

KERALA HIGH COURT

Kunnath Textiles

Vs.

Regional Provident Fund Commissioner

A.S. No. 73 of 1956

(Sankaran Ag., C.J. and P.T. Raman Nayar, J.)

29.01.1958

JUDGMENT

Raman Nayar, J.

1. In 1942 one K.T. Paul and his six brothers started a handloom textile factory which they ran until about March 1948. In January, 1949, the seven brothers formed a private limited company with one of the brothers, by name Cherukutty, as the managing director. This company took the factory on lease and worked it until 1-11-1953 when it surrendered the lease, The provision of the Employees' Provident Funds Act, XIX of 1952 were applied to the factory while it was being run by the Eastern Agencies Ltd., and that company was contributing to the Employees' Provident Fund as required by the Act and the Scheme framed thereunder. On the termination of the lease of the company, the seven brothers formed themselves into a partnership which they called the "Kunnath Textiles" and they took over the factory which they continued to run with the same employees (although they now choose to call them new workers) making the same goods and with no change whatsoever as to its character. They however discontinued sending the returns and making the contributions required by the Act, and when called upon by the Regional Provident Fund Commissioner to comply with the provisions of the Act contended that theirs was an infant factory within the meaning of Section 16 of the Act having been established only on 1-11-1953 and that the provisions of the Act were not applicable to the factory until it came of age on 1-11-1956. This contention was overruled by the Commissioner by his letter dated 27-8-1954 on the ground that what had happened was only a mere change in management and not the establishment of a new factory. The firm demanded a hearing. That was given, but the Commissioner adhered to this former view and passed an order to that effect on 5-4-1955. Thereupon the firm filed a writ petition, No. 76 of 1955, for quashing the aforesaid order of the Commissioner, but later withdrew the petition saying that it proposed to move the Central Government for a direction under Section 19A of the Act. That the firm did but the direction it obtained from the Central Government (communicated by a letter dated 16-10-1955) was not

favorable. It confirmed the view of the Commissioner and required that the factory be brought under the provisions of the Act and of the Scheme framed thereunder with effect from 1-11-1953. As a result thereof, the Commissioner, it would appear, threatened to recover the contributions due under the provisions of the Revenue Recovery Act. Therefore the firm, represented by one of its partners, Cherukutty, came forward with the present petition under Article 226 of the Constitution seeking an order prohibiting the Commissioner from taking any steps to recover the contributions. The petition having been dismissed by a single Judge of this court, the firm has come up on appeal.

2. From a consideration of the bare facts as stated above it seems to us beyond doubt that the holding of the learned single Judge that no new factory was established on 1-11-1953, that the factory he was dealing with was the same as the one in respect of which contributions were being made by the Eastern Agencies Ltd., from 1-11-1952 to 1-11-1953, that the firm represented by Cherukutty was the employer in relation to the factory, and that the order dated 6-10-1955 by the Central Government embodied a correct decision, must be upheld. Although in strict legal theory the Kunnath Textiles is a different legal entity from the Eastern Agencies Ltd., the ownership of the factory was throughout vested in the seven brothers and as remarked by the learned single Judge, it is significant that the licence for working the factory has throughout remained in the name of Cherukutty who was the managing director of the Eastern Agencies Ltd., and is now the managing partner of the Kunnath Textiles. The so called surrender of the lease was only a notional transaction by which the seven brothers in the garb of the Eastern Agencies Ltd. made over the factory as a working concern to themselves in their new garb of the Kunnath Textiles. The factory continued to work as before with, it is admitted, practically the very same employees and there was no interruption in its existence, not even a notional death and rebirth.

3. It is argued on behalf of the appellant that the lease to the Eastern Agencies Ltd., and the surrender by it were not, as wrongly assumed by the learned single Judge, of the factory as such, but only of the premises and the equipment. That might or might not be so - it is significant that the lease deed has not been produced - but we do not think that it makes any difference. Assuming that the lease was only of the premises and the equipment, and that the surrender was not notional but real, the firm being a different entity from the company, what actually happened as a result thereof was undisputedly that the appellant firm took over the factory as a working concern. That in law the surrender of a lease is not, strictly speaking, a transfer does not alter the position. We are not really concerned with the buildings or the equipment, and that these, or the factory of which they form part, changed hands does not affect the identity of the factory. The factory remained the same factory making the same goods and employing the same workers without as much as a day's interruption and in this connection we might draw attention to Section 2(g) of the Act which defines a factory as any premises in which a manufacturing process is being carried on, a definition the continued and uninterrupted application of which to the premises in question was in no way affected by the alleged surrender - and what happened in fact was not even a change in the management of the factory as stated by the Commissioner but

merely a change in the name of its owner and, in law, a change of the personality of the owner. The factory did not stop working. Its workers were not discharged by the Eastern Agencies Ltd., nor, it would appear, reappointed by the Kunnath Textiles, and the firm has produced no evidence whatsoever in support of its repeated assertions that a new factory was started by it on 1-11-1953 with new employees. Even if there were a discharge and a reappointment we would be inclined to ignore that as mere paper transactions designed to defeat the statute. Having regard to the definition of a factory in Section 2(g) of the Act, it is clear that the continuance of a factory as the same factory is unaffected even by a change of ownership, and it matters little by what means the change is effected whether by a transfer, or by the death of the previous owner, or by some other such transaction as in the present case. Much less can it be affected by a mere change in the name of the owner. By what form of legal transaction the change is brought about is of no consequence; and surely no one can be allowed to evade the law by purporting, to deal with only the buildings and equipment of a factory when in fact what is dealt with is the factory as a running concern.

4. Our attention has been drawn to the explanation to Section 16(1) of the Act which for the removal of doubts declares that the date of the establishment of a factory is not to be deemed to have been changed merely by reason of a change of the premises of the factory. This was perhaps thought necessary in view of the fact that in Section 2(g) "factory" is defined in terms of its premises, and it certainly does not imply that a change other than that of the premises, a mere change in the name of the owner as in the present case, effects a change in the date of the establishment of a factory.

5. The objection taken on behalf of the Commissioner that the petitioner must first get rid of the order passed by the Central Government in exercise of its powers under Section 19A of the Act - no such relief is claimed in the petition and the Central Government is not a party - before it can seek to stay the hands of the Commissioner seem to us well-founded, but, in the view that we have taken of the case on the merits, we think it unnecessary to go into that matter at any length.

6. We dismiss the appeal with costs. Advocate's fee Rs. 200 (two hundred).
Appeal dismissed.