(1972) 06 KL CK 0005

In the High Court Of Kerala

United Hoteliers APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 07-06-1972

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16

Citation : (1973) KLJ 184 : (1972) 2 LLJ 596

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—The only question for decision in this case is whether the petitioner''s establishment is entitled to the protection u/s 16 of the Employees'' Provident Funds Act, 1952. The facts of the case are not in dispute and they have been correctly recorded in the order Ext. P-8. There was a boarding and lodging establishment at Calicut under the style "Santha Bhavan Boarding and Lodging" which belonged to a company known as Messrs. C. Krishnan Nair & Co. (P) Ltd. That business was wound up by the company. Its goodwill, licences and other privileges and also the utensils used in that establishment were sold individually on 14-2-1965 to certain persons who by a deed dated 15-2-1965 constituted themselves into a partnership under the name United Hotels, who is the petitioner in this writ petition. On 15-2-1965 Messrs. C. Krishnan Nair & Co. (P) Ltd., retrenched all their workers settling their claims in full. On 20-2-1965, the petitioner firm took an usufructuary mortgage of the building in which the company was running the business Santha Bhavan Boarding and Lodging. With effect from 1st March, 1965, the petitioner started the business of boarding and lodging in the same premises under the style Santha Bhavan. The petitioner claimed that its business is a new establishment entitled to the benefit of Section 16(1)(b) of the Act as already stated. The Central Government, by its order Ext. P-8 dated 2410-1970 after stating the above facts, held that there was sufficient continuity between the business run by Messrs. Krishnan Nair & Co. (P) Ltd., and the petitioner, and that a mere change in the ownership of the establishment would not affect the date of setting up of the establishment for the purpose of

Section 16(1)(b) of the Act. Pursuant to the above decision, the Regional Provident Fund Commissioner, Kerala issued a notice, Ext. P-9 dated 25-10-1970 to the petitioner, calling upon it to comply with the provisions of the Act with" effect from 1-3-1965. This writ petition has been filed to quash Exts P-8 and P-9 and to restrain the respondents from enforcing the provisions of the Act until the expiry of the period mentioned in Section 16(1)(b) thereof.

2. I am unable to agree with the decision of the Central Government. Its finding is one which a tribunal entrusted with the duty of deciding a question on facts cannot arrive at. It is clear from the facts stated in its order that the business of the company was totally wound up after settling in full the claims of all its employees, that the petitioner did not acquire the company''s establishment, and that it started its own business. It is true that the nature of the two businesses was the same and the new business was started in the same premises where the old one was being carried on. These two facts as well as the fact that the new business had acquired the goodwill, licences and other privileges of the old business are relevant in determining whether the new business is a continuation of the old business. But they do not by themselves establish the link between the two businesses. What is essential for holding that the one is a continuation of the other is the existence of the old business immediately before the commencement of the new business. A closure or a temporary cessation of the old business does not make it non-existent. It may also be possible for persons to make paper arrangements to show that the old business has been fully wound up. One has to examine the real position; and if the old business has been really wound up, and it ceased to exist before the commencement of the new one, there is no question of any continuity. In the instant case, the old business was completely wound up for all purposes; and there was an interval of fifteen days between the winding up of that business and the commencement of the new one. It is also stated that most of the workers employed in the new business are not persons employed in the old business. In these circumstances, it is impossible to hold that the new business is a continuation of the old one, or there is any connection between the two.

3. For the reasons stated above, I allow this writ petition and quash Exts. P. 8 and P-9. The respondents are restrained from enforcing the provisions of the Employees'' Provident Funds Act against the petitioner during the period mentioned in Section 16(1)(b) of the Act. There will be no order as to costs.

