

**M/s. India Pistons Limited, A-4, Industrial Estate, Maraimalai Nagar,
Kanchipuram District Vs The Regional Provident Fund Commissioner,
Tamil Nadu and Pondicherry States Employees Provident Funds, 20,
Royapettah High Road, Chennai 600014 and The Presiding Officer,
Employees Provident Funds Appellate Tribunal, 7th Floor, 60 Skylark
Building, New Place, New Delhi 110019**

Court: Madras High Court

Date of Decision: Nov. 13, 2008

Acts Referred: Employees Provident Funds and Miscellaneous Provisions Act, 1952 – Section 16, 16(1)(d), 2A, 7A

Hon'ble Judges: V. Dhanapalan, J; S.J. Mukhopadhaya, J

Bench: Division Bench

Advocate: S. Ravindran for M/s. T.S. Gopalan and Co, for the Appellant; V. Vibhishanan, for the Respondent

Final Decision: Dismissed

Judgement

V. Dhanapalan, J.

The challenge in this appeal is to the judgement of the learned Single Judge, passed in W.P. No. 5209 of 1999,

whereby, the writ petition was allowed holding that the two Units of M/s.India Pistons Ltd., one at Sembium and another at Maraimalai Nagar

constitute one integrated whole for the purpose of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and therefore, the

appellant is not entitled to claim ""infancy protection"" u/s 16(1)(d) of the Act and in the consequences, the appellant is bound to comply with the

provisions of the said Act from the date of its establishment i.e., January 1987. The facts which are relevant for consideration of this appeal are set

out hereunder:-

The appellant herein, namely, M/s.India Pistons Ltd., is one of the group companies of M/s.Simpsons Group of Companies. The appellant-

company established its factory at Sembium in the year 1960 and it started another Unit at Maraimalai Nagar in the year 1987. The

appellant/M/s.India Pistons Limited is a ""Factory"" covered under the provisions of the Employees Provident Fund and Miscellaneous Funds Act,

1952, hereinafter referred to as the ""Act"". The main activities of the appellant is the manufacture of Engine Valve Pistons required in the motor

vehicle industry. The appellant applied to the competent authority prescribed under the Act, and made a request for allotment of a separate Code

Number for its new Unit at Maramalai Nagar in the year 1990 on the ground that it is totally a different legal entity and hence entitled to the

infancy protection" u/s 16(1)(d) of the Act. The first respondent/Regional Provident Commissioner, Chennai, by his departmental proceedings

dated 23.6.1998 passed an order holding that the appellant-Unit is a part and parcel of the main Unit at Sembium as both the units constitute one

integrated whole for the purpose of the Act and therefore it is not entitled for the "infancy protection" u/s 16(1)(d) of the Act and that therefore it

shall comply with the provisions of the Act from January, 1987 under the Sub Code allotted to it. Aggrieved of the same, the appellant raised a

dispute u/s 7-A of the Act before the second respondent/Employees Provident Funds Appellate Tribunal, for determining the question of granting

infancy protection". By order dated 24.11.1998, the second respondent/Appellate Tribunal set aside the order of the first respondent/Regional

Provident Commissioner and allowed the appeal holding that the Appellant/Maramalai Nagar Unit is a new Unit and it should be treated as an

independent Unit and not as an integral part of the Sembium Unit, nor as a part of a main Unit and thus the new Unit is entitled for "infancy

protection" u/s 16(1)(d) of the Act. Against which, the first respondent-Regional Provident Fund Commissioner, Chennai, has filed the Writ

Petition challenging the order of the Employees Provident Funds Appellate Tribunal which was allowed by this Court setting aside the order of the

Appellate Tribunal and this Court held that the two Units of India Pistons Ltd., one at Sembium and another at Maraimalai Nagar constitute one

integrated whole for the purpose of the provisions of the Act and the hence the new Unit at Maraimalai Nagar is not entitled to claim "infancy

protection". Challenging the above order of this court, this Writ Appeal has been preferred.

2. It is the foremost contention of the learned counsel for the appellant that the new Unit at Maraimalai Nagar is an independent Unit and it was

established in the year 1987 entitled to "infancy protection" in accordance with Section 16(1)(d) of the Act. The learned counsel would further

contend that clubbing of the two establishments belonging to the same company is applicable only in terms of Section 2A and the said provision

would have no application in respect of applicability of Section 16(1)(d) of the Act and therefore the new Unit is entitled for the "infancy

protection" for a period of three years, as it was established in January, 1987. The learned counsel assailed the order of the writ Court and

contended that the Unit at Maraimalai Nagar is a new unit, independent of the other Unit at Sembium, and it is being treated as a separate Unit by

other statutory authorities; having separate registration under the Factories Act, Income Tax Act, Employees State Insurance Act etc.; having a

separate management; supervision; work force and independent finance, besides, the products manufactured in the new Unit at Maramalai Nagar

is different from the products manufactured by the other Unit at Sembium and these salient features have not been looked into by the learned Single

Judge and therefore the conclusion of the Writ Court is contrary to the well settled proposition of law.

3. Further contention has been made that the Unit at Sembium manufactures the pistons meant for heavy vehicles, whereas in the new Unit at

Maraimalai Nagar the manufacture of pistons are for the latest model high speed and fuel efficient engines in cars, light commercial vehicles and

two wheelers, which require the high technology, and the new Unit set up by the same employer without having any interdependency or unity of

employment or financial integrity, cannot be considered as a branch or extension of the other Unit at Sembium. Furthermore, the new Unit is

governed by the separate Standing Orders and the products are marketed through separate agency.

4. Per contra, learned counsel for the respondents would contend that the appellant's Factory at Sembium and its new Unit at Maraimalai Nagar

manufacture the same products, namely pistons, whether it is for heavy vehicles or for light vehicles meant either for the high speed fuel efficiency

engines in cars or light commercial vehicles or two wheelers, the manufacture of pistons is the basic product and both the Units are manufacturing

the very same products and they cater to the needs of different segments of the automobile industry. Further, common ownership of the

establishments is very well accepted and that even though the factories maintain separate accounts, the accounts merged as a single balance sheet

for the preparation of Annual Report and that there is a financial integrity and interdependency between the two Units, and therefore the appellant

is not entitled for ""infancy protection"" due to the existence of interdependency and unity of management and also the manufacture of pistons which

is the very same product. Merely because the Unit at Maraimalai Nagar is having a separate Registration and Code Number, it cannot give

advantage to the appellant for deciding the question of entitlement of ""Infancy protection"". Therefore, the learned Single Judge has well considered

the purpose of the Act contemplated u/s 16(1)(d) of the Act and there is no infirmity in the order of the learned Single Judge and prays that this

Appeal be dismissed.

5. We have heard the submissions of the learned counsel appeared on either side and analysed the material facts and the legal position and perused

the material documents.

6. Admittedly, the appellant, M/s.India Pistons Ltd., is a "factory" and it is owned by M/s.Simpsons Group of Companies and they established a

Unit in the year 1960 at Sembium and in the year 1987, they started another Unit at Maraimalai Nagar. The appellant applied for separate Code

Number with the first respondent-Regional Provident Fund Commissioner in the year 1990 claiming ""infancy protection"" and is having a separate

registration for the Unit at Maraimalai Nagar. An analytical view of the facts would further reveal that when the appellant had applied for a separate

Code Number to claim the benefit u/s 16(1)(d) of the Act, as there was a failure to implement the provisions of the Act, the Regional Provident

Fund Commissioner has initiated proceedings for compliance of the provisions of the Act holding that the new Unit of M/s.India Pistons Ltd., at

Maraimalai Nagar is a part and parcel of the main Unit at Sembium and the new Unit is not entitled to claim ""infancy protection"". Thereafter, the

appellant raised a dispute u/s 7-A of the Act and in its proceedings dated 23.6.1998, the first respondent/Regional Provident Fund Commissioner

rejected the claim of the appellant holding that the two Units of M/s.India Pistons Ltd., at Maraimalai Nagar and Sembium constitute one

integrated whole for the purpose of provisions of the Act, the new Unit of the appellant at Maraimalai Nagar is not entitled to ""infancy protection

u/s 16(1)(d) of the Act and therefore, they have to comply with the provisions of the Act. Against which, the appellant went on Appeal before the

Employees Provident Funds Appellate Tribunal and the Appellate Tribunal has set aside the order of the first respondent/Regional Provident Fund

Commissioner. Against which, the first respondent has filed the Writ Petition and the same was allowed by this Court.

7. Before proceeding to examine this Appeal, it would be necessary to examine the provisions contemplated u/s 16(1)(d) of the Act.

16. Act not to apply to certain establishments :-

(1) This Act shall not apply-

(d) to any other establishment newly set, until the expiry of a period of three years from the date on which such establishment is, or has been, set

up.

Explanation: For the removal of doubts, it is hereby declare that an establishment shall not be deemed to be newly set up merely by reason of a

change in its location.

8. It is brought to the notice of this Court that the above provision has been omitted by Act 10/1998 with effect from 22nd November, 1997.

However, since the fact in question viz., claiming benefit u/s (d) relates to the period from January 1987, we hold that the application of the

relevant provision of law at that point of time was in force and therefore the claim of the appellant made u/s 16(1)(d) has to be examined.

9. Now, let us examine this case based on the above provision. The questions arise for consideration are whether the appellant at Maraimalai

Nagar is a newly set up ""establishment""? and whether the appellant Unit can claim the ""infancy protection"" u/s 16(1)(d) of the Act for a period of

three years?.

10. It is seen that the appellant Unit in question was established in the year 1987 and the Annual Report of the establishment for the year 1987

claimed that the new Unit was set up at Maraimalai Nagar near Madras with an annual production capacity of 7 lakhs pistons with a capital outlay

of Rs. 6.5 crores during that relevant period. The appellant/Unit was geared to cater to the needs of the changed market requirements for the new

breed of vehicles, whether it is for light vehicles or heavy vehicles and look forward to reap the long term benefits that should flow from the

investment and therefore, the new Unit of the appellant is commercial in nature and a bulk of the production was given to M/s.Maruthi Udyog

Limited. It appears that the Maraimalai Nagar Unit set up by the appellant-company would cater to the latest models and high speed and fuel

efficient engines in cars, light commercial vehicles and two wheelers and to keep pace with the market requiring high technology, the company is

also continuing with its plans of modernisation and replacement at its plant at Sembium. From the above aspects, it is very clear that the new Unit

at Maraimalai Nagar is a well founded Unit having adequate financial support and protection for its stability from its promoter and therefore it does

not require any breathing time to claim the benefit of ""infancy protection"", as held by a number of rulings of the Supreme Court.

11. In R. Ramakrishna Rao Vs. State of Kerala, Their Lordships of the Supreme Court held as follows:-

...The intention behind Section 16 read with Paragraph 26 quite clearly shows that the period is intended to give a breathing time to new

establishments/That reason does not hold when the establishment is already old and well founded.....

12. In Regional Provident Fund Commissioner and another Vs. Dharamsi Morarji Chemical Co., Ltd., reported in 1998 (I) LLJ 1060, it has been

held as follows:

4.....Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned counsel for the appellant

for culling out interconnection between Ambarnath Factory and Roha Factory was that both of them were owned by a common owner, namely,

the respondent-Company and the Board of Directors were common. That by itself cannot be sufficient unless there is clear evidence to show that

there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such

evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned counsel for the appellant that Roha

Factory was a part and parcel of Ambarnath Factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921"".

In the case on hand, it is not in dispute that apart from common ownership, there is financial integrality and managerial control between the two

Units and therefore, there is no difficulty in concluding that the Appellant-Unit at Maraimalai Nagar is a part and parcel of Sembium Unit for the

purpose of compliance of Section 7-A of the Act.

13. In Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, , the Supreme Court held as follows:-

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"".

14. It is not in dispute that the very object of the principles of ""infancy protection"" as contemplated u/s 16(1)(d) of the Act is to give a breathing

time to new establishments and such a protection can be extended to the establishments which are newly set up and not for the establishments

which are already in existence and well founded. It is not in dispute that merely because both the Units have been registered as two different

entities, both the Units should not be clubbed together for the purpose of levying contribution u/s 7-A of the Act, but the independent registration

of the Units and its functional unity and financial integrality between the two companies would be looked in a manner as widely defined with the

object of the Act for which the protection has been sought for. 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 should be construed in a manner as that it is being the beneficial legislation to

provide a healthy security to the employees and the employer gets a maximum out-turn of his products.

15. The ""infancy protection"" for a new Unit has no application to the unit which is already old and well founded. The legislative intention in giving

the ""infancy protection"" as contemplated u/s 16(1)(d) of the Act is to allow the newly established Units to have a breathing time to develop until the

production capacity is reached. But, in the instant case, the material facts would reveal that already the appellant company is having a Unit at

Sembium involved in the same activity of production of pistons and further established a Unit at Maraimalai Nagar and within a short period, the

production has reached nearly one lakh pistons and the bulk of which was also purchased by Maruthi Udyog Ltd., and this will lead to the

inevitable conclusion that the Unit in question is not a new establishment claiming advantage of the ""infancy protection"" as contemplated u/s 16(1)

(d). Further, the manufacture or production is Pistons, whether it is for light vehicles or for heavy vehicles, it is the production of pistons, which

cater the requirements of the latest technology vehicles. The appellant/Unit which manufactures and supplies pistons for heavy vehicles and other

vehicles at its Sembium Unit since 1960, with a view to meet the growing demand for supply of pistons, the appellant-Unit which is one of the

group companies of M/s.Simpson Group of Companies, established a new Unit at Maramalai Nagar in the year 1987 for the manufacture of

pistons for the latest model high speed and fuel efficiency engines and it is evident that the Unit is enjoying adequate financial support and

protection for its stability and development from its promoter and therefore, we hold that the ""infancy protection"" contemplated u/s 16(1)(d) of the

Act, which was intended to give some breathing time to the newly established Units need not be given to a Unit like the appellant as they are

already old and well founded and in view of the same, we are of the considered opinion that the appellant/Unit is not entitled to seek the ""infancy

protection"" to the Unit established at Maraimalai Nagar and therefore we hold that there is no infirmity in the order passed by the learned Single

Judge.

16. For the reasons stated above and in the light of the above decisions cited supra, the view taken by the learned Single Judge in holding that the

appellant is not entitled for any ""infancy protection"" and further directing the appellant to comply with the provisions of the Act cannot be faulted

with as it is evident that the appellant-Unit at Maraimalai Nagar is a well founded Unit having the financial support from its group of companies,

besides having the common managerial supervision.

17. As regards the question whether the Unit at Maraimalai Nagar is a ""new"" and ""independent establishment"", merely because the two Units were

registered separately and treated as separate entities by various statutory authorities, namely under the Factories Act, Income Tax, Employees

State Insurance Act and other Acts, the same is inconsequential in view of the provision contained in Section 2-A of the Act. Section 2-A of the

Act is extracted hereunder for ready reference:-

2-A. Establishment to include all departments and branches-

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.

18. In the case on hand, it could be seen that establishment of the appellant Unit consists of different departments or has branches whether situate

in the same place or in different place, all such departments or branches shall be treated as part of the same establishment as contemplated u/s 2A

of the Act. Therefore, the main Unit at Sembium and the extension branch or Unit at Maraimalai Nagar shall be treated as a part and parcel of one

establishment. There is financial integrality and managerial control between the two Units which belong to one group of companies, namely,

M/s.Simpson Group of Companies. It is the admitted fact that common Annual Reports are prepared for both the factories from 1987 onwards.

There is a common balance sheet of profit and loss account of both the factories, though they maintain separate accounts. Therefore, in any event,

though the appellant Unit is a new Unit, it can be construed only as an extension Unit of the main Unit and it cannot be treated as an independent

Unit and as rightly concluded by the learned Judge, constitute one integrated whole for the purpose of the Employees Provident Fund and

Miscellaneous Provisions Act, 1952 and in the consequences, it is bound to comply with the provisions of the Act from January 1987.

19. Learned counsel for the appellant pressed into service the decision of the Gujarat High Court in Gujchem Distillers India Ltd. Vs. Regional

Provident Fund Commissioner, , wherein a Division Bench of the Gujarat High Court held as follows:-

6.....that the term ""establishment"" is not defined in the Act and, therefore, every case has to be decided on the conspectus of all relevant factors of

that particular case. There cannot be a rigid formula, nor can there be any watertight guidelines because what is good in respect of one case may

not be good in respect of another case. It is, therefore, stated that one factor or two by itself or themselves may not be sufficient to lead to a

definite conclusion one way or the other, but on the over all consideration of all relevant factors of the court finds that the unit for all purposes is a

distinct unit, the only factor that it is run by the common employer, may be a company or a partnership would hardly be of any consequence....

As rightly held in the decision cited supra, though there cannot be a rigid formula, the overall consideration of all the relevant factors would lead to

the irresistible conclusion that the appellant-Unit at Maraimalai Nagar cannot be held to be the ""independent establishment"" for the purpose of

compliance of Section 7-A of the Act.

20. In the light of the above decisions cited supra, the view taken by the learned Single Judge in holding that the appellant is not entitled for any

infancy protection"" and further directing the appellant to comply with the provisions of the Act cannot be faulted with as it is evident that the

appellant-Unit at Maraimalai Nagar is a well founded Unit having the financial support from its promoter, besides having the unity of management

which goes with the functional integrality, financial nexus and common supervision. For the reasons stated above, we dismiss the Writ Appeal

confirming the order passed in the Writ Petition directing the appellant to comply with the provisions of the Act. Consequently, connected

Miscellaneous Petition is also dismissed. But, in the facts and circumstances of the case, there shall be no order as to costs.