

CALCUTTA HIGH COURT

Vegetable Products Ltd

Vs.

Regional Provident Fund Commissioner

Matter No. 128 of 1958

(D.N. Sinha, J.)

12.12.1958

ORDER

D.N. Sinha, J.

1. The facts in this case are shortly as follows :

Prior to December 1951, Messrs. Sisir Oil Industries Limited carried on business as manufacturer of vegetable oils and edible oils at its factory at Belghuria in the district of 24-Parganas. In or about February 1952, by an order of this Court in its company jurisdiction, the said company, namely Sisir Oil Industries Ltd. was ordered to be wound up by Court. In January 1952, a provisional Liquidator was appointed. Thereafter in April 1952 Official Liquidators were appointed and an order was made directing them to sell the assets and properties of Sisir Oil Industries Ltd. The Official Liquidators sold the factory and it has eventually been purchased by the petitioner company, which commenced manufacture from December 1953.

2. In November 1956, the petitioner was asked to comply with the provisions of the Employees' Provident Funds Act (Act XIX of 1952) (hereinafter referred to as the 'Act') and to pay its contribution to the employees' provident fund. The petitioner company took up the position that it was entitled to exemption under Section 16 of the said Act, being an infant industry. The Commissioner, under the said' Act, however, rejected the contention, which has been upheld by the Central Government. This application has been made complaining against the order of the Commissioner and is based upon the argument that the petitioner company is entitled to exemption under Section 16 of the Act as an infant industry, running a factory which had not been run for more than three years from its establishment.

3. The petitioner company is of course making its calculations on the footing that the factory was established in 1953, when it commenced manufacture. If this point of time is accepted as the starting point, then of course the petitioner company would be entitled to exemption. The respondents are not willing to consider that as the starting point, but would add the period during which, Sisir Oil Industries Ltd. carried on manufacture in the same factory.

4. The position, therefore, is that the factory was in fact first established in 1951 and if it is calculated from that date, then there is no exemption. On the other hand, if the factory is taken to have been established from December 1953, when the petitioner company recommenced production, then in that case it would be entitled to exemption.

5. Coming to the provisions of the Act we find that Section 1(3) provides as follows :

"Subject to the provisions contained in Section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule I in which 50 or more persons are employed"

6. Section 2(g) of the Act defines 'factory' and 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.

7. Coming now to Section 16, we find that the Act shall not apply to any 'factory', established whether before or after the commencement of the Act unless three years have elapsed from its establishment. It is, therefore, clear that for purposes of considering the exemption contained in Section 16(b) we are not concerned with the owner of the factory but with the factory itself. The point for consideration is as to when such a "factory" was established. A factory may from time to time change hands. The question is whether, each time the factory changes hands, it can be said that it was being newly established. In my opinion, no such argument is possible. It is apparent that the solution of this problem must depend on the facts of each case. A factory may be established and then it might change hands and the person who acquires it may entirely dismantle it or take it elsewhere or remove the machinery and instal a completely new set of machinery or produce something else. Where the change or the alterations are of such magnitude that it cannot be said that the same Factory was continuing, then indeed the continuity can be said to have been broken. Again, if a factory becomes so moribund and defunct that for all intents and purposes it has become dead and then after a long period of time somebody else recommences production entirely anew, it might be said that the factory has been newly established. As I have stated above, the solution will depend entirely on the facts of each case. What will have to be considered is the lapse of time, the conduct of the parties, the intentions of the transferor and the transferee and a consideration of all other surrounding circumstances. Normally speaking, however, a mere change of ownership cannot affect the continuity of a 'factory', for purposes of the Employees' Provident Funds Act. This has now been established in various decided cases. Bose, J. in *Bharat Board Mills Ltd. v. The Regional Provident Fund Commissioner*¹, has held that the date of establishment of a factory is the date when the factory starts its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of the establishment of the factory to the date of its taking over or acquisition, nor does the fact that the factory had ceased to produce goods for a certain time and resumes production after certain brief intervals, result in extinction of the old factory and establishment of a new factory.

8. The learned Judge relied on an unreported Bombay decision (*Chhaganlal Textile Mills Private Ltd. v. P.A. Bhaskar*² - Judgment of Tendolkar, J. dated 5th November, 1956). The facts of that

case are almost identical with the present one. There, the Chhaganlal

¹ AIR 1957 Calcutta 702

² Appln. No. 289 of 1956

Textile Mills Private Ltd. established a factory and it was ordered to be wound up at the instance of a creditor. Manufacture was stopped for some time, after which the Liquidator under orders of the Court gave a lease of the mills to Messrs. Kotak and Company for three years. On the termination of the said lease, Messrs. Kotak and Company discharged all the employees and paid them whatever was due to them, including provident fund. On the 28th February, 1955 the Liquidator granted a lease to Messrs. Babulal Shrivallabh. The lease, inter alia, provided that the lessee shall not be liable in respect of any previous liabilities, but work the mills as a new concern. The new owners put up a notice that workers would be recruited purely on a temporary basis and the new lessees would have nothing to do with their previous service in the mills. Subsequently, the lessee purchased the factory. The question arose as to whether he was entitled to get exemption under Section 16 of the Act. It was contended that the factory was recommenced under a specific agreement whereby the new lessee or owner would have nothing to do with the previous running of the factory. Nevertheless, this contention was rejected. It was held that for purposes of the Act, what has to be considered is the establishment of the 'factory' and the change of ownership was irrelevant. It was pointed out that if this was not so, then by various devices, the right of the workmen to get provident fund benefits would be put in peril and in most cases thwarted.

9. With great respect, I agree with the findings in both these cases and it appears to me that the clear law is that the establishment of a 'factory' has, under normal circumstances, nothing to do with the change of ownership. Where there has been a break in the continuity of production, that does not necessarily break the continuity for the purposes of the Act. As I have stated above, it will in all cases resolve itself to a question of fact as to whether under the facts and circumstances prevailing in that particular case, it could be said that the change of ownership constituted a re-establishment in the sense that the continuity had been broken and that the factory could be said to have been established afresh.

10. Coming to the facts of this case, we find that the original company which had established the factory went into liquidation. There is nothing before me on the records to show as to what exactly happened to the working of the factory and the disposition of its workers. All that I find is that in a letter which has been annexed to the affidavit-in-reply it has been clearly stated that the new factory did not employ all the workmen or staff of the old factory. Consequently, upon the admission of the petitioner itself it meant that there is some kind of continuity. It may be that for some time the work had stopped, but it is obvious that the petitioner company has been utilising the same factory, the same premises, the same machinery and although it has not employed the same machinery and workmen as a whole, but it has employed quite a number of them. In my opinion, the facts of the present case are such that it cannot be held that the factory was newly established in 1953, for the purposes of the Act. In my opinion, the Commissioner under the Act is right in holding that the factory must be taken to have been established much earlier and that the petitioner company was not entitled to exemption under Section 16 of the Act.

11. Under the circumstances, the application must fail. The Rule is discharged; interim orders

vacated; no orders as to costs.

12. Learned Counsel on behalf of the petitioner company states that the petitioner would require another month's time to pay the dues, I think this is reasonable and I extend the stay up to a month within which time the money should be paid.

Rule discharged.