



SUPREME COURT OF INDIA
Hon'ble Dr. Arijit Pasayat, J.
Hon'ble Mr. Lokeshwar Singh Pant, J.
Civil Appeal No. 7345 of 2000
Decided on 7-3-2007

Regional. Provident Fund Commissioner
vs.
M/s Pal's Continental Exports (P) Ltd.

EMPLOYEES' PROVIDENT FUNDS AND MISC. PROVISIONS ACT, 1952 - Sections 7A and 2A - Departments or branches of same establishments to be treated same - But unless there was clear evidence to show that there was any supervisory financial or managerial control, it could not be said that one was branch of other - Respondent claimed infancy protection or plea that it was an extension of a proprietorship, proprietor of which was Managing director of respondent company - Appellant took a view that respondent was a department of said proprietary concern and adjudicated accordingly - High Court accepted respondent's case holding that there was total independent exercise of power in two concerns - Appeal - Respondent was separately registered under Factories Act, under Central Sales Tax Act and ESI Act - High Court was right in its conclusion that respondent was not a branch of said proprietary concern - No interference was warranted.

Para 7

CASES REFERRED

1. Pratap Press, etc. v. Their Workmen, 1960 (1) LLJ 497.

Para 6

2. Regional Provident Fund Commissioner and Anr. v. Dharamsi Morarji Chemical Co. Ltd., 1998 (2) SCC 446.

Para 7

For the Appellant: Mr. Ashok Bhan, Ms. Asha G. Nair, (for Shail Kumar Dwivedi) Advocates.

For the Respondent: Mr. Bharat Sangal, Mr. R.R. Kumar, Mr. Samyadip Chatterji, Ms. Suchita Sharma, Advocates.

IMPORTANT POINTS

Merely because the proprietor of the one concern was the Managing Director of the other, that by itself is not sufficient to establish that one was a branch of the other and would be clubbed for coverage under the Employees' Provident Funds Act.

Unless there is clear evidence to show that there was any supervisory, financial, or managerial control, it could not be said that one was the branch of the other establishment. '

JUDGEMENT

DR. ARIJIT PASAYAT, J.-



1. The challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court dismissing the Writ appeal filed by the appellant. The learned Single Judge, whose order was under challenge before the Division Bench, had allowed the writ petition filed by the respondent, holding that the order passed under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (in short, the 'Act') was not sustainable.

2. Background facts in a nutshell are as follows: Respondent claimed in-fancy protection under the provisions of the Act. It started production in 1984. The respondent was of the view that it was an extension of the branch of M/s Continental Exporters, a proprietorship concern of one Sampathraj Jain, who was also the Managing Director of the respondent company. Appellants' view was that the respondent was nothing but a department of the aforesaid "M/s. Continental Exporters". Assailing the adjudication, the respondent filed a writ petition stating that there was no financial integrity. It was separately registered under the Factories Act, the Central Sales Act 1956, the Income Tax Act, 1961, and the Employees State Insurance Act. The concerns are separate and distinct. They have separate Balance Sheets and audited statements. The High Court accepted the contention and held that there was a total independent exercise of power in the two concerns. Though the manufacturing of goods was in respect of the same article, that by itself was not sufficient to hold that it was a branch or department of M/s Continental Exporters. The High Court, as a matter of fact, found that there was a total independent exercise of the management and control of the affairs, the employees were separately appointed and controlled. Taking into account these factors, it was held that the respondent company and M/s Continental Exporters were not one and the same.

3. A challenge was made to the order of the learned Single Judge in the Writ Appeal. The High Court, after analysing the factual position, came to hold that there was nothing in common between the two establishments. Merely because the proprietor of the one concern was the Managing Director of the other, that by itself is not sufficient to establish that one was a branch of the other. Accordingly, the Writ Appeal was dismissed.

4. In support of the appeal, learned counsel for the appellant submitted that the factual scenario clearly establishes that the respondent was a branch of M/s. Continental Exporters. Learned counsel for the respondent, on the other hand, submitted that in view of the findings recorded by both the learned Single Judge and the Division Bench of the High Court, there is no scope for any interference.

5. At this juncture, it would be appropriate to take note of Section 2A of the Act. The same reads as follows:

"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."

6. In *Pratap Press, etc. v. Their Workmen*, 1960 (1) LLJ 497, it was inter alia held as follows:

"The question whether the two activities in which the single owner is engaged are one Industrial unit or two distinct industrial units is not always easy to solve. No hard and fast rule can be laid down for the decision of the question, and each case has to be decided on its own peculiar facts. In some cases, I think the two activities, each of which by itself comes within the definition of "industry," are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where 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."

7. In *Regional Provident Fund Commissioner and Anr. v. Dharamsi Morarji Chemical Co. Ltd.*, 1998 (2) SCC 446, it was 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 the branch of the other. As noted by the learned Single Judge, the respondent was separately



registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees State Insurance Act. It has also been found by a learned Single Judge that there was total independence of the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s. Continental Exporters.

8. The appeal is sans merit and deserves dismissal, which we direct. There will be no order as to costs.

Ref: LLR

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