

(2006) 12 RAJ CK 0053
In the Rajasthan High Court

Times Publishing House Ltd. and Others	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
16, 7A

Citation : (2007) 113 FLR 1029 : (2007) 3 LLJ 1068

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Common prayer of the petitioners in all these writ petitions is as under:

(a) to quash the order dated October 10, 1997 by the learned Appellate Tribunal and order dated October 4, 1997 passed by the learned Regional Provident Fund Commissioner.

(b) to declare that the establishment of the petitioner is an independent establishment and the petitioner-establishment is entitled to the infancy period of three years.

(c) to declare that the establishment of Shree Vishal Printers Ltd. and Times Publishing House Ltd. are separate establishments and they cannot be clubbed with the establishment of Bennett Coleman & Co. Ltd.

(d) to restrain the respondent from: imposing any liability of P.F. contribution upon the petitioner-establishment of the employees of Shree Vishal Printers Ltd. and Times Publishing House Ltd.

(e) to restrain the respondent from: demanding any PF contribution pursuant to the order dated October 4, 1997 passed by the Regional Provident Fund

Commissioner and order dated October 10, 1997 passed by the Appellate Tribunal.

2. Contextual facts depict that the petitioner Times Publishing House (for short "TPH") is a registered company under the provisions of the Companies Act. It was; incorporated in the year 1983 since then it is doing the business. It also undertook the work of publishing a newspaper for a few months thereafter the same was discontinued. After discontinuation of publishing work the, petitioner entered into an agreement with Bennett Coleman & Co. (for short "BC") for distribution of its newspapers and for collection of advertisements. Shree Vishal Printers (for short "SVP") also entered into an agreement, with Bennett Coleman & Co. The TPH is having number of offices in various places in India and all the offices are working and doing the similar business as the Jaipur unit was doing but the Jaipur unit was having its independent entity and was independent from all the units which are working at various places like Bangalore and Patna etc. The TPH is engaged in publication of financial times from Delhi. Bombay and Bangalore and is acting as advertisement booking agent at Bombay. After undertaking the work at Jaipur TPH sent a letter to Regional Provident Fund Commissioner informing that they are entitled to get infancy benefits under the provisions of Section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "PF Act"), but no reply was received. After the infancy period of three years, the TPH sent letter dated February 24, 1988 showing its intention to implement the provision of PF Act. The required details were also submitted. No notice u/s 7-A was issued to TPH by respondents. The notice was issued to BC u/s 7-A, however the TPH implemented the provisions of PF Act. The work of the TPH was to collect advertisement and to distribute newspapers so published by BC but there was no financial or administrative control of BC. But the PF Commissioner vide order dated October 4, 1990 has wrongly clubbed the TPH with BC. The business of BC is of publishing newspapers and magazines etc. For the purpose of distribution of newspapers of BC used to give commission to TPH. BC and SVP have their own Board of Directors, none of the Directors of the said companies are common. Promoters shareholders and distributors of TPH are not members or relatives of promoters or Directors of BC. Thus they are incorporated companies. They are having separate Directors. They were having their own premises, standing orders, wage structures. ESI accounts etc. Provisions of Section 16 of PF Act applies to every establishment which is a factory, engaged in any industry, specified in Schedule 1 in which 20 or more persons are employed. The establishments of the TPH, BC and SVP are covered u/s 1(3) of PF Act. Section 16 would be applicable after the expiry of infancy period of three years. Since the BC was not having any printing press it entered into agreement with SVP. The TPH challenged the order dated October 4, 1990 before the Legal Advisor Central Government Ministry of Labour. During pendency of representation the EPF Appellate Tribunal was constituted and the representation of TPH was transferred to the Tribunal without any notice to TPH. The Tribunal considering submissions dismissed the appeals on October

10,1997 holding that all the three petitions being devoid of merit were liable to be dismissed.

3. Learned Counsel for the TPH canvassed that all the three companies have not correlation with each other. There was no functional integrity between the three companies. There was no unity of ownership or management or control or unity of finance or unity of labour or unity of employment or inter-dependence of the parties. They were having their separate accounts. They were registered under different enactment separately. They had their own finance for their activities. Their code numbers were separate. Reliance is placed on Hotel Mahaveer v. RPF Commissioner 2002-I-LLJ 244; District Transport Manager (Admn.), O.S.R.T.C., Orissa Vs. Dilip Kumar Nayak and Another, ; Aditya Synthetics Pvt. Ltd. Vs. Union of India (UOI) and Another, and Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another,

4. Per contra, learned Counsel for the respondents supported the impugned judgment of the Tribunal and placed reliance on U. P. Hotels v. State of Rajasthan 1998 WLC (Raj) UC 306 ; Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, Rajasthan PK Goods Transport Co. v. RPF Commissioner, AIR 1997 SC 58: (1996) 4 SCC 454 : 996 II LLJ 662 and the judgment of this Court in J.K. Synthetics Ltd. v. RPF Commissioner DB Civil Special Appeal No. 231/1984 decided on May 13, 1985.

5. I have reflected over the rival submissions and weighed the material on record. The question which arises for consideration is whether the three units TPH, BC and SVP should be treated having; functional integrity between them?

6. In Hotel Mahaveer and Others Vs. Regional Provident Fund Commissioner,

6. In Pai Sales Corporation v. Regional Provident Fund Commissioner 1996 (88) FJR 323 (Ker), the learned single Judge of this Court took the view that it is the cumulative effect of all the circumstances that has to be considered in order to decide whether there was functional unity or integrality between the two establishments. The view as aforesaid finds expression in the following passage:

In order to hold that two units are one and the same, they should have basically functional integrity. Even unity of ownership, supervision common balance-sheet, the fact that employees are treated alike for the purpose of gratuity, provident fund, bonus and for conditions of service in general are not considered sufficient to hold that the units have functional integrity. If each unit has a distinct and separate entity such as Sales-tax registration. Income Tax registration, separate registration under the labour law, then, this (sic) an important circumstance to show that they are separate and independent units. If one of the units can carry on its activities without reference to the other, it is a prima facie material to hold that the units are separate.

7. In District Transport Manager (Admn.), O.S.R.T.C., Orissa Vs. Dilip Kumar Nayak and Another,

4. It is seen that this Court in *Isha Steel Treatment v. Assn. of Engineering Workers* had considered a similar question whether there was functional integrity between the office at Churchgate and the factory at Trombay. It was held that in the absence of any functional integrity, separate offices could be created as independent units and they cannot be deemed as one unit. In support thereof, this Court has relied on an earlier judgment in *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, The same ratio applies to the facts of this case. As stated earlier, for efficient transaction of the business and coordinated services of the transport operations, several zones have been created by the Corporation and each zone is independent of its operational efficacy. Therefore, all the zones are not an integral part or parcel of coordinated transport service as a single unit. In these circumstances, the decision of the High Court that all the zones would be considered to be an integral unit of the Corporation and pendency of industrial dispute in respect of one employee of a different zone would be bar for the management to take disciplinary action against an employee in that particular zone is clearly wrong. We are of the opinion that in such a case there is no need for the management to seek and obtain leave of the Industrial Tribunal u/s 33-A of the Act.

8. In *Aditya Synthetics v. Union of India* (supra) the Apex Court indicated as under 1994 II LLJ 6

12. The provisions of Section 16 though have to be construed strictly as not to interpret contrary to language used in its Section. Clause 16(1)(d) exclude the operation of the Act to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been set up.

9. In *Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*,

7. In the above decision this Court has held that the unity of ownership, supervision and 4 control that existed in respect of the two mills involved in that case and the fact that the conditions of the service of the workmen of the two mills were substantially identical were not by themselves sufficient in the eye A of law to hold that there was functional integrity between the two mills. It held that it was a clear case of closure of an independent unit and not of a part of an establishment. The decision of the learned single Judge off the High Court that the fact that the two units were situate in a distance of 200 meters, the fact that both the units were controlled by the same employer and that the business of heat treatment processing carried on in the two units was identical had left no room for doubt that the two units were really integral cannot be sustained....

10. The Division Bench of this Court in *J.K. Synthetics Ltd. v. RPF Commissioner* (supra) indicated as under:

Thus, taking in view the entire facts and circumstances of the case we are clearly of the view that there was no functional integrity between J.K. Nylon Yarn

Factory and J.K. Tyre Cord Factory and as such J.K. Tyre Cord Factory is entitled to infancy benefit of three years from the date of its establishment in November, 1971.

11. In RPF Commissioner v. Naraim Udyog (supra) the Apex Court held as under:

2. The High Court was wholly unjustified in concluding that both the firms, being registered under the Companies Act as two different individual identities, were two independent companies and could not be clubbed together for the purpose of levying contribution u/s 7-A of the Act. It is true, as found by the High Court, that they are registered as two independent units and represented separately by the members of a Hindu Undivided Joint Family. Nonetheless the Commissioner recorded, as a fact, the functional unity and integrality between the two concerns. Consequently, the definition of "establishment" which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act.

12. In Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others,

6. The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letter-heads bear the same telephone numbers and 10 partners of the appellant are common out of the 13 partners of the third respondent. The trucks plied by the two entities are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act; so is the finding. Now, this finding is essentially one of fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the appellant as to why could the Regional 1 Provident Fund Commissioner not pierce the veil and read between the lines within the outwardliness of the two apparents. No legal bar could be pointed out by the learned Counsel as to why the views of the Regional 1 Provident Fund Commissioner, as affirmed by the Central Government, be overturned.

13. Having scanned the impugned order of learned EPF Appellate Tribunal, I find that the finding arrived at is based on legitimate 2 inferences drawn from facts. Learned Tribunal categorically observed that the Regional Provident Fund Commissioner after piercing the veil and reading between the lines held that since all the three establishments are one there 2 was functional integrality between them and they were not entitled to infancy benefit. The Tribunal found the order of RPF Commissioner quite elaborated, well discussed and based on sound reasoning and in the supervisory jurisdiction under Article 227 of the Constitution I see no reason to interfere with the finding of facts. In *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, their Lordships of Supreme Court defined the supervisory jurisdiction under Article 227 of the Constitution of India as under:

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much-less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

14. For these reasons, all these writ petitions being devoid of merit stand dismissed without any order as to costs.