IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1963-1998 (O&M)
Date of decision : 10.12.2024

M/s. Punjab Plastic Industries ...... Appellant

versus

The Recovery Officer ESI Corpn. and another ..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Sacchi Manajan, Advocate for
Mr. Sudeep Mahajan, Advocate
for the appellant.

Mr. H.S. Bhatia, Advocate
for the respondents.

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PANKAJ JAIN, J. (Oral)

1. Appellant is aggrieved of order passed by ESI Court whereby petition preferred under Section 75 read with Section 77 of the Employee's State Insurance Act, 1948 seeking quashing of orders dated 28.02.1995/07.03.1995 passed under Section 45-A of the 1948 Act and subsequent recovery orders stands dismissed.

2. The issue involved in the present case relates to clubbing of two separate entities. Appellant is a partnership firm working under the name and style of M/s. Punjab Plastic Industries. Mohinder Singh and Surjit Singh are the two partners in the firm. The other firm M/s. Ess Ess Poly Printers is a proprietorship firm owned by Surjit Singh. Both Surjit Singh and Mohinder Singh are real brothers. Corporation claims that both the firms are indeed joint in business and management. They thus, need to be clubbed for the purpose of ESI Act, 1948.

3. Appellant claims that though both the entities are working from the same premises, but are separate and distinct establishments. Both the units are separately registered under the Punjab Shops and Commercial Establishment Act, working independently having their own individual rights. Thus, they cannot be clubbed to saddle them with the liability under 1948 Act. The Corporation wrongly clubbed both the entities and raised demand. Petition filed under Section 75 of the 1948 Act by the appellant stands dismissed by the ESI Court.

4. The issue relating clubbing of two establishments is no more *res-integra*. There is plethora of case law governing the issue. In the case of ***Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani vs. Their Workmen*** reported as ***AIR 1960 SC 56***, three judges bench considering the issue of clubbing the entities for the purpose of labour laws observed as under:-

> "11. xx xx What then is ' one establishment' in the ordinary industrial or business sense ? xx xx It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for con- sideration

at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and - in part with factories or plants which are independently owned."

5. In the case of ***Management of Pratap Press, New Delhi vs. Secretary, Delhi Press Workers' Union Delhi*** reported as ***AIR 1960 SC 1213***, Supreme Court further elaborated the aforesaid observations made in ***Associated Cement Companies (supra)*** observing as under:-

> "xx xx xx While pointing out that it was impossible to lay down any one test as an absolute and invariable lest for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case."

6. In ***Regional Provident Fund Commissioner vs. Dharamsi Morarji Chemical Co. Ltd.*** reported as ***1998 (2) SCC 446,*** Supreme Court held that another factory established by the same management having separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act need to be held as a separate units. The same was followed by Supreme Court in ***Regional Provident Fund Commissioner vs. Raj's Continental Export(P) Ltd.*** reported as ***2007(4) SCC 239***.

7. All these precedents were reiterated by Supreme Court in case of ***M/s. L.M. Gadodia and sons and another vs. Regional***

Provident Fund Commissioner reported as ***2012 AIR Supreme Court 273*** to observe as under:-

> "11. Now, on the question as to whether such two units should be considered as one establishment or otherwise, there is no hard and fast rule. However, guidelines have been laid down two judgments of this Court rendered way back in the years 1959-60 and they are followed from time to time. Thus, in The Associated Cement Companies Ltd**., *Chaibasa Cement Works, Jhinkpani vs. Their Workmen reported in [AIR 1960 Supreme Court 56],*** a bench of three judges was considering the question as to whether the factory and the limestone quarry belonging to the appellant company should be considered as one establishment for the purpose of Industrial Disputes Act, 1947. This Court observed therein as follows:-
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>> "11. .... What then is 'one establishment' in the ordinary industrial or business sense? .... It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same. The difficulty of applying these tests arises because of the complexities of modern industrial organization; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or

> factories having the same ownership and in part with factories or plants which are independently owned."

Later in paragraph 5 of Management of ***Pratap Press, New Delhi vs. Secretary, Delhi Press Workers' Union Delhi reported in [AIR 1960 Supreme Court 1213]***, another bench of three judges explained the above proposition in Associated Cement Company (supra) in the following words:-

> " ......While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that cass.......

12. Accordingly, depending upon the facts of the particular case, in some cases the concerned units were held to the part of one establishment whereas, in some other cases they were held not to be so. ***Regional Provident Fund Commissioner vs. Dharamsi Morarji Chemical Co. Ltd.*** reported in ***[1998 (2) SCC 446]*** and ***Regional Provident Fund Commissioner vs. Raj's Continental Export(P) Ltd. reported in [2007(2) S.C.T. 482 : 2007(2) R.A.J. 724 : [2007 (4) SCC 239]*** are cases where the two units were held to be independent. In Dharamsi Morarji (supra), the appellant company was running a factory manufacturing fertilizers at Ambarnath in Distt. Thane, Maharashtra since 1921. The appellant established another factory at Roha in the adjoining district in the year 1977 to manufacture organic chemicals with separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act. The two were held to be separate for the purposes of coverage under the Provident Funds Act. In Raj's Continental Export (supra), Dharamsi Morarji was followed since the two entities had separate registration under the Factories Act, Central Sales Tax Act,

1956, Income Tax Act, 1961, Employee State Insurance Act, separate balance sheets and audited statements and separate employees working under them.

13. As against that in ***Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi reported in [1996 (9) SCC 454]*** and ***Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and others reported in [1996 (5) SCC 522]*** the concerned units were held to be the units of the same establishment. In Rajasthan Prem Krishan Goods Transport Co. (supra) the trucks piled by the two entities were owned by their partners, ten out of thirteen partners were common, the place of business was common, the management was common, the letter-heads bore the same telephone numbers. In Naraini Udyog (supra) the two entities were located within a distance of three kilometers as separate small-scale industries but were represented by the members of the same Hindu undivided family. They had a common head office at New Delhi, common branch at Bombay and common telephone at Kota. The accounts of the two entities were maintained by the same set of clerks. Separate registration under the Factories Act, The Sales Tax Act and The ESIC Act were held to be of no relevance and the two units were held to be one establishment for the purpose of Provident Funds Act.”

8. In view of ratio of law laid down in the aforesaid binding precedents, the following proposition can be culled out:-

“(i) Where statute does not enumerate as to what constitutes one establishment, usual tests have to be applied to determine the true relation between the parts, branches etc.

(ii) No particular test can be prescribed as absolute test in all cases.

(iii) Though, the relationship between the units will depend upon the facts proved, but unity of ownership, management and control may be important tests.

(iv) Functional integrity and general unity is also vital to ascertain the relationship between the two units.

(v) Unity of employment is also vital to arrive at the conclusion whether the two units are indeed one establishment or not.

9. Applying the aforesaid proposition to the facts of the present case, even though partners in the appellant concern are brothers, but it stands proved that Mohinder Singh has nothing to do with the other concern which is a partnership concern belonging to other brother namely Surjit Singh. Meaning thereby, there is no unity of ownership, management or control. There is no evidence to prove that there is functional integrity or general unity apart from the fact that two units operated from the same premises. However, the same looses its significance in view of the fact that both have been registered separately under State Shop and Establishment Act, having their separate entity and being filed separate returns, having separate book of accounts. Though, it is claimed by respondent-corporation that there is unity of employment, but there is no such evidence to support the same.

10. In view of above, this Court finds that merely for the reason that Surjit Singh who is partner in the present concern is also proprietor in the other concern, they cannot held to be single entity which are liable to be clubbed.

11. In view of above, finding recorded by the ESI Court regarding the two separate entities being same need to be reversed as there is no jointness of management or accounts or entity.

12. Resultantly, the present appeal is allowed. The order passed by the respondent-Corporation and the ESI Court are hereby set aside.

13. Ordered accordingly.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.12.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No