

Lakshmi Rattan Engineering Works

v.

Regional Provident Fund Commissioner, Punjab, and Others

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR (CJI) HON'BLE JUSTICE
K. N. WANCHOO HON'BLE JUSTICE M. HIDAYATULLAH HON'BLE
JUSTICE J.C.SHAH HON'BLE JUSTICE S.M.SIKRI

Civil Appeal No. 572 And 573 Of 1964 | 06-10-1965

Wanchoo, J.

1. These two appeals on certificates granted by the High Court raise a common question of law and will be dealt with together. As the facts are slightly different in the two cases, we shall consider the question of law arising in these appeals with reference to the facts of Civil Appeal No. 572 and thereafter deal briefly with the facts in Civil Appeal No. 573.

2. Turning therefore to the facts in Civil Appeal No. 572, it appears that the Government of India, Ministry of Rehabilitation, started a diesel engine factory at Faridabad in 1952. On 23 May, 1955, the appellant purchased the factory from the Government of India. On 27 July, 1956 the Regional Provident Fund Commissioner (hereinafter referred to as the Commissioner) informed the appellant that the Employees' Provident Funds Act, 19 of 1952 (hereinafter referred to as the Act), applied to it and it should therefore deposit the dues on account of contributions and administrative charges under the Act and submit the necessary returns in that behalf. The appellant objected that it was not liable to pay the amounts claimed from it and relied on S. 16(1)(b) of the Act as it was at the relevant time. The main dispute between the Commissioner and the appellant was that the Commissioner was claiming that the factory must be deemed to have been established in 1952 while the appellant was claiming that the period of three years allowed under S. 16(1)(b) should count from the date from which the appellant purchased the factory from the Government of India. In view of this dispute the appellant filed a writ petition before the Punjab High Court on 18 November, 1956. It raised a number of points including an attack on the vires of S.5 of the Act. In the present appeals, however, we are

concerned only with one question, namely, whether under S. 16(1)(b) of the Act the appellant can claim that the period of three years' exemption granted thereunder should start in its case from the time when it purchased the factory from the Government of India in May 1955. Other points were not raised before us in view of the decision of this Court in *Mohmedalli and others v. Union of India* and another [1963 - I L.L.J. 536] holding the Act intra vires the Constitution. The learned single Judge dismissed the petition with one minor direction in favour of the appellant. Thereupon there were two appeals before the Division Bench, one by the Commissioner with respect to that part of the order which went against him and the other by the appellant with respect to the rest. The Division Bench allowed the appeal of the Commissioner and dismissed the appeal of the appellant with the result that the writ petition was dismissed in toto. Thereafter the appellant obtained a certificate from the High Court to appeal to this Court and that is how the matter has come up before us.

Section 16(1)(b) as it was at the relevant time read thus :

"(1) This Act shall not apply to -

(a) * * *

(b) any other establishment, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

The argument on behalf of the appellant is that it acquired the factory in May 1955 and three years for the purpose of S. 16(1)(b) should be counted from the date on which it acquired the factory.

3. We are of opinion that there is no force in this contention. The words of S. 16(1)(b) are quite clear and leave no room for doubt that the period of three years should count from the date on which the establishment was first established and the fact that there has been a change in the ownership makes no difference to the counting of this period of three years so long as the

establishment has continued to work all along. This view is further enforced by the explanation to S. 16(1) which lays down that

"The date of the establishment of an establishment shall not be deemed to have been charged merely by reason of a change of the premises of the establishment."

4. Thus even if there is a change in the location of an establishment, that would not affect the date from which the establishment began, provided there was continuity of working. If that is so, with respect to the change of location there can be no doubt that a mere change of ownership would make no difference to the date of establishment of the establishment so long as there was continuity of working. The contention of the appellant that the date of establishment in its case should be taken as 23 May, 1955 when it acquired the factory from the Government has therefore no force. Then it is urged that in any case the appellant merely acquired the machinery and premises of the factory and re-started the factory after its acquisition and did not take over a running factory from the Government of India. We are of opinion that this contention also has no force. It is clear from Cl. (ix) of the agreement between the appellant and the Government of India that the appellant had taken over a running factory. Clause (ix) provides that -

"the purchaser agrees to take over and to employ all the 168 workers at present working in the said factory whose names and other particulars are mentioned in Sch. 4 annexed hereto on the wages specified therein with effect from the date on which the possession of the said factory is handed over to the purchaser."

5. This clause clearly means that the appellant took over a running factory and therefore there was mere change of ownership in May 1955 and so the date of establishment must remain the date of its first establishment in 1952. In the circumstances, the appellant cannot claim that the date of the first establishment of the factory in this case should be taken to be 23 May, 1955 and three years' exemption should count from that date.

6. Then it is urged that after the taking over of the factory, the appellant charged the line of business from the manufacture of diesel engines to the manufacture of parts of textile machinery. That, in our opinion, makes no difference for a mere change in the line of business would not make any difference to the date of first establishment where a running factory is taken over. Civil Appeal No. 572 must therefore fail.

7. Turning now to the facts of Civil Appeal No. 573, it appears that the Indian Co-operative Union, Ltd., started a training centre for the benefit of displaced persons from Pakistan and in that connexion started a textile unit for imparting knowledge in the art of weaving cloth, etc., to displaced persons in 1951. This centre was taken over by the Government of India, Ministry of Rehabilitation, in March 1953 and came to be known as technical unit. In January, 1955, the appellant purchased the technical unit from the Government of India and took possession thereof. However, the deed of conveyance was executed on 5 January, 1957 by the President of India in favour of the appellant. On 27 July, 1956 the Commissioner wrote to the appellant that it was governed by the Act and required it to deposit sums due on account of contributions and administrative charges and submit the necessary returns. The appellant contended that it had taken over the factory from the Government of India in January, 1955 and was thus entitled to three year's exemption from that date. The dispute between the appellant and the Commissioner was the same as in the other appeal, namely, whether the factory should be deemed to be established in 1951 when it was first established by the Indian Co-operative Union, Ltd., or in 1955 when it was taken over by the appellant. In consequence of this dispute, the appellant filed a writ petition before the Punjab High Court in November 1957. It raised a number of points in the writ petition but in the present appeal we are concerned only with one question, namely, whether under S. 16(1)(b) of the Act the appellant is entitled to claim that the factory should be deemed to have been first established when it was taken over in January, 1955. The writ petition met the same fate as in Civil Appeal No. 572 and also the appeal before the Division Bench. Thereupon a certificate to appeal to this Court having been granted by the High Court, the matter has come up before us. We are of opinion that there is no force in this appeal either. We have already held in Civil Appeal No. 572 that mere change of ownership so long as the factory is working all the time makes no difference to the date of establishment of the factory. So in this case also the establishment of the factory must be taken to be in 1951 and not January, 1955 when the appellant acquired it. There is no substance in the appellant's contention that it did not acquire a running factory, for the agreement

between the President of India and the appellant shows that the appellant had undertaken.

"to make every possible effort to see that the workers employed on the transfer of the said factory remain continuously employed in the factory."

8. It clearly shows that the factory was working continuously up to the date when the appellant took over and there was mere change of ownership in January, 1955. Therefore, the date of establishment must remain the same, namely, 1951.

9. Then it is urged that this was a mere training unit and not a factory at all and stress is placed on the name given to it, namely, technical unit, and on the fact that training was imparted to persons employed in the factory. That, in our opinion, makes no difference. The name certainly was technical unit; but there is no doubt that this was a factory producing textile goods, though at the same time it was being used as a training centre for displaced persons. It was nonetheless a factory producing textile goods in which a number of workmen were employed. The appellant undertook to continue to employ the workmen as far as possible and cannot take advantage of the name of the factory as it was before the appellant acquired it and also of the fact that it was also used for purposes of training. We are, therefore, of opinion that there is no force in this appeal either.

10. The appeals are hereby dismissed with costs. There will be one hearing fee.