

Regional Provident Fund Commissioner, Jaipur

Vs

Naraini Udyog and Others

Civil Appeals Nos. 9490-93 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

08.07.1996

ORDER

1. Though Respondents 1 and 2, namely, M/s. Naraini Udyog, Kota and M/s. Modern Steels, Kota were served, they are not appearing either in person or through counsel. Leave granted. In these appeals, we are concerned only with the legality of the order of the Division Bench of the Rajasthan High Court in Writ Petitions Nos. 120-121 of 1990 etc. etc. made on 7-7-1993. As regards the aforesaid two concerns, their functional integrity was found by the Commissioner in his report as under :

"The fact of common Head Office at New Delhi, a common branch at Bombay, common telephone at Kota for residence and factories has also been not denied by Shri Krishan Kumar in his evidence. At the same time assertion that the Head Office though located in the same building but is separate lacks credibility. The letterheads of the two firms do not give any such indication. The stand of the establishment, that the two are registered separately under the Factories Act, the Sales Tax Act, the ESIC Act, are located at a distance of 3 kms apart, have separate Central Excise Nos., are registered as separate small-scale industries etc. and, therefore, the two should be treated as separate establishments is devoid of merit. As already analysed earlier, the concept of an establishment for the purposes of the Act is wide enough to include more than one factory and as such the factors relied upon by the management do not cut across that concept. The purpose of each Act is (sic) entities for those Act is immaterial so far the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is concerned. The statement by the Provident Fund Inspector that he had seen some workers of M/s. Naraini Udyog working in M/s. Modern Steel has been denied by the employer but it is not very crucial to the point at issue. The submission on behalf of the department that the office of M/s. Modern Steel is situated in the premises of M/s. Naraini Udyog and accounts of the two are maintained by the same set of clerks has not been controverted by the employer. Thus, taking into account the totality of the factors, the conclusion that the two firms in reality constituted a single establishment for the purpose of the Act is inescapable. This is fully supported by the provision of Section 2-A of the Act as also the case-laws laid down by the Supreme Court mentioned in para 4 earlier."

2. On the basis thereof, the appellant has called upon them to contribute the amount under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') holding that the above two concerns are establishments within the meaning of Section 1(3)(a) of the Act. The Division Bench in the impugned order had held that they were registered under the

Companies Act as two different individual identities, though they are represented by the members of the same family. Therefore, they are two independent companies. Both cannot be clubbed together for the purpose of levying contribution under Section 7-A of the Act. We have gone through the reasoning given by the High Court. We find that the High Court is wholly unjustified in reaching the above conclusion. 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. Accordingly, the High Court had not considered in proper perspective the provisions of the Act which is a beneficial legislation to provide healthy security to the workmen. In the ultimate analysis the employer gets maximum out-turn of his production by ensuring health insurance to its employees which is the fundamental right to the latter.

3. The appeals are accordingly allowed. The order of the High Court is set aside and that of the Commissioner stands confirmed to the above extent. No costs.