Eddy Current Controls (India) Ltd. Vs R. Provident Fund Commission and Another

Court: High Court Of Kerala

Date of Decision: July 9, 1993

Acts Referred: Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 1(3), 19, 2, 2A

Citation: (1994) 1 LLJ 522

Hon'ble Judges: T.L. Viswanatha Iyer, J; P. Krishnamoorthy, J

Bench: Division Bench

Advocate: M. Pathros Mathai and S. Sirijagan, for the Appellant; George C.P. Tharakan S.C., for the Respondent

Final Decision: Dismissed

Judgement

Krishnamoorthy, J.
Petitioner is a company registered under the Companies Act, 1956, having its registered office at Eddypuram,

Chalakudy, in Trichur District. It is engaged in the business of manufacture of eddy current clutches and motors. Petitioner-company owns and

maintains two factories, one at Chalakudy in Kerala and the other at Coimbatore in the State of Tamil Nadu. The factory at Chalakudy was

established in the year 1974 and the factory at Coimbatore was established in 1979. According to the petitioner, these two factories are

established and registered separately and independently under the Factories Act and they are having separate registration and licences under the

Central Excise Act and the Sales Tax Acts of the respective States. Separate accounts are maintained in regard to the factories and balance-sheets

are also prepared separately. The installed capacity of the Chalakudy factory is 500 HP and that of the Coimbatore factory is only 32.35 HP. The

employees of the two factories are not mutually transferable. The factory at Coimbatore is having only 16 employees.

2. The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ""the Provident Funds Act'') was made

applicable to the factory at Chalakudy with effect from December 31, 1976, u/s 1(3)(a) of the said Act. It is applicable only to the factory owned

by the petitioner and not to the petitioner-company as such. The petitioner-company was informed by the Regional Provident Fund Commissioner,

in July, 1980, that the factory at Coimbatore is a branch unit of the company and is liable to pay provident fund contribution under the Provident

Funds Act, by virtue of Section 2A of the said Act; copy of that letter is produced as Exhibit P-3. To Exhibit P-3 the petitioner submitted a

detailed objection evidenced by Exhibit P-4, dated July 26, 1980. By his order dated August 20, 1982, produced as Exhibit P-5, the Regional

Provident Fund Commissioner (first respondent) rejected the objections of the petitioner and directed the petitioner to implement the provisions of

the Act and the Scheme in respect of the Coimbatore factory with effect from the date of starting of the factory.

3. Aggrieved by the said order the petitioner filed a representation before the second respondent u/s 19A of the Provident Funds Act; the

representation is produced as Exhibit P-6. The second respondent confirmed the order of the 1st respondent by Exhibit P-7 order dated

November 17, 1982, holding that the Coimbatore factory is only a branch of the Chalakudy establishment and that the petitioner is liable to

contribute to the Fund in respect of both the factories.

4. Petitioner is challenging Exhibits P-5 and P-7 orders as illegal and vitiated by an error of law. It is contended that the Coimbatore factory should

be considered as a factory established separate and independent of the Chalakudy factory and since the Coimbaore factory does not employ 20

or more persons, it is not liable to be covered under the Act. It is further contended that Section 2A of the Provident Funds Act has no application

to the petitioner''s factories as the factory at Coimbatore is not a branch or department of the Chalakudy factory, as defined in Section 2A of the

Act. Petitioner further contends that the fact that the two factories are owned by the petitioner by itself will not make one factory a branch or

department of the other so as to come within the purview of Section 2A of the Provident Funds Act. According to the petitioner, the respondents

have misconstrued and misunderstood the provisions of Section 2A and have erroneously applied that section in holding that the Coimbatore

factory is a branch of the Chalakudy factory. The fact that the two factories are separately registered and have separate licences and that there is

no interdependence between the two establishments is relevant for determining whether one is a branch of the other. On these grounds the

petitioner prays for quashing Exhibits P-5 and P-7 orders and to declare that the factory at Coimbatore is not liable to be covered as a branch or

department of the factory at Chalakudy under the Provident Funds Act.

5. In the light of the contentions raised by the petitioner the question that arises for consideration is regarding the ambit and interpretation of Section

2A of the Provident Funds Act read with Section 1(3)(a) and (b) thereof. In the Provident Funds Act there is no definition of an ""establishment"",

but ""factory"" has been defined in Section 2(g) as follows:-

factory"" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so

carried on, whether with the aid of power or without the aid of power.

6. It is further seen that under Sub-section (3) of Section 1 of the Provident Funds Act it applies (a) to every establishment which is a factory

engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and (b) to any other establishment employing

twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this

behalf. There is a proviso to Section 1(3) which is not very relevant for the purpose of this case. Section 2A inserted in the Act by amending Act

46 of 1960, reads as follows:-

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situated in

the same place or in different places, all such departments or branches shall be treated as part of the same establishment.

7. On a reading of Section 2A, it is clear that if an establishment consists of different departments or has branches, whether situate in the same

place or in different places, such departments or branches shall be treated as part of the same establishment. The question to be decided is as to

whether the Coimbatore factory is a branch or department of the establishment at Chalakudy.

8. It is an admitted fact that the industry in which the petitioner is engaged in both the factories is one specified in Schedule I to the Act. A

department of an establishment is intimately linked with the establishment and, therefore, it may not be difficult to find out whether a part of an

establishment is a department of that establishment. For example, if one factory is ultimately manufacturing the end product and there are other

factories which manufacture the component parts necessary to constitute the end product, such factoreis can be said to be a department of the

other establishment wherein the end product is ultimately produced. In that view of the matter, there may not be any difficulty in finding out whether

one establishment is a department of the other. But the difficulty arises in finding out whether one establishment is a branch of the other. That will

depend upon the facts of each case. In a case under the Industrial Disputes Act, Associated Cement Companies Ltd. v. Their Workmen 1960

LLJ 1) the Supreme Court said (at page 8):

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 of 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, each unit is then a separate unit. How

the relation between the units will be judged must depend on the facts provided, having regard to the scheme and object of the statute which gives

the right of unemployment compensation and also prescribes a disqualification therefor. 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.

9. On the basis of the principle laid down by the Supreme Court as above, if the branch of an establishment taken with the establishment forms one

industrial establishment, Section 2A of the Provident Funds Act will be attracted and by the application of the above section the employees in the

branch will also come within the purview of the Act. Section 2A specifically provides that if an establishment consists of different departments or

has branches, they shall be treated as part of the same establishment so that for the purpose of determining the liability the main establishment as

also its branch has to be taken as one unit. This seems to be the correct principle to be applied in such cases. When once an establishment comes

within the purview of the Act by virtue of the provision contained in Section 1(3)(a) the employer becomes liable to contribute to the Provident

Fund for the employees.

10. In a Division Bench decision of this Court in Ramunni v. Regional Provident Fund Commissioner ILR (1974) Ker 11, the facts were as

follows: The appellant-petitioner was engaged in manufacturing biscuits. He had three factories at Tellicherry, Palghat and Trichur where he was

manufacturing biscuits. The industry in which the appellant was engaged was one specified in Schedule I to the Act. In that case, in the factories at

Tellicherry, Palghat and Trichur, only less than 20 persons were employed and the question arose as to whether for the purpose of liability under

the Provident Funds Act all the three factories have to be taken as one unit or be taken as three independent units. If they are taken as one unit, the

establishments will come within the purview of the Actand if they are independently taken, they will be outside the purview of the Act. The question

that arose in that case was as to whether the factories at Palghat and Trichur were only branches of the establishment at Tellicherry. Considering

that question the Division Bench held:-

If the activities carried on in the branches or even departments, are not such as would fall under the Act, then the branches and the departments

must normally be outside the Act. But if the branches and departments form an intimate pan of the establishment, in which an activity specified in

Schedule I to the Act is carried on as to form an integral whole with the establishment, on the principles laid down for holding that the establishment

with the departments and branches really make "one industrial establishment", then and then only, will the branches and departments and the

employees therein come within the purview of the Act. That is the effect of Section 2A.

11. Again, after referring to the decision of the Supreme Court in Associated Cement Companies Ltd. "s case (supra), it was further held:

If, by applying the principle laid down by the Supreme Court in this case, it is possible to say that the branch of an establishment taken with the

establishment forms one industrial establishment, Section 2A will be attracted and by its application the branch and the employees in the branch will

also come within the purview of the Act.

12. It is in the light of these principles that we have to consider the question as to whether the two establishments of the petitioner-company, one at

Chalakudy and the other at Coimbatore, form part of a single unit for the purposes of the Act or whether they are independent units. On the facts

found by the Regional Provident Fund Commissioner as also by the Government of India, it is clear that the factories at Chalakudy and

Coimbatore are owned by the petitioner-company. The product manufactured in the two factories is the same, namely eddy current clutches and

motors, specified in Schedule I to the Act. The fact that only a motor with a lesser horse power is manufactured at Coimbatore is irrelevant. The

registered office is the same for both the factories at Chalakudy and Coimbatore. The factory at Coimbatore has been described by the company

as a unit and the activity carried on there is the same as that of the factory at Chalakudy. The balance sheet, profit and loss account, income and

expenditure account are all common for all the units of the company as per the Eighth Annual Report of the company for the year ending June 30,

1979. Three employees from the Chalakudy unit are employed in the Coimbatore unit and their salary and provident fund are paid from Chalakudy

unit. As per the balance-sheet during 1978-79, an amount of Rs. 32,331.25 has been transferred to the head office accounts from the Coimbatore

unit and a sum of Rs. 6,41,219.05 has been transferred during 1979-80. The cash book further shows thata sum of Rs. 20,000 has been

transferred to the Coimbatore unit on December 2, 1981, by telegraphic transfer. The profit and loss account shows that raw materials worth Rs.

21,16,973.76 has been transferred from the head office to the Coimbatore unit in 1980-81. The same Managing Director, Finance Manager and

Secretary are the persons empowered to operate the bank accounts of both the factories. Thus, it is clear that there is financial and functional

dependency between the two units. There is unity of ownership, management, supervision and control and general unity of purpose. It is further to

be noted that the factories at Chalakudy and Coimbatore are manufacturing the same product. Thus it can be seen that there is unity of production

as well. Judged in the light of the above facts, we are in complete agreement with the view taken by respondents Nos. 1 and 2 that the Coimbatore

factory is only a branch of the establishment and is not an independent unit.

13. Counsel for the petitioner relied on two decisions of the Supreme Court which arose under the Payment of Bonus Act, reported in Alloy Steel

Project Vs. The Workmen, and The Workmen of H.M.T. and Another Vs. The Presiding Officer, National Tribunal, Calcutta and Others, The

question that arose for consideration in the former case was as to whether Messrs. Alloy Steel Project is to be treated as a separate establishment

or is to be treated as part of the main establishment owned by Hindustan Steel Ltd. It was argued on behalf of the workers that by virtue of

Section 3 of the Payment of Bonus Act, the Alloy Steel Project has to be treated as the same establishment as it is only a branch of the Hindustan

Steel Limited. In the latter case the question arose as to whether the units of the Hindustan Machine Tools in different parts of India were part of

the same establishment or not under the Payment of Bonus Act In both the decisions on an interpretation of Section 3 of the Payment of Bonus

Act, the Supreme Court held that they are independent units. But before understanding the ratio of the decisions, it is necessary to quote Section 3

of the Payment of Bonus Act, 1965, which reads:

3. Establishment to include departments, undertakings and branches:- Where an establishment consists of different departments or undertakings or

has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts

of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any

such department or undertaking or branch, then, such department or undertaking or branche shall be treated as a separate establishment for the

purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the

commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

14. On a reading of Section 3, it is clear that the principal part of the section lays down that different departments or undertakings or branches of

an establishment are to be treated as parts of the same establishment only for the purpose of computation of bonus under the Act. It is not as if

they have to be treated as parts of the same establishment for the purpose of determining the applicability of the Bonus Act u/s 1(3) thereof. u/s 3

of the Payment of Bonus Act branches and departments are to be treated as parts of the same establishment only for the purpose of computation

of bonus whereas u/s 2A of the Provident Funds Act they have to be treated as parts of the same establishment for all purposes. Moreover, a

special provision is made in the proviso to Section 3 of the Payment of Bonus Act in regard to any department, undertaking or branch which

maintains a separate balance-sheet and profit and loss account for any accounting year, which is absent in Section 2A of the Provident Funds Act.

In the case reported in Alloy Steel Project v. Their Workmen (supra), the Supreme Court decided the matter on the basis that Section 3 of the

Payment of Bonus Act is relevant only for the computation of bonus and not to determine the question as to whether one establishment forms part

of another or not for the purpose of applicability of the said Act. In Workmen of Hindustan Machine Tools v. National Tribunal (supra), the

Supreme Court relied on the proviso to Section 3 and came to the conclusion that the two establishments with which they were concerned are

different and separate. The wording of Section 3 of the Payment of Bonus Act and Section 2A of the Provident Funds Act are entirely different

and the proviso to Section 3 is absent in Section 2A. In that view of the matter, these two decisions of the Supreme Court, relied on by counsel for

the petitioner, can have no application to the case on hand.

15. In Mahipal Singh v. R.P.F. Commissioner, (1972) 41 FJR 329 (Kar), the Karnataka High Court, on the facts of that case and on the basis

that there is no finding that they are branches, held that the three concerns are different and cannot be treated as parts or branches or departments

of the same establishment. In the case reported in Metazinc Pvt. Ltd. v. R.P.F. Commissioner, the two units were manufacturing different products.

So also the decision reported in B.C. Bhandari v. R.P.F. Commissioner, Bangalore (1990) 60 FLR 143 shall be confined to its own facts. In

Dharamsi Morarji Chemicals Co. Ltd. Vs. N.G. Desai, The Regional Provident Fund Commissioner and others, there is no consideration of the

impact of Section 2A.

16. In Andhra Cement Co. Ltd. Vs. Regional Provident Fund Commissioner, Hyderabad and Another, the facts were as follows: The petitioner-

Company established a cement factory known as "Andhra Cement Factory" at Vijayawada in the year 1938. In the year 1978 the management

established another factory styled "Visakha Cement Works" at Visakhapatnam, The State Government allowed interest-free sales tax loans, a

rebate of 25% in power tariff and other facilities as incentives to the new industry. The Commissioner of Labour also recognised it as a separate

establishment. The service conditions were totally different from the service conditions of the workmen working in Andhra Cement Factory. The

employment was also different 75% of the wages as recognised by the Central Wage Board was also being paid from November 1, 1979. The

workmen accepted the same. Separate balance-sheet and separate accounts were maintained for the new establishment. In 1982 proceedings

were initiated by the Andhra Pradesh Regional Provident Fund Commissioner to cover the employees of Visakha Cement Works under the

Provident Fund, treating it as part and parcel of Andhra Cement Factory. Thereupon the petitioner-Company made a representation to the

Government of India u/s 19-A of the Provident Funds Act stating that Visakha Cement Works is a new establishment and, therefore, it is entitled

for exemption u/s 16 of the Act for the infancy benefit of three years. The said representation was rejected by the Central Government and

accordingly a writ petition was filed before the Andhra Pradesh High Court, contending that Visakha Cement Works at Visakhapatnam, is an

independent unit and that it cannot be clubbed with Andhra Cement Factory, Vijayawade. After considering the case-law on the question, the

Andhra Pradesh High Court held as follows (at page 462):

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 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.

17. In the light of the above principles the Andhra Pradesh High Court considered the facts of that case and came to the conclusion that on the

facts of that case Visakha Cement Works is a branch of the petitioner-company, and, therefore, cannot claim the benefit of exemption as

postulated u/s 16 of the Employees" Provident Funds Act for the infancy benefit. It was further held that the fact that Visakha Cement Works has

been registered separately, licensed separately, granted interest-free sales tax loans as well as a rebate of 25% in power tariff cannot be reckoned

as contributing factors to be taken as guidelines in finding whether the unit is a separate establishment or a branch of the main unit.

18. We are also of the view that the mere fact that separate licences were obtained under the Factories Act for the two factories in question is not

a relevant consideration at all. Applying the principles deducible from the aforesaid decisions to the facts of this case, we are clearly of the view

that the Coimbatore factory is only a branch of the establishment at Chalakudy, for the reasons which we have already mentioned.

19. In view of what is stated above, we do not find any ground to interfere with Exhibits P-5 and P-7 orders and accordingly this original petition is

dismissed, but, in the circumstances, without any order as to costs.