

SUPREME COURT OF INDIA

Union of India

Vs.

A.S. Amarnath

(S Majmudar and M J Rao JJ.)

27.11.1997

ORDER

1. The Union of India as appellant has brought in challenge the judgment and order of the High Court of Judicature at Madras allowing the writ petition filed by the respondent, proprietor of one Sarathi Dye House, Madurai. The Regional Provident Fund Commissioner had taken the view that the respondent had continued the business of the erstwhile firm wherein his father was a managing partner after a new firm was established by him earlier with his brother as its partner and thereafter as proprietor and therefore, the infancy benefit could not be claimed by the respondent's concern as per the provisions of Employees' Provident Funds and Miscellaneous provisions Act, 1952 (hereinafter to be referred to as "the Act"). The respondent's contention before the authorities under the said Act was that for the period from 23-1-1978 to 28-2-1981, infancy benefit was available under Section 16(1)(b) of the Act. The authority functioning under the Act repelled that contention by taking the view that the respondent's concern was not entitled to such benefit as it was the continuation of the erstwhile firm's business. The respondent carried the matter in a writ petition before the High Court. The High Court by the impugned judgment has taken the view that the respondent's concern was entitled to the infancy benefit as it was a new concern and the earlier partnership business run by the erstwhile partnership concern was already closed and a new business was run by the new concern which entitled it to claim the infancy benefit. The view taken by the High Court is based on relevant facts which have been noted in the impugned judgment. Earlier, the firm was Sarathi & Co. There were three partners constituting the said firm. The partners were, (i) Shri A.R. Sahasraman, (ii) Shri A.P. Keswavan, and (iii) Smt. A.R.S. Thulasi Bai. Incidentally, the first partner was the father of the present respondent. The business of the said firm could not be carried out further as the respondent's father who was the managing partner of the said firm died on

6-11-1977. The business was closed. In view of the closure of the said business, all workmen earlier employed by the said firm were given closure compensation as per the provisions of the Industrial Dispute Act, 1947. The workmen accepted the said closure compensation. The union of workmen representing them sought to challenge the said closure. The industrial dispute raised by them was not referred for adjudication by the State Government under the provisions of the Industrial Disputes Act as it was held by the State Government that the closure was bona fide, valid and effective. The workmen accepted the said finding of the State Government. Thereafter, the respondent who was one of the sons of the deceased partner of the firm, Sarathi & Co. along with his brother A.S. Ramesh entered into a partnership on 13-2-1978 under the name and style of Sarathi Dye House which survived up to 1981 and thereafter got dissolved. On these facts, the High Court has noted that it could not be held that the business of the old firm was continued by the respondent in the firm wherein the partners were entirely different and even though some of the workmen might have been employed by the new firm, it cannot be said that the old business was continued by the new concern. It was also observed that merely because the new entity is utilising the licence exploited by the old firm and the name of the new firm is identical with the name of the old firm and items of and machinery utilised by the old firm and items of machinery utilised by the old firm have been availed of by the new concern, it cannot be said that the said business had continued and therefore, the claim of infancy benefit was not available to the new concern. These are pure finding of facts based on relevant evidence. In our view, it requires no

interference under Article 136 of the Constitution.

2. learned Counsel for the appellants relied upon two decisions of this Court, in the case of Sayaji Mills Ltd. v. R.P.F. Commr. 1984 Supp SCC 610 and in the case of R.P.F. Commr v. Naraini Udyog . So far as the first decision is concerned, it was found on facts by this Court that temporary cessation of business by a concern because of winding-up proceeding cannot result into establishment of a new concern once the auction-purchaser under the orders of the Court had restarted the very same concern after purchasing it in any winding-up proceeding. The said decision is based on its own facts and therefore, cannot be pressed into service in the present case. This is not a case of temporary cessation of the erstwhile business of the concern because of any order of the Court. On the other hand, it was a case of closure which was held bona fide and accepted by the workmen by taking the closure compensation from the erstwhile employer. In the latter decision, this Court was concerned with an entirely different question under Section 7-A of the Act. Two companies were found to have functional unity and integrality and therefore, they can be clubbed as per the provisions of Section 7-A of the Act for the purpose of applicability of the Act. The finding reached by the Commissioner in that case clearly indicated that though for namesake they were treated to be two concerns, yet truly speaking, they were part and parcel of one company. On these facts, therefore, Section 7-A was found applicable by this Court. There is no such question in the present case. We are concerned with the question of infancy benefit claimed by the respondent which is found justifiable available to the respondent on the facts of the present case. In the result, the appeal fails, and is accordingly dismissed. No costs.