

SAYAJI MILLS LTD.

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REGIONAL PROVIDENT FUND COMMISSIONER

21st December, 1984

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(E.S. VENKATARAMIAH AND R.B. MISRA, JJ.)

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act XIX of 1952) Section 16(1)(b), scope of—The appellant a public limited company purchasing "Hirji Mills Ltd." in certain liquidations proceedings from the Official Liquidator and recommending the factory after an year of its closure with the same machinery and with 70% of the previous workmen after investment of some fresh capital in the business and renovation of the machinery—Whether the factory is a "new factory" within the meaning of S.16(1)(b) and the provisions of the Act are not applicable on the date of the suit to the factory—Interpretation of benevolent legislation.

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At the sale held by the Official Liquidator under the orders of the Bombay High Court, the appellant a public limited company, purchased the "Hirji Textile Mills" minus its goodwill and its workmen who were discharged earlier. The appellant invested some fresh capital in the business, renovated the machinery and employed workmen on fresh contracts which included 70% of the workmen formerly working in that factory and commenced to produce certain new types of things at the factory w.e.f. November 12, 1955, after obtaining a new licence to run it. When by the end of February, 1956 the Regional Provident Fund Commissioner made certain enquiries about the working of the factory in order to enforce the provisions Provident Fund Act against the appellant, the appellant wrote to him stating that the factory was an infant factory having been established on November 12, 1955 and the period of three years had not not elapsed from that date within the meaning of Section 16(1) b) of the Act. When the Regional Provident Fund Commissioner was not convinced about its explanation, the appellant first filed a writ petition under Article 226 of the Constitution before High Court of Bombay in Miscellaneous Application No. 76 of 1957 challenging the applicability of the Act to the factory and after withdrawing it, filed Short Cause Suit No. 2088 of 1958 before the City Civil Court at Bombay for a declaration that the Act and the scheme framed thereunder could not be enforced against the factory until the expiry of three years from November 12, 1955 and that the appellant was not liable to make any contributions under the Act. The trial Court dismissed the suit holding that in view of the several facts established in the case it could not be presumed that a new factory was established by the

appellant on November 12, 1955, that the continuity of the old factory had not been broken and as such the appellant was liable to make contributions under the Act. The judgment of the trial Court was affirmed by the Bombay High Court in Appeal No. 406/64. Hence the appeal by special leave.

Dismissing the appeal, the Court,

B HELD : 1.1. Every statute should be construed so as to advance the object with which it is passed and as far as possible, avoiding any construction which would facilitate evasion of the Act. [521-C]

C 1.2. In consonance with the directions enshrined in Article 43 of the Constitution, Employees' Provident Fund Scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. The Act being a beneficent statute and section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, section 16 should receive a strict construction.

[521A-B, 522A]

D 2.1. The criterion for earning exemption under section 16(1)(b) of the Act is that a period of three years has not yet elapsed from the date of establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory which once established may be interrupted on account of factory holidays, strikes, lock outs, temporary breakdown of machinery, periodic repairs to be effected to the machinery in the factory, non-availability of raw materials, paucity of finance etc., and also on account of an order of court as in the present case. Interruptions in the running of factory which is governed by the Act brought about by any of these reasons without more cannot be construed as resulting in the factory ceasing to be the factory governed by the Act and on its restarting it cannot be said that a new factory is or has been established. On the resumption of the manufacturing work in the factory it would continue to be governed by the Act which does not state that any kind of stoppage in the working of the factory would give rise to a fresh period of exemption. In other words the period of three years should be counted from the date on which the factory was first established and the fact that there had been a change in the ownership makes no difference to the counting of period. [522A-D, 524D-E]

E *Lakshmi Rattan Engineering Work v. Regional Provident Fund Commissioner, Punjab & Ors.*, [1966] 1 LLJ 741 SC, reiterated.

F *Chaganlal Textile Mills Pvt. Ltd. v. P.P.A. Bhaskar*, Misc. Appln. No. 289 of 1956 disposed of on November 5, 1956 : *M/s. Bharat Board Mills Ltd. v. The Regional Provident Fund Commissioner & Ors.*, A.I.R. 1957 Cal. 702 : *Vegetable Products Ltd. v. Regional Provident Fund Commissioner, W. Bengal & Ors.*, A.I.R. 1959 Cal. 783; *Jamnadas Agarwala & Anr. v. The Regional Provident Fund Commissioner, West Bengal & Ors.*, A.I.R. 1963 Cal. 513;

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A *Robindra Textile Mills v. Secretary, Ministry of Labour, Govt. of India, New Delhi & Anr.* A.I.R. 1936 Punjab-55; *Hindustan Electric Co. Ltd. v. Regional Provident Fund Commissioner, Punjab & Anr.*, A.I.R. 1959 Punjab 27; *Regional Provident Fund Commissioner, Punjab & Anr. v Lakshmi Rattan Enginnering Works Ltd.*, A.I.R. 1962 Punjab 507 ; *M/s. R.L. Sahni & Co. v. Union of India represented by the Regional Provident Commissioner, Madras & Anr.*, A.I.R. 1966 Mad. 416; *Kunnath Textile v. Regional Provident Fund Commissioner*, A.I.R. 1959 Kerala 3; *The New Ahmedabad Bansidar Mills Pvt Ltd. Ahmedabad v. Union of India & Ors.*, A.I.R. 1968 Gujarat 71; approved.

Provident Fund Inspector, Trivendrum v. Secretary, N.S.S. Co-operative Society, Changancherry, [1970] 2 S.C.R. 481 : *Vithaldas Jagannathdas & Anr. v. The Regional Provident Fund Commissioner, Madras & Anr.*, A.I.R. 1965 Mad. 508; distinguished.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.2139 of 1970.

From the Judgment and Decree dated August 25, 1969 of the High Court of Bombay in Appeal No. 406 of 1964 from Original Decree.

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N. H. Hingorani, Mrs. K. Hingorani and Mrs. Rekha Pandey for the Appellant.

O. P. Sharma and Miss. A. Subhashini for the Respondent.

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The Judgment of the Court was delivered by

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VENKATARAMIAH, J. This appeal by Special Leave involves the question whether the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act XIX of 1952) (hereinafter referred to as 'the Act') were applicable on the date of the suit out of which this appeal arises to the factory which was purchased by the appellant in the year 1955 in certain liquidation proceedings.

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Prior to December, 1954 a company called 'Hirji Mills Ltd.' was carrying on the business of manufacture and sale of textile goods in its factory situated at Fergusson Road, Lower Parel, Bombay. That company was ordered to be wound up by the High Court of Bombay and its assets were ordered to be sold by the Official Liquidator. At the sale held by the Official Liquidator, the appellant which was a Public Limited Company, purchased the above said factory. It is stated that the workmen had been discharged earlier and the goodwill of the company in liquidation had not been

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acquired by the appellant. There was discontinuance of the work of the factory for some time. The appellant restarted the factory on November 12, 1955. The appellant claims that it invested some fresh capital in the business, renovated the machinery and also employed workmen on fresh contracts though about 70 per cent of the workmen were formerly working in that factory. It is also contended that the appellant commenced to produce certain new types of goods at the factory after obtaining a new licence to run it. When by the end of February, 1956 the Regional Provident Fund Commissioner made certain enquiries about the working of the factory in order to enforce the Act against it, the appellant wrote to him stating that the factory was an infant factory as it had established it on November 12, 1955 and the period of three years had not elapsed from that date. The appellant claimed exemption from the operation of the Act relying upon section 16 (1) (b) thereof. When the Regional Provident Fund Commissioner was not convinced about its explanation the appellant filed a writ petition under Article 226 of the Constitution before the High Court of Bombay in Miscellaneous Application No. 76 of 1957 challenging the applicability of the Act to the factory. That petition was, however, withdrawn. Later on the appellant filed a suit before the City Civil Court at Bombay in Short Cause Suit No. 2088 of 1958 for a declaration that the Act and the scheme framed thereunder could not be enforced against the factory until the expiry of three years from November 12, 1955 and that the appellant was not liable to make any contributions under the Act. The appellant also prayed for an injunction against the Regional Provident Fund Commissioner restraining him from enforcing the Act against the factory. The suit was resisted by the Regional Provident Fund Commissioner. He contended that the Act was applicable to the factory when it was in the hands of Hirji Mills Ltd. (the company under liquidation) and hence it did not cease to apply merely because there was discontinuance in the working of the factory for a short period and there was change of ownership. It was also pleaded that the factory could not be treated as having been newly established on November 12, 1955 and hence the exemption under section 16 (1) (b) of the Act was not available. The trial court dismissed the suit with costs. The trial court while negativing the contention of the appellant observed thus:

"If a factory was closed down and after it had gone into liquidation the factory is dismantled by the liquidator and the liquidator sold the various assets as scrap it would be a different matter but in the present case having regard to the recitals in the Deed of Conveyance dated 5th December 1955

A Ex. A it cannot be disputed that the Plaintiffs have in fact purchased all the assets (a) lands, hereditaments and premises, (b) buildings, godowns, structures and sheds and (c) the plant and machinery and other moveables from Hirji Mills (in Liquidation) and Official Liquidator and others and what is more after making such purchase they have been utilizing the said same assets particularly same factory premises and same plant and machinery with a few additions to carry on the same business, namely, manufacturing textile goods which was carried on by that factory when it was owned by Hirji Mills Ltd. with 65 to 70 per cent of the old staff and workmen of Hirji Mills Ltd. From these facts it cannot be said that the intention while effecting the transfer of all the several assets from the former owners to the owners was that the old factory should become defunct or non-existent and a new factory was intended to be established. On the contrary these facts affirm the continuity of the established factory, notwithstanding the fact that the plaintiffs did not purchase it as a going concern."

E The trial court held that in view of the several facts established in the case it could not be presumed that a new factory was established by the appellant on November 12, 1955. It on the other hand held that the continuity of the old factory had not broken and as such the appellant was liable to make contributions under the Act. The judgment of the trial court was affirmed by the Bombay High Court in Appeal No. 406 of 1964. This appeal by Special Leave is filed against the judgment of the High Court.

G The facts established in this case are that Hirji Mills Ltd. had been carrying on the business of manufacture of textile goods in the factory from the year 1931 upto the date of the winding up order which was made on December 17, 1954 and there was stoppage of manufacturing activity in the factory till November 12, 1955 on which date it was recommenced by the appellants. The points for consideration are whether in the circumstances in which the appellant came to acquire the factory there was the extinction of the old factory and the establishment of a new factory on November 12, 1955 and whether it could be said that the Act had ceased to apply to the factory on the stoppage of the manufacturing process in it owing to the winding up order.

At the outset it has to be stated that the Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise among others conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, the Act should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided. Section 1 (3) of the Act during the relevant period declared that subject to section 16 thereof, it applied to every establishment which a factory engaged in any industry specified in Schedule I thereof and in which fifty or more persons were employed. The material part of section 16 of the Act as it stood at the relevant time alongwith the marginal note read as follows :—

“16, Act not to apply to factories belonging to Government or Local Authority and also to infant factories—

(1) This Act shall not apply to—

- (a) any factory belonging to the Government or a local authority ; and
- (b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

Explanation :—For the removal of doubts, it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory.....”

A The Act being a beneficent statute and section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, section 16 should receive a strict construction. If a period of three years has elapsed from the date of the establishment of a factory, the Act would become applicable provided other conditions are satisfied. The criterion for earning exemption under section 16(1) (b) of the Act is that a period of three years has not yet elapsed from the date of the establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory. The Act also does not state that any kind of stoppage in the working of the factory would give rise to a fresh period of exemption. The work in a factory which is once established may be interrupted on account of factory holidays, strikes, lock outs, temporary breakdown of machinery, periodic repairs to be effected to the machinery in the factory, non-availability of raw materials, paucity, of finance etc. It may also be interrupted on account of an order of court like the one we are confronted with in this case. Interruptions in the running of a factory which is governed by the Act brought about by any of the reasons mentioned above without more cannot be construed as resulting in the factory ceasing to be a factory governed by the Act and on its restarting it cannot be said that a new factory is or has been established. On the resumption of the manufacturing work in the factory, it would continue to be governed by the Act. In *Chaganlal Textile Mills Pvt. Ltd. v. P.A. Bhaskar*,⁽¹⁾ on the file of the Bombay High Court which is one of the earliest decisions delivered on the above question (which is unreported), Justice Tendolkar observes thus :

F “The important point to notice about this provision is that the Act is made applicable to factories and not to the owners thereof; or, in other words, it applies to factories irrespective of who the owners from time to time may be.”

The learned Judge proceeds :

G “The question is whether the order of liquidation and the consequent temporary discontinuance of business until a lease was granted to Kotak and Company has the consequence of making the factory which was established cease

H (1) Misc. Appln. No. 289 of 1956 disposed of on November 5, 1956.

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to be established. In my opinion the answer to this question must be in negative. A temporary cessation of the activities of an established factory cannot lead to the result that the factory ceases to be established for the purposes of the Employees' Provident Funds Act, for if it did, the class of employers who spare no ingenuity in seeking to deprive the employees of all the benefits conferred upon them by statute would have convenient handle whereby the activities of an established factory have to be discontinued for a few months in order to deprive the employees of the benefits under the Employees' Provident Funds Act. I take it that the establishment of a factory involves that the factory has gone into production and no more.....but once it goes into production, a temporary cessation of its activities, for whatever reasons that cessation takes place cannot in my opinion, take the factory out of the category of an established factory for the purposes of the Employee's Provident Fund Act."

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Towards the conclusion of his judgment, the learned Judge says that :

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"Even a complete change in the whole body of employees cannot make a factory which is established, cease to be established. In any event, the Employees' Provident Funds Act is a beneficial legislation for the benefit of the employees and every construction of its provisions which would defeat the object of the legislation and lead to an evasion must be rejected, unless the clear language of the Act leaves no option to the Court but to accept such an interpretation."

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The above statement appears to us to lay down the law correctly. We find that this view has been followed in *Messrs Bharat Board Mills Ltd. v. The Regional Provident Fund Commissioner & Ors.*,⁽¹⁾ *Vegetable Products Ltd. v. Regional Provident Fund Commissioner, W. Bengal & Ors.*,⁽²⁾ *Jamnadas Agarwalla & Anr. v. The Regional Provident Fund Commissioner, West Bengal & Ors.*,⁽³⁾ *Robindra Textile Mills v. Secretary, Ministry of Labour, Govt. of India, New*

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(1) A.I.R. 1957 Cal. 702.

(2) A.I.R. 1959 Cal. 783.

(3) A.I.R. 1963 Cal. 513.

A *Delhi & Anr.(1) and Hindustan Electric Co. v. Regional Provident Fund Commissioner, Punjab & Anr.(2), Regional Provident Fund Commissioner, Punjab & Anr. v. Lakshmi Ratten Engineering Works Ltd.(3)* (affirmed in item 2 *infra*). A similar view has been taken by the Madras High Court in *M/s. R.L. Sahni & Co v. Union of India, represented by the Regional Provident Commissioner, Madras & Anr.(4)* in which it was held that it could not be postulated that each time when there was a change of hands, a new establishment came into existence. In *Kunnath Textiles v. Regional Provident Fund Commissioner(5)* and in *The New Ahmedabad Bansidhar Mills Pvt. Ltd. Ahmedabad v. The Union of India & Ors.(6)* also the same view has been taken.

C In *Lakshmi Ratten Engineering Works v. Regional Provident Fund Commissioner, Punjab & Ors.(7)* which was filed by one of the parties to the appeal before the Punjab High Court in *Regional Provident Fund Commissioner, Punjab & Anr. v. Lakshmi Ratten Engineering Works Ltd* (supra) against the judgment rendered therein, this Court has held while affirming the said judgment that the words in section 16 (1) (b) of the Act were quite clear and they left no room for doubt that the period of three years should be counted from the date on which the factory was first established and the fact that there had been a change in the ownership made no difference to the counting of that period.

E This is not a case where the old factory was reduced into scrap and a new factory was erected in its place. Nor can it be said that there was total discontinuity brought about between the old factory and the factory which was restarted after the appellant purchased it. The stoppage of production was brought about temporarily as stated earlier by the winding up order and the factory was restarted after it was sold to the appellant by the Official Liquidator. The finding of fact recorded by the trial court in this case which is affirmed by the High Court clearly establishes that it was the same old factory which recommended production on November 12, 1955. What is of significance is that a substantial number of workmen

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- (1) A.I.R. 1958 Punjab 55.
- (2) A.I.R. 1959 Punjab 27.
- (3) A.I.R. 1962 Punjab 507.
- (4) A.I.R. 1966 Mad. 416.
- (5) A.I.R. 1959 Kerala 3.
- (6) A.I.R. 1968 Gujarat 71.
- (7) 1966 1 Labour Law Journal 741.

and staff who were working under the former management had been employed by the appellant though it is claimed that they had entered into new contracts of employment. Mere investment of additional capital or effecting of repairs to the existing machinery before it was restarted, the diversification of the lines of production or change of ownership would not amount to the establishment of a new factory attracting the exemption under section 16 (1) (b) of the Act for a fresh period of three years.

On behalf of the appellant, reliance was placed on the decision of this Court in *Provident Fund Inspector, Trivandrum v. Secretary, N.S.S. Co-operative Society, Changancherry.*⁽¹⁾ That was a case in which the Secretary of a Co-operative Society which owned a press had been acquitted by the Magistrate of the charge of not complying with the provisions of the Act. The High Court had confirmed the order of acquittal. On appeal, this Court found that there was no ground to interfere with the acquittal. The defence of the accused in that case was that the Co-operative Society of which he was the Secretary had acquired the press in question in March, 1961 and had established a new press subsequently and hence the Act was not applicable to the press as the period of three years prescribed by section 16 (1) (b) of the Act had not expired. The evidence in that case showed that after the purchase, a new owner had come in the place of the former owner, the work of the press was stopped on the date of its sale and was started again after a break of three months, the machinery in the press was also altered and the persons employed previously were not continued in service. While a fresh recruitment of workmen had taken place, out of those workmen only six happened to be the former employees and compensation had been paid to the workmen at the time of the sale by the former owner. On these facts it was held that a new establishment had come into existence. In the case before us, it is seen that about 70 per cent of the former workmen had been employed by the appellant and there was no change of machinery. Further this is a case where the interruption of work had taken place owing to the order in the winding up proceedings. It is relevant to state here that this Court in the course of its judgment in the above case did not overrule the decision of the Calcutta High Court in *Messrs Bharat Board Mills Ltd.* (*supra*) but only distinguished it. The facts of that case more or less corresponded to the facts of the case before us. It is true that this Court in the above decision approved the decision of the

A Madras High Court in *Vithaldas Jagannathdas & Anr. v. The Regional Provident Fund Commissioner, Madras & Anr.*⁽¹⁾ but that does not make any difference so far as the case before us is concerned since in the Madras case there was a finding that in reality the old establishment had come to an end and there was a new establishment. In the case before us, the finding of fact of the trial court is to the contrary. The learned trial judge has held that the intention in this case was to maintain the continuity of the old factory. Hence the decision on which reliance is placed being distinguishable on facts is not of much use to the appellant.

C In the circumstances, we do not find that there is any infirmity in the judgment under appeal. The appeal, therefore, fails and is hereby dismissed with costs.

D S.R.

Appeal dismissed.