IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4236 of 2019

I.P.Rings Ltd.
rep. by its Managing Director
D-11/12, Industrial Estate
Maraimalai Nagar
Chennai - 603 209. .. Appellant

vs.

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

2. The Presiding Officer
Employees provident Fund Appellate Tribunal
Scope Minar, Core II 4th Floor
Laxmi Nagar District Centre
Laxmi Nagar
New Delhi - 110 092. .. Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 6.8.2019 passed in W.P.No.11227 of 2013 by the learned Single Judge.

WP.No. 11227 of 2013: 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 Appellant : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam
and Associates

For Respondents : Mr.R.Vishnu
for 1st respondent

JUDGMENT
(Delivered by SUBRAMONIUM PRASAD,J.)

The short issue which arises for consideration is as to whether the appellant company, which is a group company of M/s.Sympson Group of Companies and is also a subsidiary company of another company named M/s.India Pistons, is entitled to the benefits of infancy protection under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. The appellant herein had challenged the order passed by the Regional Provident Fund Commissioner denying the benefit of infancy protection under Section 16(1)(d) of the Act before the Employees Provident Fund Appellate Tribunal. The Tribunal quashed the order denying the protection stating that the two units are completely independent of each other and, therefore, the appellant is entitled to the infancy protection benefit. The said order was the subject matter of challenge by the Assistant Provident Fund Commissioner in the instant writ petition.

3. In the writ petition, it had been stated by the Assistant Provident Fund Commissioner that the appellant is a subsidiary of M/s.India Pistons. Reliance was placed on the Annual Report to demonstrate that the entire financial resources to develop the appellant company was done by M/s.India Pistons. Reliance was also placed on the inspection report of the Provident Fund Commissioner.

4. It is also pertinent to mention at this juncture that a Division Bench of this Court in the case of M/s.India Pistons Limited v. The Regional Provident Fund Commissioner and another, reported in 2009 2 LW 514 had denied the benefit to M/s.India Pistons regarding a new unit which was to be established at Maraimalai Nagar by observing as under:

> "19. In the case on hand, it could be seen that establishment of the appellant Unit consists of different departments or has branches whether situate in the same place or in different place, all such departments or branches shall be treated as part of the same establishment as contemplated under Section 2A of the Act. Therefore, the main Unit at Sembium and the extension branch or Unit at Maraimalai Nagar shall be treated as a part and parcel of one establishment. There is financial integrality and managerial control between the two Units which belong to one group of companies, namely, M/s.Simpson Group of Companies. It is the admitted fact that common Annual Reports are prepared for both the factories from 1987 onwards.

There is a common balance sheet of profit and loss account of both the factories, though they maintain separate accounts. Therefore, in any event, though the appellant Unit is a new Unit, it can be construed only as an extension Unit of the main Unit and it cannot be treated as an independent Unit and as rightly concluded by the learned Judge, constitute one integrated whole for the purpose of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and in he consequences, it is bound to comply with the provisions of the Act from January 1987."

5. The learned Single Judge relying on the afore-mentioned paragraph of the decision in M/s.India Pistons Limited v. The Regional Provident Fund Commissioner and another (supra) allowed the writ petition filed by the first respondent herein. It is this order which has been assailed by the appellant in the instant writ appeal.

6. The learned counsel for the appellant would contend that there has been no independent application of mind by the learned Single Judge on the facts of the instant case and the reliance of the learned Single Judge on the Division Bench decision, referred to above, could not have been the sole determinative factor to deny the benefit of infancy protection under Section 16(1)(d) of the Act.

7. He would contend that since the judgment of the learned Single Judge is one of reversal and in view of the finding of facts arrived at by the Tribunal, the learned Single Judge ought to have discussed the facts of the present case to come to a conclusion that the decision of the Tribunal on facts is contrary to the evidence adduced by the appellant.

8. Having perused the order of the learned Single Judge, we find that the contention of the learned counsel for the appellant is well founded. To arrive at a conclusion denying the benefits of infancy protection under Section 16(1)(d) of the Act, the learned Single Judge has only reproduced the averment made in the writ petition and has not gone into the question of financial dependence of the appellant on M/s.India Pistons, nor has the learned Single Judge discussed as to why on the facts of the case, the appellant, which is a separate company incorporated under the Companies Act, is not entitled to the benefit of infancy protection. The learned Single Judge has also not given any reason as to why the findings arrived at by the Tribunal are contrary to law and perverse. We, therefore, deem it appropriate and necessary to set aside the impugned

judgment and remand the matter back to the learned Single Judge for a fresh consideration on facts and law.

Resultantly, the appeal is allowed. The impugned judgment dated 6.8.2019 is set aside and the matter is remanded to the learned Single Judge to decide the case afresh. The writ petition stands restored to the original number to be listed before the appropriate Bench. No costs. Consequently, C.M.P.No.26374 of 2019 is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

sasi

To:

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

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

+1cc to Mr.S.Ramasubramaniam, Advocate, S.R.No. 14304

W.A.No.4236 of 2019

VSN II(CO)
GN(05/03/2020)