(1978) 02 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 7070 of 1975

Rubka Fruit Products Pvt. Ltd. by Managing Director Joseph	APPELLANT
Vs	
The Regional Commissioner, Employees Provident Funds and Family Pension Fund	RESPONDENT

Date of Decision : 24-02-1978

Acts Referred:
Employees Provident Fund and Family Pension Act, 1952 — Section 16, 16(1)

Citation : (1978) ILR (Mad) 291

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : S.W. Kanakaraj, for the Appellant; Radha Srinivasan, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—The facts in this case do not admit of any controversy. Certain machineries were hypothecated to the State Bank of India by

one Delican Private Limited. The said Delican Private Limited went into liquidation. Those machineries were purchased by the Petitioner from the

mortgagee (The State Bank of India). There was a closure of the establishment originally run by M/s. Delican Private Limited and after the

liquidation proceedings and the purchase of the machineries which covered a period of six months and more, the Petitioner with the help of the

machineries and in the same premises as the business was conducted by Messrs. Delican Private Limited, started afresh the business of

manufacture of fruit and fruit products under the name and style of Rubka Fruit Products Private Limited. The Petitioner claimed, infancy

protection u/s 16(1)(b) of the Employees Provident Fund and Family Pension Act,

1952. By the impugned order, dated 24th September 1975 it

was held that such a protection would not be available to the Petitioner. The reason, according to the Regional Commissioner, Employees''

Provident Funds, is this:

The establishment Messrs. Rubka Fruit Products Private Limited did not purchase the plant, boiler, machinery, etc., from the market. It purchased

these from the previous employer viz., the State Bank of India, Madras the mortgagee in ""where they were and as they were condition."" The

present employer has taken over the entire factory together with its premises. The closure of the establishment was only for about six months. In

these circumstances, I decide that the provisions of the Employees'' Provident Funds and Family Pension Fund Act, 1952 will continue to apply to

the establishment Messrs. Rubka Fruit Products Private Limited, Madras-10 from the date (i.e.) 10th January 1975 from which it has taken over

the previous establishment.

In attacking this order, Mr. S.W. Kanagaraj, learned Counsel for the Petitioner urges that this line of reasoning has been held to be wrong in

several decisions including that of the Supreme Court. It cannot be said that merely because the Petitioner had purchased old machinery, or using

the same premises, it is not a new establishment. The test to be applied is whether with a view to evade its liability under the Act, the claim for

infancy protection is made. In support of this submission the learned Counsel for the Petitioner, relies on the decision reported in The Provident

Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry, , in which the decision of this Court in Vittaldas

Jagannathadas v. Regional Provident Fund Commissioner (1966) 1 L.L.J. 240, found approved. Again the learned Counsel for the Petitioner

presses into service the decision in Devi Press v. Regional Provident Fund Commissioner (1965) 1 L.L.J. 294, and contends that the facts are

more or less identical. Therefore, according to him, the impugned order must be quashed.

2. Miss. Radha Srinivasan, learned Counsel appearing for the department, would, however, contend that having regard to the fact that the same

machineries were purchased and the same premises is used and there had not been long interval between the commencement of the old business and the commencement of the new business of the Petitioner, it must be presumed that, it is not a new establishment entitled to the infancy

protection.

3. I can straightaway say that all these authorities are loaded in favour of the Petitioner. The reasoning of the Regional Commissioner Respondent

stated above hardly appeals to me. The correct line of reasoning in Vittaldas Jagannathadas v. Regional Provident Fund Commissioner (1966) 1

L.L.J. 240 which found approval in the Supreme Court as seen from The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-

operative Society, Changanacherry, , is what is set out at page 86:

If, in a particular case, it appears that the new establishment is not genuinely such, but is only an old one formally resuscitated in order to avoid the

legal obligation, it is always open to the Court to held that it is the old establishment which is substantially continuing, and that the liability to

contribute must be affixed to the apparently new form also. But where, in reality, the old establishment has come to an end, and there is a new

establishment, this establishment is entitled to infancy protection in its own right, even if it happens by coincidence to have employed a large part of

the personnel of the previous establishment.

Then again in Writ Petition No. 1333 of 1961 on the file of this Court, Srinivasan J. has held:

That the same premises was used does not mean that, it was the same business. There is a vital distinction in law between the transfer of a business

as a running concern and the transfer of a few of the assets of the business, which has been wholly ignored by the Regional Provident Fund

Commissioner.... It must also be mentioned that in so far as the closure of the business by Narayana Ayyar was concerned, the genuineness of that

closure was never in dispute. It was not closed down with a view to escaping any liability which the application of the Employees'' Provident Funds

Act, might impose.

On these decisions, I have absolutely no difficulty in agreeing with the learned Counsel for the Petitioner and rejecting the argument advanced on

behalf of the department/Respondent.

4. The facts stated above would clearly show that the Petitioner is not claiming any undue benefit of infancy protection. On the contrary, the earlier

company went into liquidation, the machineries were bought from the mortgagee and there was an interval of six months between the closure of the

old business end the commencement of the Petitioner business. All these would go to show that the Petitioner''s establishment is a new

establishment entitled to the infancy protection u/s 16 of the Employees'' Provident Funds and Family Pension Fund Act XIX of 1952. Hence .this

writ petition will stand allowed. However, there will be no order as to costs.