HIGH COURT OF GUJARAT

AKHANDANAND KELAWANI UTEJAK MANDAL
Versus
REGIONAL PROVIDENT FUND COMMISSIONER

Date of Decision: 25 June 1997

Citation: 1997 LawSuit(Guj) 267

Hon'ble Judges: S D Shah

Eq. Citations: 1997 3 GLR 2322, 1997 2 GLH 96, 2000 3 LLJ 1673, 1997 4 GCD 45

Case Type: Special Civil Application

Case No: 878 of 1996

Subject: Labour and Industrial

Acts Referred:
Employees Provident Funds And Miscellaneous Provisions Act, 1952 Sec 7A

Final Decision: Petition dismissed

Advocates: N D Nanavati, J D Ajmera, Nanavati Associates

Cases Cited in (+): **1**

S. D. SHAH, J.

[1] By this petition under Art. 227 of the Constitution of India, the petitioner Akhandanand K. U. Mandal has challenged the legality and validity of the order passed by the Regional Provident Fund Commissioner, Gujarat State, respondent No. 1 herein, dated 29th May, 1995 at Annexure-A to the petition and has further applied for an appropriate writ directing the respondent to hold the enquiry under Sec. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"). The petitioner has also applied for declaration that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are not applicable to the petitioner as they were running Primary School and Secondary School registered and recognised under different statutes and, therefore, they were not governed by the provisions of the said Act.

[2] It appears that the petitioner which is a registered Trust under the Bombay Public Trust Act, 1950, is running various schools being (1) Akhandanand Hindi High School, (2) Akhandananad Secondary School, (3) Akhandanand Hindi Primary School, and (4) Akhandanand Primary School. Admittedly, the schools are being run in the same building with the same class rooms and other facilities for running the schools are common, such as, black-boards, tables and chairs, the benches, the compound, etc. It is undoubtedly true that the aforesaid schools are registered and/ or recognised under the different provisions of the different statutes such as the Bombay Primary Education Act, 1947 and the Gujarat Secondary Education Act, 1972. It is their say that in the aforesaid schools, the strength of the teaching or the non-teaching staff never exceeded 14 in respect of each school and they were, therefore, not governed by the provisions of the said Act and were not liable to submit themselves to the provisions of the said Act. According to them, the provisions of the said Act also would not apply in view of the Notification dated 19th February 1982 issued by the Government of India in exercise of the powers conferred by sub-sec. (3) of Sec. 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The said Notification is annexed at Annexure-B to the memo of the Special Civil Application. It is specified that certain classes of establishments in each of which twenty or more persons are employed, are to be treated as one establishment within the meaning of the said Act and Clause III thereof reads as under :

> (iii) "any school, whether or not recognised or aided by the Central or a State Government".

[3] Mr. N. D. Nanavati appearing for the establishment has placed emphasis on the word "following classes of establishments in each of which twenty or more persons are employed" and has submitted that if in each of the schools registered and/or recognised under different statutes, the strength of the staff - teaching or non-teaching is more than 20, then only the provisions of the said Act would apply, but, if the schools are recognised and registered and being run under different statutes, the Act would not be applicable and, therefore, the enquiry held under Sec. 7-A of the said Act and the order passed pursuant thereto was non-est and was without jurisdiction and not binding on the petitioner.

[4] Mr. N. D. Nanavati further submitted that in fact no enquiry as envisaged by Sec. 7-A of the said Act is held or conducted and, therefore, also the impugned order is liable to be quashed and set aside as the same is violative of the provisions of the Act and principle of natural justice. The aforesaid submission of Mr. N. D. Nanavati is not well founded. It appears that a Notice under Sec. 7-A of the said Act is given which is dated 18th November, 1988 to afford an opportunity to the establishment to represent its case and to produce the relevant record on 6th of December, 1988. It appears that

thereafter with a view to enabling the establishment to produce the relevant evidence and to submit its reply as many as 30 adjournments were granted starting from 9th of January, 1989 to 29th November, 1994 but, the reply was filed on 26-10-1993. After taking into consideration the said reply and the contention raised in such reply, the order came to be passed which was communicated vide communication dated 29th May, 1995. From the said order, it becomes clear that the petitioner was called upon to deposit the amount mentioned in the order within 15 days of the receipt of the order failing which it was stated that the said amount will be recovered as arrears under Sec. 8 of the said Act. The amount which the petitioner is called upon to pay is also specifically mentioned in the order and it works out to Rs. 87,515/-. The details of which are given in the Schedule which is stated in the order. It is found by the competent authority that four schools which are run by Akhandanand Kelavani Utejak Mandal are not separate and independent units or institutions and that entire strength of the employees of the institutions is required to be considered for the applicability of the said Act. There is no dispute about the fact that the educational institutions are governed by the provisions of the said Act. But, Mr. Nanavati has simply relied upon the aforesaid Notification and this Court shall deal with the said submission hereafter after dealing with the question of liability of the petitioner to pay the amount directed to be paid by the impugned order by Regional Provident Fund Commissioner, Gujarat State.

[5] In the case of Dhoraji Engg. Works, Rajkot v. Regional Provident Fund Commr., Ahmedabad, reported in [1980(2)] XXI (2) GLR 461, the Division Bench of this Court speaking through S. H. Sheth, J. has laid down the principle. When the industries are ostensibly different three tests to determine such industries as one establishment are laid down by the Division Bench in the said case which are as under :

(1) unity of ownership, management and control,

(2) functional integrality, and

(3) unity of employment.

All these tests need not necessarily be established in each case. In the case before the Division Bench, firm was owned and managed and controlled by same related partners. Test of unity was held to be largely satisfied and it was held that the firms were engaged in same industrial activity and situated in neighbourhood. It was also found that there was geographical proximity. It was found that they were supplementary and complimentary to each other. It was also found that there was also financial unity and in that view of the matter, the Act was held to be applicable. The Division Bench of this Court has relied upon various decisions of the

Apex Court reported in AIR 1960 SC 56 (Associated Cement Co. Ltd. v. Their Workmen), AIR 1962 SC 1221 (Secretary, South India Mills Owners Asso. v. Secretary Coimbatore District Textile Workers Union), AIR 1964 SC 314 (Associated Industries (P) Ltd. v. Regional Provident Fund Commi., Kerala) and AIR 1971 SC 2577 (Union of India v. Ogale Glass Works Ltd). Since a detailed reference is made to the binding precedents of the Apex Court by the Division Bench of this Court, it is not necessary for this Court to refer to those decisions once again as the crux of the matter is summarised and is clearly stated by the Division Bench of this Court. The trinity of unity shall have to be examined and absence of one of the three factors would not necessarily make the establishment to be independent establishment. The fact that the establishments were owned by the same persons or by the same trust, that the management was the same, that the schools were being run in the same premises, with the same facilities such as furniture, black-boards, compound, lavatory, bathroom, office, etc. would be sufficient to establish that the establishment enjoyed the test prescribed by the Division Bench of this Court. The purpose of prescribing the test is to find out the true relation between the parts, branches or units. If in their true relation they constitute one integrated whole, the establishment is one. If, on the other hand, they do not constitute one integrated whole, each unit is a separate unit. How the relation between the units will be judged will depend upon the facts proved, having regard to the scheme and object of the statute which gives right of unemployment compensation and also prescribes a disqualification therefor. In one case the unity of ownership, management and control may be the important test. In other case, functional integrality or general unity may be an important test, in third, unity of employment may be an important test. Difficulties often arise in applying these tests because of the complexities of modern industrial organisation. Many enterprises may have functional integrality between factories which are separate unit. 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. In the midst of such complexities, it often becomes difficult even to discover the real thread of unity. It is clear, therefore, that while determining whether two enterprises constitute one establishment, the Court has determined three tests referred to hereinabove.

[6] In order to counter the aforesaid position of law, Mr. N. D. Nanavati has relied upon the decision of the Division Bench of this Court in the case of Gujchem Distillers India Ltd. v. Regional Provident Fund Commissioner, reported in [1985(2)] XXVI (2) GLR 653 wherein the Division Bench of this Court speaking through Late Justice N. H. Bhatt of this Court has stated that for determining whether two or more establishments owned and run by the same person or company are distinct establishments or not, one factor or two by itself or themselves may not be sufficient

to lead to a definite conclusion. The Court must take into account all the relevant factors and determine whether the two establishments are distinct units. The fact that it is run by the common employer, be it company or a partnership would hardly be of any consequence. If the two units are quite distinct, the new unit would be entitled to infancy benefits under the Act. In my opinion, this decision does not in any way run counter to the proposition of law laid down by the Apex Court and foliowed by the Division Bench of this Court in the case of Dhoraji Engg. Works (supra).

[7] It is undoubtedly true that the facts of each case thereto determine as to whether the two establishments are one unit or not. But, if three unity exists or any two of the three unity exists, and other circumstances and facts are pointer to the conclusion that the establishments are in fact being run, managed, controlled, financed by the same management in the same building with the same furniture, fixtures and with the same compound, it would not be possible for the Court to run away from the conclusion that the three unity as prescribed by the aforesaid decision are already established and that the employer is liable to pay the provident fund as determined under the provisions of the said Act. This decision in no way runs counter to the decision of Dhoraji Engg. Works (supra) or to any of the decisions of the Apex Court.

[8] Mr. N. D. Nanavati has relied upon the decision of the learned single Judge of this Court in the case of Chairman, Sarvajanik Education Society, Surat v. Jashvantrai Gulabrai Desai, reported in (1978) XIX GLR 1058; firstly the decision is not dealing with the provisions of the Employees' Provident Funds and the Miscellaneous Provisions Act, 1952. It is, therefore, not a decision directly on this issue. Secondly, it deals with a question of Secondary Education Regulations, 1974. When question of transfer of employee was involved, the learned single Judge has taken the view that every school is an independent unit under the scheme of the Act and the Regulation and, therefore, transfer of a teacher from one school to another was not permissible. This case, in my opinion, cannot militate against the principle of three unity prescribed by the aforesaid decision for the purpose of testing as to whether two or more establishments can be clubbed together or not. On facts as well as law, this decision is, therefore, not at all applicable nor does it militate against the principle of law laid down by the aforesaid Division Bench decision of this Court following a large number of decisions of the Apex Court.

[9] Mr. N. D. Nanavati has also relied upon the judgment of the Apex Court in the case of Workmen of the Straw Board Manufacturing Co. Ltd. v. M/s. Straw Board Manufacturing Co. Ltd., reported in AIR 1974 SC 1132, wherein the question was one of closure of an establishment under Sec. 25-A read with Sec. 25-FFF of the Industrial Disputes Act, 1947. The question before the Apex Court was as to whether the two units would constitute one establishment or not. It was in the context of a different

statute enacted for different purposes that the Court observed that the most important aspect in a case relating to closure is whether one unit has such componental relation that closing of one must lead to the closure of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit, if the other unit is capable of functioning in isolation is of very material import in the case of closure. There is bound to be a shift of emphasis in application of various tests from one case to another.

[10] In my opinion, the principle laid down in the aforesaid case has no application whatsoever. Firstly, it shall have to be kept in mind that the test prescribed for testing as to whether various establishment are one establishment or they are required to be clubbed together under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are obviously different from the test to be applied for the purpose of determining as to whether closure of one unit would constitute closure of entire establishment. The purposes of the two statutes are different. When an employer makes an attempt to close the unit with a view to relieve the workers or employees and the employees claim the right to continue in another establishment of the same employer, the ratio of the aforesaid decision shall have application. The principle of law which is laid down in the context and provisions of altogether a different statute, whose purpose and object is also different, cannot be blindly applied to the provision of a statute which is enacted for the purposes of the welfare of the entire class of employees who are employed by one establishment though ostensibly claiming to be different establishments because they are either registered or recognised under one or another statute. The very benevolent purpose of the Act of 1952 of providing provident fund to the class of employees by deducting the amount from their salary and by calling upon the employer to deposit the equivalent amount is to see that on their retirement the employees/workmen who are otherwise lowly paid are armed with sufficient fund so as to maintain their family or so as to live rest of their lives by banking upon the savings which are made in their provident fund. This benevolent purpose would be totally frustrated if the provisions of other statute and the observations of the Apex Court made in connection with closure of a unit under the provisions of the Industrial Disputes Act, 1947 are applied to such a benevolent welfare statute. This decision, in my opinion, therefore, cannot have any application.

[11] Lastly, Mr. N. D. Nanavati has submitted before this Court that because of the Notification issued by Government of India, Ministry of Labour, dated 19th February, 1982, the Central Government has specified classes of establishment in each of which 20 or more persons are employed, as establishments to which the said Act shall apply. Clause III of the said Notification is referred hereinabove.

[12] It is the case of Mr. N. D. Nanavati that in each of the schools run by the petitioner if the strength of staff teaching or non-teaching is more than 20 then only the Act of 1952 would apply and not otherwise. It is his submission that if the petitioner is running a primary school in two shifts then, perhaps, the Act may apply, but if different schools are run which are registered and recognised under different statutes, and if the strength of teaching and non-teaching staffis less than 20, then the Act would not apply. In my opinion, the interpretation placed on the Notification cannot be accepted. Clause III of the Notification refer to any school whether recognised or aided by the Central or State Government. It does not refer to schools registered and recognised under different statutes. If the schools are registered and recognised under different statutes and/or being run in the same building with the same management, with the same furniture and fixtures and with the same compound, it is not necessary that in each such school, the employees must be 20 or more. In fact, such interpretation would render the provisions of the Act of 1952 meaningless and a welfare legislation enacted for the benefit of the employees would be turned into a dead letter so as not to be operative at all in the case of educational institutions. In fact, when large number of educational institutions are being run in the same building with same fixtures, furniture, in the same compound and with the same management, the three unity spoken of by the Supreme Court and reiterated by the Division Bench of this Court are said to exist and the Notification cannot be so interpreted so as to render the decision of the Apex Court meaningless. If such an interpretation is accepted, one and the same management will run number of educational institutions in the same building with the same furniture, fixtures with the same compound and number of schools starting from nursery school, primary school, secondary school, higher secondary school can be born and these very schools might impart education in different languages as is the case in the present petition. I am, therefore, not inclined to accept the submission of Mr. N. D. Nanavati and to interpret the Notification in the way suggested by him. This submission of Mr. Nanavati must also, therefore, fail.

[13] These were the only submissions which were made before this Court and since all the submissions fail, the petition must fail. The same is, therefore, dismissed. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs.

[14] At the request of Mr. Nanavati, time is granted to the petitioner for a period of four weeks to enable the petitioner to have further recourse to the higher forum.

[15] In view of the aforesaid order passed in the main matter, no order on the Civil Application and the same is disposed of accordingly.

Petition dismissed.