

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.11227 of 2013

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office, No.3, Rajaji Salai,
Tambaram, Chennai 600 045.

... Petitioner

vs.

1. M/s.I.P.Rings Ltd.,
rep. By its Managing Director,
D-11/12, Industrial Estate,
Maraimalai Nagar,
Chennai 603 209.

2. The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minar, Core II 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

... Respondents

Writ Petition filed under Article 226 of the
Constitution of India seeking issuance of a writ of
Certiorari, to call for the records of the 2nd Respondent
relating to the order passed in ATA No.788(13)2008, dated
13.04.2011 and quash the same.

For Petitioner : Mr.R.Vishnu
for K.Ramu

For 1st Respondent : Mr.Sanjay Mohan
and Ms.M.Elavarasi
for M/s.S.Ramasubramaniam
Associates

For 2nd Respondent : No appearance

O R D E R

The Assistant Provident Fund Commissioner of the
Employees' Provident Fund Organization has come up with
the above Writ Petition challenging the order dated
13.04.2011 passed in ATA No.788 (13) 2008, whereby, the 2nd
Respondent/Tribunal has set aside the order passed under

Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the Act') by holding that the 1st Respondent is not a branch of M/s.India Pistons.

2. Facts leading to the filing of this Writ Petition, as stated in the Affidavit, are as under:

2(i) The 1st Respondent is engaged in the manufacture of piston Rings, which falls under the scheduled Industry 'Electrical Mechanical or General Engineering Products'. Though it is registered as a separate Company, for all practical purposes, the 1st Respondent acts only as a branch unit of M/s.India Pistons Ltd., which is an establishment covered under the Act with Code No.TN/MS/252. M/s.India Pistons is one of the group Companies of M/s.Sympson Group of Companies. The 1st Respondent herein started manufacturing activities/production with an employment strength of 35 persons at Maraimalai Nagar with effect from 01.08.1991 as a branch unit of M/s.India Pistons.

2(ii) The Petitioner went on to state that the 1st Respondent is fostered by M/s.India Pistons Ltd., as is evident from its 1st Annual Report (1991-92) by way of taking steps to implement the project by purchase of 7.25 acres of land in Maraimalai Nagar for the 1st Respondent establishment and afforded financial resources to develop its production activities. Based on the inspection report submitted by the Provident Fund Inspector, who had inspected the premises under Section 13 of the Act and also based on the particulars furnished by the 1st Respondent in the Investigation proforma, the 1st Respondent was required to implement the provisions of the Act with effect from the date of commencement, i.e. 01.08.1991 as per the provisions of Section 2-A of the Act, as a branch Unit of M/s.India Pistons.

2(iii) The 1st Respondent challenged the Letter No.TN/Apply/EO/Che.XI/93, dated 10.05.1993 issued by the Enforcement Officer, in W.P.No.11523 of 1993 at the preliminary stage of investigation. However, the said Writ Petition stood dismissed by an order dated 21.06.2000. In the meantime, M/s.India Pistons challenged the order passed under Section 7-A on 23.06.1998 on the very same issue under Section 7-I of the Act before EPFAT, New Delhi, which decided the matter in favour of the Appellant and the same was challenged by the Department in W.P.No.5205 of 1999. The said Writ Petition was allowed on 14.03.2006 and it was challenged by M/s.India Pistons in W.A.No.594 of 2006, which was also dismissed by a Division Bench of this Court vide an elaborate order dated 13.11.2008.

2(iv) Since the 1st Respondent did not deposit the EPF dues of its employees through M/s.India Pistons Ltd., with a view to avoid misappropriation of PF money recovered from the wages of the workmen, without prejudice to the decision of this Court, a separate Code number was allotted for the Petitioner on the request of the 1st Respondent vide communication dated 21.07.1995 for remittance of dues for the undisputed period from 01.08.1994 onwards.

2(v) Pursuant to the orders of this Court in W.P.No.11523 of 1993, dated 21.06.2000, the 1st Respondent vide its letter dated 21.06.2007 sought for an opportunity to represent the case in the matter of deciding the applicability of the Act to the establishment and claimed infancy protection, as if the 1st Respondent establishment is set up afresh, independently, by a new owner. In response, a summon under Section 7-A of the Act was issued to the 1st Respondent vide letter dated 24.07.2007, affording an opportunity of hearing on 13.08.2008.

2(vi) Thereafter, the Enforcement Officer had also filed a detailed report dated 06.08.2007, stating that the 1st Respondent Company was not a fresh establishment started by a new owner, but promoted by M/s.India Pistons Ltd. and that the products manufactured by the 1st Respondent were procured by M/s.India Pistons Ltd. The Enforcement Office had also brought out the nexus existing between both the Companies and accordingly opined that the 1st Respondent was not entitled to infancy protection and that they have to be covered with effect from 01.08.1991, i.e. the date of its commencement.

2(vii) After considering the materials placed before the enquiry, a speaking order was passed on 15.10.2008, treating the 1st Respondent as a branch of M/s.India Pistons Limited with no infancy protection in terms of Section 16 of the Act and further directed the 1st Respondent to remit the dues for the period from August 1991 to July 1994.

2(viii) Aggrieved by the said order, the 1st Respondent preferred an Appeal before the 2nd Respondent/Appellate Authority in ATA No.788 (13) 2008 and the 2nd Respondent/Tribunal, by an order dated 13.04.2011 allowed the said Appeal. Challenging the same, the Petitioner has come up with the present Writ Petition.

3. The main contention of the learned counsel for the Petitioner is that the 2nd Respondent, with non-application of mind, failed to see that the 1st Respondent - Company is a branch of M/s.India Pistons Ltd., and as

such, the 1st Respondent is not a new establishment claiming infancy protection. According to the learned counsel, the 2nd Respondent/Tribunal miserably failed to take into account the real purport and intention behind Section 2-A of the Act.

4. Learned counsel for the Petitioner drew reference to the Apex Court decision in the case of L.N.Gadodia & Sons vs. Regional Provident Fund Commissioner, reported in (2011) II SCR 508, wherein, it is held that Section 2-A of the Act is an enabling provision and is a welfare enactment and that the establishments run by the same family members under common Management with common workforce and financial integrity are expected to be treated as branches of one establishment for the purpose of EPF Act. Relevant portion the said judgment reads thus:

"16. Section 2(A) of the Act which declares that where an establishment consists of different departments or has branches whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. It was submitted that only different departments or branches of an establishment can be clubbed together, but no different establishments altogether. In this connection, what is to be noted is that this is an enabling provision in a welfare enactment. The two petitioners may not be different departments of one establishment in the strict sense. However, when we notice that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of Provident Funds Act. The issue is with respect to the application of a welfare enactment and the approach has to be as indicated by this Court in Sayaji Mills Ltd. (supra). The test has to be the one as laid down in Associated Cement Company (supra) which has been explained in Management of Pratap Press (supra)."

5. Pointing out that the intention of the legislature in giving infancy protection under Section 16

(1)(d) of the Act is to allow the newly established units to pick up and stabilize their production activities, learned counsel for the Petitioner submitted that, in the case on hand, there is no such requirement of giving any breathing time, as the 1st Respondent - Company is a well founded unit even before its incorporation. Thus, according to the learned counsel, when the 1st Respondent - Company is having adequate financial and technical support for its stability from its promoter viz. M/s.India Pistons Limited, it is not entitled to protection under Section 16 (1)(d) of the Act and its claim of infancy protection, as if, it is a new establishment, is a clear case of camouflage, thereby denying the benefits of the Act to its employees.

6. Heard the learned counsel for the parties and gone through the materials available on record.

7. In the order impugned, the 2nd Respondent/Tribunal, with reference to the decisions of the Apex Court in the case of Associate Cement Company Ltd. vs. Workmen and in the case of Sandeep Associate vs. Regional PF Commissioner, has held that the 1st Respondent-Company is a separate Unit and is entitled to get infancy protection, on the basis that common ownership itself is not sufficient to club two establishments. But, the authority, who initiated proceedings under Section 7-A of the Act, came to the conclusion that it cannot be treated as a separate entity, as there is functional integrality between the 1st Respondent-Company and M/s.India Pistons Limited.

8. It is further seen that this Court, by an order dated 21.06.2000 in W.P.No.11523 of 1993, had, in detail, considered the case of the Employees' Provident Fund Organization and held that there was functional integrality between the 1st Respondent Unit and M/s.India Pistons Limited, and the same has been confirmed by a Division Bench of this Court vide judgment dated 13.11.2008 in W.A.No.594 of 2006.

9. On a perusal of the Annual Report of the 1st Respondent-Company of the year 1991-92, produced by the Petitioner, it is seen that the 1st Respondent - Company was promoted by M/s.India Pistons Limited, and the Technical Assistance Agreement between Nippon Piston Ring Co. Ltd., Japan and M/s.India Pistons Ltd. would reveal that the Agreement was transferred by mutual consent in November 1991, with the approval of the Central Government, in September 1991. Brushing aside the said Annual Report, the 2nd Respondent/Tribunal has proceeded to hold that the 1st Respondent-Company is a separate Unit.

10. It is no doubt true that in terms of Section 16 of the Act, infancy protection need to be given to a new unit, provided it is a new Unit. Whether one Unit is dependent on the other Unit and there is functional integrality between the two Units, has to be proved by the PF authorities, in case, they want to club both Units, and mere common ownership or common Management is not sufficient, even though the new Unit is situated in the same compound of the old Unit.

11. The decision rendered in L.N.Gadodia's case (cited supra) is clear that, where an establishment consists of different departments or has branches, whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

12. In view of the foregoing discussion and in the light of the Division Bench judgment of this Court dated 13.11.2008 made in W.A.No.594 of 2006, wherein, it is held that the 1st Respondent-Company is not entitled to seek "infancy protection" to the Unit at Maraimalai Nagar, it is clear that there is functional integrality between M/s.India Pistons Limited and the 1st Respondent-Company. Merely because, an order has been passed by the 2nd Respondent/Tribunal against EPF Organization, it cannot be said that, they have no locus to file a Writ Petition. Any person or Company, who is aggrieved by an order of the Labour Court/Tribunal, on the ground of illegality and perversity, is entitled to knock at the doors of this Court.

13. As the 1st Respondent-Company, is nothing but a subsidiary of M/s.India Pistons Limited, the order dated 13.04.2011 passed by the 2nd Respondent/Tribunal in ATA.No.788(13)2008, requires interference, and it is accordingly, set aside. Resultantly, the 1st Respondent-Company cannot enjoy the benefit of infancy protection and this Court directs the 1st Respondent-Company to pay the Provident Fund amount due to the employees, for the period during which, it enjoyed infancy protection. The said dues shall be paid to the employees within a period of two months from the date of receipt of a copy of this order.

14. It is needless to mention that, it is open to the E.P.F. authorities to invoke Section 7-Q and 14(B) of the Act, if the dues are not paid to the employees, within the time stipulated. The E.P.F. authorities are directed to determine the amount payable by the 1st Respondent-Company for the period during which, it enjoyed infancy

protection, and on determination of the same, the said amount shall be paid by the 1st Respondent-Company to the E.P.F authorities.

In fine, the Writ Petition is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

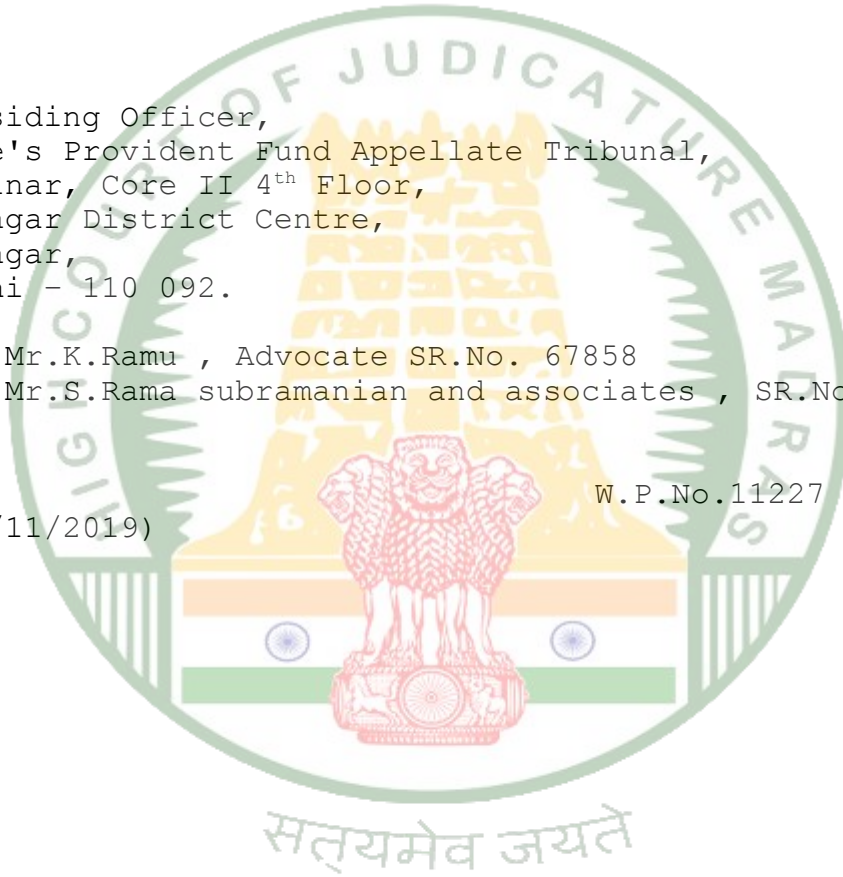
The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minar, Core II 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi - 110 092.

+1cc to Mr.K.Ramu , Advocate SR.No. 67858

+1cc to Mr.S.Rama subramanian and associates , SR.No. 66995

W.P.No.11227 of 2013

A.SK(06/11/2019)



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