

(2002) 12 KAR CK 0035
In the Karnataka High Court
Case No : Writ Appeal No. 4864 of 1999

The Regional Provident Fund Commissioner	APPELLANT
Vs	
B. Ganapathy Bhandarkar	RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7 A

Citation : (2003) 4 KarLJ 10 : (2003) 3 LLJ 356

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Udayshankar Rai, for Harikrishna S. Holla, for the Appellant;
Subramanya, for B.C. Prabhakra, for the Respondent

Final Decision : Dismissed

Judgement

1. The controversy involved herein is as to whether the three establishments owned by the respondent-B. Ganapathy Bhandarkar could have been clubbed together for the purpose of coverage of these establishments under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short, the "Act")?

2. The learned Single Judge has held that the appellant-Regional Provident Fund Commissioner (in short, the "Commissioner"), has erred in clubbing all the three establishments by holding that "the shops and the manufacturing units, therefore, are different and distinct, and there is no interconnection between the two".

3. This is the third round of litigation between the parties before this Court. The issue is being kept alive since 1975. The respondent had started business in hardware goods including weighing scales in 1959. The business was started simultaneously at Mangalore and Bangalore. The unit at Bangalore was treated as head office and that at Mangalore to be its branch office. At each of these trading units, six employees were working. These units were engaged merely in

buying and selling of various merchandise and sale of weighing scales formed less than 10% of the total turnover.

4. In 1975, the respondent started a factory at Yeyyadi, Mangalore, for manufacture of weighing scales. In his affidavit dated 11-5-1982 (Annexure-N) filed before the Commissioner during the enquiry u/s 7-A of the Act, he had specifically taken the contention that he had established the factory by taking loan from Canara Bank. He had further stated that the goods manufactured in the said factory were sold through factory sales representatives purely on commission basis. The weighing scales manufactured in his factory were not sold in his shops either at Bunder, Mangalore or Bangalore. The above facts have not been disputed by the Commissioner in his order passed successively pursuant to the orders of this Court.

5. The first order passed by the Commissioner was quashed in W.P. No. 1693 of 1980 and the matter was remanded. On remand, the 2nd order was passed by the Commissioner. But, the same also could not sustain the judicial scrutiny and it was also quashed in W.P. No. 1311 of 1983. Aggrieved by the said order, the Commissioner went in appeal in W.A. No. 1906 of 1989 which was disposed of on 5-6-1991 with the direction to the Commissioner to hold de novo enquiry and thereupon pass fresh order. The Commissioner without examining the matter in its proper perspective and in the light of the observations made by this Court in the judgment, again passed order on 23-12-1993 reiterating his earlier view. This order was questioned in W.P. No. 3949 of 1994 in which the impugned order has been passed. The learned Single Judge on examining the facts and circumstances and the material brought on record has held that the shops and manufacturing units of the respondent are different and distinct establishments, having no interconnection between the two and therefore the provisions of the Act are not applicable to these units.

6. There is no denial of fact that the shops situate at Mangalore and Bangalore were having 6 employees at each of the shops. Further, none of these employees were transferred to the factory. Further, there was no finding as to interdependency between the factory and the two shops. The learned Single Judge has found that the Commissioner has committed an error of record in holding that the three units were having common balance-sheet and trading account. Before us also, it could not be disputed that only the two shops were having common balance-sheet and trading account. But so far as the factory is concerned, it maintains separate books of accounts, balance-sheet and trading accounts and has no relationship between the shops. From these facts, it cannot be disputed that between the two shops and the factory, there is absolutely no financial or functional dependency. Accordingly, employees of the shops and the factory cannot be clubbed together for holding that the provisions of the Act will apply to those establishments. The only ground which seems to have prevailed with the Commissioner for clubbing the units is that there is a common ownership.

7. The Supreme Court in the case of Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd., , has held that only because owner of different establishments are common, that by itself is no ground to establish interconnection. In paragraph 4 of the judgment, it has been held that,--

"So far as this contention is concerned the finding reached by the High Court, as extracted earlier, clearly shows that there was no evidence to indicate any such interconnection between the two factories in the matter of supervisory, financial or managerial control. Nothing could be pointed out to us to contradict this finding. Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned Counsel for the appellant for culling out interconnection between Ambarnath factory and Roha factory was that both of them were owned by a common owner, namely, the respondent-company and the Board of Directors were common. That by itself cannot be sufficient unless there is clear evidence to show that there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned Counsel for the appellant that Roha factory was a part and parcel of Ambarnath factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921".

8. The learned Counsel for the appellant-Commissioner has placed reliance on the judgment of the Supreme Court in the case of Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others, and Bench decision of this Court in the case of Hotel Mahaveer v. Regional Provident Fund Commissioner 2001 Lab. I.C. 3005, in support of their contention that the Commissioner was justified in clubbing all the three units and issuing coverage memo.

9. In our considered opinion, the reliance placed on the above judgments is obviously misconceived. In those judgments it was found as of fact that the management of two units sought to be clubbed were common. They are conducting the business from the same premises with the same set of employees and by using same business assets. This is not the situation here.

10. For the said reasons, the writ appeal is dismissed.