
(1987) 11 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 13006 of 1987

Shri Hotel Arjun

APPELLANT

Vs

The Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 16 (1) (b)

Citation : (1987) 3 KarLJ 42 : (1995) 3 LLJ 699

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; Shylendrakumar, Central Govt. Advocate, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—The short question which falls for determination in this writ petition is whether the petitioner M/s. Shri Hotel Arjun of Harihar is entitled to the benefit of infancy u/s 16(1)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1951 (hereinafter referred to as the "Act").

2. The undisputed facts are that the premises where the petitioner is now carrying on his business was once used by M/s. "Shanbhag Hotel". M/s. Shanbhag Hotel closed its establishment on 15-2-1983. On 18-2-1983 M/s. Sree Enterprises represented by its own partners took over the building on rental basis from one Shri Narayana Ladva and Shri Ambasa Ladva. The previous day the same Sree enterprises purchased the utensils and other articles required for running the Hotel from the partners of M/s. Shanbhag Hotel for a sum of Rs. 1,75,000/-. They renovated the hotel and renamed the Hotel as "Hotel Arjun" employing its own new employees with effect from 1-7-1983.

3. Because the previous management of Hotel Shanbhag was brought within the purview of the Act, the respondent advised the new entrepreneurs to continue the contribution as it was only continuing the earlier business. That was resisted by the petitioner Hotel on the ground that they had nothing to do with the previous establishment and Hotel Arjun was not a continuation of the

establishment which was operating under the name and style of Hotel Shanbhag. Overruling that resistance, the order was passed holding that the petitioner is a continuation of the establishment which was run under the name and style of Hotel Shanbhag.

4. In almost identical circumstances this Court in the case of Rukmini K. Shetty v. Regional Provident Fund Commissioner, Karnataka 1987 FJR 193, has taken the view that when a new person takes on lease the same premises and starts his business a fresh, which is similar to the one that was run in the premises earlier "namely". Restaurant business, it cannot be said that the new lease and the new lessee are the continuation of the old lessee and his business. The only difference between the facts of Rukmini K. Shetty's case and the present case on hand is that there the lease came to an end by virtue of the order of eviction passed by a Civil Court, whereas here the lease has come to an end on the volition of the parties lessee being different.

5. The manner of termination of lease cannot be a distinguishing feature to take away the vigour of the decision rendered in Rukmini's case.

6. Mr. Sylendra Kumar, learned Central Government Standing Counsel for respondents, urged that having regard to the ruling of the Supreme Court in the case of Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner, this Court should necessarily hold that the petitioner Hotel Arjun is a continuation of the earlier "industry" or the establishment and therefore the order of the Regional Provident Fund Commissioner must be sustained. In Rukmini's case (1987 FJR 193) (Kant) this Court considered Sayaji Mill's case and explained the ratio. In Sayaji Mill's case numerous illustrations have been given as to how an industry or establishment may be interrupted in its working condition. While the illustrations are not exhaustive but only illustrative, nevertheless, they indicate the industry interruption which the Court can take into account in determining its continuation as the earlier establishment or industry. The Supreme Court in Sayaji Mill's case has not laid down the inflexible rule that a business carried on in the same premises by successive entrepreneurs would amount to the continuation of the first establishment or industry carried on in that premises. But to understand the ruling of the Supreme Court in Sayaji Mill's case in that fashion is to permanently prevent the new entrepreneurs taking up the same business in a given premises though their establishment is totally new, independent of the previous establishment.

7. The benefit of "infancy" period of 3 years or 5 years, as the case may be, u/s 16(1)(b) of the Act is available to all new establishments if they satisfy the requirement which may be held to be essential having regard to the object of the Act. None of the employees of the previous establishment should be borne on the rolls of the new establishment. No member of the management of the previous establishment should be a member of the new establishment. In other words, the change of management should not be with the object of extending the period of infancy. The test has to be applied by the Regional Provident Fund

Commissioner to see whether there is a genuine termination or end of the previous establishment and not a colourable attempt to clothe the old establishment as if it were a new establishment. It is only on being satisfied that it is only the old establishment to gain extended period of infancy, should the Provident Fund Commissioner reject the claim put forward by the new establishment.

8. The learned counsel for the respondent was not in a position to tell this Court whether the judgment in Rukmini's case 1987 FJR 193 has been appealed or not. If the Department has come to accept the decision, then the matter must rest there.

9. With the explanation I have furnished and the criteria I have indicated to determine the difference between the old establishment being continued and a new establishment being brought into existence, the petitioner must succeed on the facts of this case to have the order impugned set aside.

10. Accordingly, the order is quashed and the rule is made absolute. No costs.

Rules made absolute.