
(2016) 01 KL CK 0129
In the High Court Of Kerala
Case No : W.P. (C) No. 4513 of 2011.

The Regional Provident Fund Commissioner

APPELLANT

Vs

K.K. Bhanumathy

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1 (3) (b), 2A

Citation : (2016) 3 CLR 547 : (2016) 150 FLR 302 : (2016) 3 KerLJ 67 : (2016) 3 KHC 80 : (2016) 3 KLT 60 : (2016) LabLR 925 : (2016) 2 LLJ 389 : (2017) 1 SCT 56

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : Thomas Mathew Nellimoottil, SC, P.F, for the Appellant; Millu Dandapani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Harilal, J. - The petitioner was the respondent and respondent 1 and 2 herein were the appellants in appeal No.ATA No.847(7)/2005, on the files of the 3rd respondent herein, the EPF Appellate Tribunal. Respondents 1 and 2 herein are the mother and son, respectively. The 1st respondent is the registered owner of five stage carriages in her name and the 2nd respondent is the owner of one stage carriage and service station. The 1st respondent is conducting the bus service in the name "Prayaga Motor Service" and the 2nd respondent is conducting the service station in the name "Prayaga Auto Garage", respectively. According to the petitioner herein, since the said establishments satisfied the conditions for coverage under Section 1(3)(b) read with Section 2A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), those were provisionally covered under the Act. The establishments are interrelated and functioning in the same premises. Thus, there is a functional clubbing of both establishments together and thereby, both establishments must be taken together, as a single unit and thereby, both are

covered by the application of Act.

2. The respondents 1 and 2 contended that "Prayaga Motor Service" and "Prayaga Auto Garage" are entirely different and distinct establishments owned by different persons. There was no functional or managerial integrity between the two establishments and merely on the reason that both establishments are functioning in the same premises and the respondents 1 and 2 are mother and son, liability under the Act cannot be imposed on them, as employers, who are liable to pay employees' provident fund contribution.

3. After examining the rival contentions, the original authority rejected the contentions raised by the respondents 1 and 2 and found that the respondents 1 and 2 are liable to pay employees contribution under the Act, on the reason that employers are mother and son and both establishments are functioning in the same premises and thereby, there is a functional and geographical integrity between the two establishments. Aggrieved by the order passed by the original authority, the respondents 1 and 2 preferred the appeal before the Tribunal and the Appellate Authority, by Ext.P3, reversed the findings of the original authority and allowed the appeal.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 and 2.

5. It is the case of the petitioner that respondents 1 and 2 are mother and son and both establishments are functioning in the same premises. It is also contended that the motor service cannot be functioned, without service station. Thus, there is a functional integrity between the motor service and service station and thereby, both establishments can be clubbed together and taken as a single establishment.

6. As rightly held by the Appellate Authority, it is well settled that two establishments can be treated as one, if there is financial, functional and managerial integrity between the two units and the said finding is supported by the decision of the Apex Court in *The Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani v. Their Workmen* [AIR 1960 SC 56]. Thus, the unity, ownership, management and control is the appropriate tests to find out the integrity of two establishments.

7. Going by Ext.P1 order passed by the original authority, it is seen that the original authority has been carried away by the relationship between two employers, as mother and son and also the fact that both establishments are functioning in the same premises. As rightly held by the Appellate Authority, merely on the basis of the relationship between the employers and proximity of the establishments in the same premises, it cannot be held that there is managerial, financial or functional integrity. Members of the same family with close relationship, either as mother and son or as brothers or brother and sister, can conduct different establishments in the same premises and merely on the basis of locative proximity, all the establishments cannot be clubbed together as

one establishment, falling under the Act, unless the integrity of function and management are supported by sufficient documentary evidence. Such a situation usually occurs, when single ownership divides by family partition. After family partition, different establishments cannot be clubbed together, though, earlier, they were owned and functioned singly. So, functional and managerial integrity are the twin conditions for clubbing different establishments together, as one, falling under the Act. In the instant case, the findings of the original authority are not supported by any kind of documentary or oral evidence and the findings rest on locative appearance of the establishments and relationship between the parties. Therefore, I find that the findings of the original authority are not legally sustainable and Appellate Authority is justified in reversing the findings of the original authority and allowing the appeal.

8. This writ petition is dismissed accordingly.