
(2009) 08 DEL CK 0350

In the Delhi High Court

Case No : Writ Petition (C) No. 6594 of 1999

The Regional Provident Fund Commissioner

APPELLANT

Vs

Park Hotel Private Ltd. and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(B), 2A, 6, 6A, 6C

Citation : (2009) 162 DLT 335 : (2009) 123 FLR 503 : (2009) ILR Delhi 847
Supp : (2010) 1 LLJ 626

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajesh Manchanda, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—This is a petition challenging the order dated 3rd June, 1999 passed by respondent No. 2, Presiding Officer, Employees. Provident Fund Appellate Tribunal, whereby he has set aside the order dated 19.11.1996 passed by the petitioner u/s 14(B) of Employees. Provident Fund and Miscellaneous Provisions Act, 1952.

2. It has been alleged in the petition that respondent No. 1, Park Hotel Private Limited started in New Delhi in November, 1992, as a branch or department of its registered office at 15, Park Estate, Calcutta. On 10th May, 1993, respondent No. 1 applied for allotment of Code No. , suppressing the fact that its head office was already covered under the Act in West Bengal. Respondent No. 1 also concealed the fact that its office at Pragati Bhawan, Jai Singh Road, New Delhi as well as Park Hotel at 15 Parliament Street, New Delhi already stood covered under the provisions of the Act. On the application dated 4th May, 1993, submitted by respondent No. 3, it was allotted Code No. DL-15572 on 9th December, 1993, for the administrative convenience of respondent No. 1. Since there was delay in remittances of P.F. contribution u/s 6 of the Act, E.P.F. contribution u/s 6A of the

Act, Insurance Fund contribution u/s 6C of the Act, Administrative charges u/s 38 of the E.P.F. Scheme, 1952 and Administrative Charges payable under the EDLI Scheme, 1976, damages were levied upon it vide order dated 19.11.1996, for the period from November, 1992 to December, 1993 and for May, 1994. Vide impugned order dated 3rd June, 1999, the Tribunal set aside the order passed by the petitioner on 19th November, 1996, primarily on the ground that since the establishment started working from 1st November, 1992, it was entitled to infancy benefits up to 30th November, 1995. It was also held by the Tribunal that the loss of interest suffered by the employees should be recovered from the salary of the officers who had committed delay in allotting the Code No. to the establishment.

3. In the counter affidavit filed by it, respondent No. 1 has stated that it had applied for voluntary coverage under the Act vide letter dated 4th January, 1993, and had written to the petitioner from time to time for allotment of code No. However, the code No. was allotted only vide letter dated 9th December, 1993. It has been further alleged that Park Hotel Private Limited, which is a private limited company, decided sometime in October- November, 1992 to set up a new establishment at Delhi and that it had no office at Pragati Bhawan, Jai Singh Road, New Delhi, which was only an address for correspondence. It has been further stated that respondent No. 1 computed the contribution and deposited the same vide letter dated 31.01.2004, soon after receiving the Code No. DL-15571 from the respondent.

4. Section 2A of the Employees. Provident Fund and Miscellaneous Provisions Act, 1952 reads as under:

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

5. A perusal of annexure R-3 which is the copy of the letter dated 28.11.1995, written by Respondent No. 1 to the Petitioner and R-4 which is the copy of the Resolution passed by the Board of Directors of Respondent No. 1, would show that the registered office of Park Hotel Private Limited is at 15, Park Estate, Calcutta.

In the counter affidavit filed by it, respondent No. 1 has not denied that its registered office is situated in Calcutta. This is also not the case of respondent No. 1 that its establishment in Calcutta did not come within the preview of The Employees. Provident Funds and Miscellaneous Provisions Act, 1952. The stand taken by it is that in October- November, 1992 it decided to set up entirely a new, different and separate establishment at Delhi and passed a resolution for this purpose on 30.12.1992, authorising Shri R.N. Kaushal and Shri J.C. Babu to apply for various licences under Factories Act, Industries Act and seek registration with different departments, such as Provident Fund, Employees State

Insurance Corporation, Sales Tax and Excise Tax.

6. In view of the provision of Section 2A of the Act, if the establishment set up by respondent No. 1 in Delhi is a branch or a department of the establishment in Calcutta, it will have to be treated as a part of the Calcutta establishment. But, if it is neither a department nor a branch of the Calcutta establishment, it would not be treated as a part of Calcutta establishment even if the ownership of Calcutta establishment as well as Delhi establishment vests in the same company i.e. Park Hotel Private Limited.

7. The question as to what are the relevant materials necessary for determining the oneness or unity of an industrial establishment when it consists of parts, units etc. came up for consideration before the Hon.ble Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, . The Hon.ble Supreme Court observed as under:

The Act not having prescribed any specific tests for determining what is "one establishment., we must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and object of the Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. What then is "one establishment. in the ordinary industrial or business sense? The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units etc., with different locations, near or distant, the question arises what tests should be applied for determining what constitutes "one establishment.. Several tests were referred to in the course of arguments before us, such as, geographical proximity, unity of ownership, management and control, unity or employment and conditions of service, functional integrality, general unity of purpose etc.

...It is perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc., If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, such unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification thereof. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many

enterprises may have functional integrity between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned.

8. In *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, the Supreme Court observed as under:

Where two units belong to a proprietor, there is almost always likelihood also of unity of management. In all such cases, therefore, the Court has to consider with care how far there is "functional integrity" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated.

9. In *Wipro Ltd. Vs. Regional Provident Fund Commissioner*, Karnataka, the High Court observed as under:

10. To determine, whether different units of one employer constitute "one establishment" or "separate establishment", various tests, such as unity of ownership, management and control, unity of employment, functional integrality and general unity of purpose will have to be applied. But it is not possible to lay down any one test as the absolute and invariable test for all cases. It depends upon the facts and circumstances of each case. However, if, by their relationship with each other the branches, units or parts constitute one integrated whole, it can be said that it is "one establishment". If they do not constitute one integrated whole, it cannot be said that it is "one establishment". If they do not constitute one integrated whole, it cannot be said that it is "one establishment". If they do not constitute one integrated whole, each unit is separate. If one unit can exist conveniently and reasonably without the other, they are not one but separate units. The test of integrality or commonness is the basis to hold that several units of one employer is "one establishment".

10. In *Andhra Cement Co. Ltd. Vs. Regional Provident Fund Commissioner, Hyderabad and Another*, where the Petitioner Company first established a Cement Factory at Vijaywada in the year, 1938 then another Factory at Vishakhapatnam in the year, 1978, the High Court of Andhra Pradesh held as under:

A broad criteria emerging out of the above conspectus of case law are. In order to hold that different parts, units, branches and so forth are merely constituents of one establishment, the salient features, which are enumerated below, must be satisfied; this is, however, by entering a caveat that no hard and fast rule could be laid down as to how many of the following shall have to be satisfied-in other words, each case has to be considered in the light of its own circumstances as to whether it is a new establishment or a branch, part or constituent of the old establishment. There cannot however be a strait-jacket formula:

(1) The unity of ownership, management and control, unity of employment and

conditions of service, functional integrality and general unity of purpose.

(2) The connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

(3) The real purpose of the tests is to find out the true relationship between the two parts, branches, units, etc. If they constitute one integrated whole, we say that the establishment is one. If it is so to the contrary, then each unit is a separate one.

(4) In one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case the important test may be the unity of employment.

(5) Many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities, it may be difficult to discover the real thread of unity.

11. It was held in *Ebrahim Currim and Sons v. Regional Provident Fund, Commissioner, Maharashtra and Goa* 1993 LLR 916; that mere fact of common ownership by itself is not sufficient to satisfy that the subsequent unit is a branch or department of first unit. The test of functional integrality has to be satisfied.

12. In *Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others*, , the Hon.ble Supreme Court held that whether two units are one or distinct will have to be considered in the light of the provisions of Section 2-A of the Act and in such cases, the court has to consider how far there is functional integrality between the two units, whether one unit cannot exist conveniently and reasonably without the other, and on the further question, in matters of finance and employment, the employer has actually kept the two units distinct or integrated.

13. In *Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd.*, , the Hon.ble Supreme Court held that unless there is clear evidence to show that there was any supervisory financial or managerial control, it cannot be said that one is branch of the other.

14. A perusal of the impugned order dated 3rd June, 1999, shows that the Tribunal has not, at all, gone into the question as to whether the establishment set up in Delhi was a department or branch of the Calcutta establishment or not. The Tribunal has not gone into the question as to whether the establishment in Calcutta and the establishment in Delhi, were functionally different or not. It has not gone into the question as to who was managing the affairs in Calcutta establishment and who was managing affairs of Delhi establishment; whether the

company Park Hotel Private Limited was showing income and expenditure of Calcutta establishment and Delhi establishment separately or not; whether the company was maintaining a common account for both the establishments or was maintaining separate accounts for Calcutta establishment and Delhi establishment. The Tribunal has, without examining the applicability of Section 2A of the Act, held that since the establishment in Delhi started working from 1.11.1992, it would be entitled to infancy benefits up to 30.11.1995. In my view, the Tribunal was not justified in granting infancy benefit to respondent No. 1 without going into the question as to whether Delhi establishment was an integral part of the Calcutta establishment or not.

15. In view of the above, order dated 3rd June, 1999, passed by the Presiding Officer of the EPF Appellate Tribunal is set aside and the matter is remanded back to the Tribunal to pass a fresh speaking order after examining the applicability of Section 2A of the Act, in the light of this judgment. The parties are directed to appear before the Tribunal at 10.30 am on 24th August, 2009. The Writ Petition stands disposed of.