(1980) 08 KL CK 0023

In the High Court Of Kerala

Case No : W.A. No. 334 of 1978

The Regional Provident Fund Commissioner and Another	APPELLANT
Vs	
C.K.M. Saw Mills	RESPONDENT

Date of Decision : 01-08-1980

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1), 19A

Citation : (1980) 08 KL CK 0023

Hon'ble Judges : V. Balakrishna Eradi, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T.R.G. Warrier, for the Appellant; Ratna Singh and Kuruvilla Jacob, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, C.J.—The Union of India jointly along with the Regional Provident Fund Commissioner, Kerala has preferred this appeal against the decision of a learned single judge of this Court allowing O.P. No. 4350/76 filed try the Respondent herein and quashing the orders produced and marked in the original petition as Exts. P-1, P-3, P-5 and P-6.

2. A firm by name Messrs. Muralidhara Saw Mills was conducting a saw mill at Puthiyara, Calicut. The said establishment had been brought under the purview of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the Act) with effect from 31st January 1965 with Code No. KR/1673. It is common ground that the aforesaid firm closed the saw mill business on 1st November 1970 and all the workers were retrenched and paid retrenchment compensation. By a sale deed dated 16th November 1970 the plant, machinery, lands and buildings, etc., of Muralidhara Saw Mills were sold and purchased by another firm by name Messrs. C.K.M. Saw Mills and the working of that mill was resumed by Messrs. C.K.M. Saw Mills with effect from 24th November 1970. By

the Notice Ext. P-1 dated 3rd May 1971 the Regional Provident Fund Commissioner, Kerala (who was 1st Respondent in the O.P. and will hereinafter be referred to as the 1st Respondent) informed Messrs. C.K.M. Saw Mills (hereinafter referred to as the writ Petitioner-firm) that it was liable to continue compliance with the provisions of the Act and the scheme framed thereunder with effect the date on which it had started manufacturing process in the factory. In reply thereto the writ Petitioner firm submitted before the 1st Respondent as per the representation Ext. P-2 that the previous owners had wound up their establishment on 30th October 1979 after dispensing with the services of all their employees and what had taken place was not a mere change of management but a change of ownership and a subsequent recommencement of working of the factory by the new owner with a new set of ten workers. In these circumstances it was contended in Ext. P-2 that the Petitioner''s establishment was a new establishment entitled to the benefit of infancy protection u/s 16(1)(b) of the Act. The aforesaid plea did not find acceptance at the hands of the 1st Respondent who informed the Petitioner as per the order Ext. P-3 dated 14th July 1971 that under the provisions of the Act any change in the ownership of an establishment already brought within the purview of the Act will not affect the continued applicability of the provisions of the Act to the establishment and, as such, the writ Petitioner-firm was liable to continue compliance with the provisions of the Act and the scheme with effect from the date on which it had started manufacturing process in the establishment. Aggrieved by the said order passed by the 1st Respondent, the writ Petitioner-firm took resort to the provisions of Section 19A of the Act and referred the question of the entitlement of the Petitioner''s establishment to infancy protection u/s 16(1)(b) of the Act to the Central Government. A personal hearing was afforded to the writ Petitioner-firm by the Government of India and ultimately by a detailed order evidenced by Ext. P-5 dated 18th March 1976 the Central Government rejected the Petitioner''s contention that its establishment is a new establishment and not a continuation of the old mill and held that the writ Petitioner firm is liable to continue compliance with the provisions of the Act and the scheme framed thereunder from the date on which they started the manufacturing process in the establishment, that is, 24th November, 1970. In view of the said decision rendered by the Central Government the writ Petitioner firm was called upon by the 1st Respondent as per the communication Ext. P-6 dated 21st July 1976 to comply immediately with the direction contained in the aforesaid order passed by the Central Government. Thereupon the Petitioner came up to this Court by filing O.P. No. 4350 of 1976, out of which this writ appeal has arisen seeking to quash Exts. P-1, P-2, P-5 and P-6.

3. The Petitioners case is that 30th October 1970 Muralidhara Saw Mills closed down its establishment due to financial loss and other reasons and thereafter no further relationship of employer-employee existed between the said establishment and its workmen since all the workmen ''were retrenched after payment of the amounts due to them including the retrenchment compensation.

On this basis, it was submitted by the writ Petitioner firm that the C.K.M. Saw Mills under the new ownership and management was a new establishment set up under a new licence and with a new set of employees. On the other hand, it was contended by the Respondents before the learned single Judge that the mere fact that there was a change of ownership of the establishment which was already covered by the Act and the Scheme should not effect the liability of the establishment to be continued to be so covered.

4. After setting out the aforesaid contentions advanced on either side the learned single Judge rightly observed that "the real question is whether M/s C.K.M. Saw Mills owned by the new firm, is in effect and substance the continuation of the old establishment known as M/s Muraleedhara Saw Mills." The learned Judge then went on to consider whether on the basis of the fact and circumstances of the case as brought out by the materials on record "the establishment now owned and run by the Petitioner firm could be characterised as one which is the continuation of the old establishment." After adverting to the factual aspects relied on by counsel on either side the learned Judge recorded his conclusion in the following terms:

Taking all facts and circumstances into consideration, particularly of the fact that what happened between the stoppage of work of the old establishment on 30th October 1970 and starting of the new establishment on 24th November 1970 is not a temporary closure, but a complete closure of the old, and the setting up of a new one, there is no warrant for a conclusion that the establishment run by the Petitioner firm is in effect and substance the continuation of the old establishment.

In the light of the said conclusion the writ petition was allowed and Exts.P-1, P-3, P-5 and P-6 were quashed.

5. It is contended before us by the learned Counsel appearing for the Appellants that the question as to whether the Petitioner''s establishment was only a continuation of the old establishment or whether it is a new establishment entitled to infancy protection u/s 16(1)(b) being essentially one of fact the finding entered thereon by the Government of India after a discussion of all the relevant aspects was not liable to be interfered with by this Court in proceedings under Article 226 of the constitution so long as it could not be characterised as perverse nor shown to be vitiated by any illegality.

6. We find there is force in the submission made on behalf of the Appellants. The following observations of the Supreme Court in the order, dated 30th March 1978 passed by it in S.I.P. (Civil) No. 4583 of 1977 (disposal of after notice to the Respondents) are of special relevance in this context:

The short question raised in this SLP is as to whether the Petitioner qualified for exemption from the levy under the Employees'' Provident Funds Act, 1952 for the period of infancy specified in Section 16(1). The sole question that arises in such a situation is as to whether a new establishment has been set up on whether there is a continuation of the old establishment. This is essentially a question of fact depending on many variables. The identity of the establishment cannot be confounded with the identity of the workmen employed. A constellation of factors conduce to the conclusion regarding continuity of the establishment or otherwise. When an establishment changes hands and a plea is put forward that in the hands of transfers, a new establishment has been set up extinguishing the old establishment, the court has to survey all the facts and reach a result which takes note of the essential features. Change of location may be a circumstance but certainly is not a clinching one. Change of machinery, change of workmen, change of licences and the like may have some hearing but it is only the totality that tells. Confounded by such a question the court has to determine whether the old concern, in substance persists or had perished. If only the machinery has been purchased and not the concern as much the inferences may be of discontinuity. But, if the location is the same, the machinery substantially continues the same though supplemented later, if the concern do facts runs on, then the inference is more readily available that no new establishment has been set up. In the present cases the conclusion reached by the Tribunal is that an overall appreciation of the features shows the continuity of the old in new hands as contrasted with the extinction of the old and the birth of a new concern. This being a finding of fact for which there is fair support in the evidence, we cannot disturb it under Article 136.

Sri Gobind Das has pressed before us the ruling in 1970 (2) S.C.R. 461. In that case a criminal case against the factory owner failed because it was contended that a new establishment had been set up. On the oral evidence the prosecution had not discharged its burden and the accused had probably made out a case that there was a new establishment set up. Even assuming that the facts in that case gave rise to the inference drawn in that particular decision, the facts in the present case do not lend us to the same conclusion. We therefore dismiss this special leave petition.

In the unreported judgment in W.A. No. 250 of 1978 Subsequently reported in ILR 1980 2 Ker 738, Division Bench of this Court consisting of Gopalan Nambiar, C.J. and one of us (Balagangadharan Nair, J.) has after a detailed discussion of the case-law on the subject summarised the position by pointing out that a mere change of ownership cannot affect the continuity of a "factory" for the purposes of the Act and merely because of the fact that the establishment was not taken over as a going concern or because retrenchment compensation had been paid to the workmen it could not be said that there was an extinction of an old establishment and that a new establishment had come into being; and that it must essentially be a question of fact as to whether there has been a substitution of an old establishment by a new one.

7. The finding entered on such a question of fact by the statutory authority, namely, the Central Government is exercise of its power u/s 19A of the Act is not liable to be interfered with by this Court unless it is shown to be manifestly

perverse or vitiated by any illegality of approach or an omission to advert to say of the material facts or circumstances. In the present case, it is seen from the order Ext. P-5 that the Central Government has approached the matter from a correct legal perspective and it is only after a detailed advertence to all the relevant facts and circumstances that it has recorded the conclusion that the contention of the writ Petitioner firm that its establishment was a new establishment and not a continuation of the old mill could not be accepted. The said finding of fact is not liable to be interfered with by this Court unless it is shown to be illegal or perverse. So long as it is not shown that the statutory authority which recorded the finding the misdirected itself in regard to the correct legal principles or criteria to be applied for determination of the question or that it has omitted to consider relevant materials available on record this Court cannot be invited in writ proceedings under Article 226 of the Constitution to re-evaluate the evidence and sit in judgment on the correctness of the finding of facts entered by the statutory authority.

8. Tested in the light of the aforesaid legal position, we consider, with respect, that the learned single Judge was not justified in interfering with the finding of fact recorded by the Central Government in the order Ext. P-5 passed u/s 19A of the Act. We accordingly allow this writ appeal, set aside the judgment of the learned single Judge and dismiss O.P. No. 4350 of 1976. The parties will bear their respective costs in this appeal.

