

A REGIONAL PROVIDENT FUND COMMISSIONER  
v.  
M/S. RAJ'S CONTINENTAL EXPORTS (P.) LTD.

MARCH 7, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C *Employees' Provident Funds & Miscellaneous Provisions Act, 1952—  
ss. 7A & 2A—Managing Director of Respondent-concern owned a  
proprietorship concern—Held, that by itself not sufficient to establish that  
Respondent was branch of such proprietorship concern—There was no  
supervisory or management control—Respondent was separately registered  
under the Factories Act, Central Sales Tax Act and Employees State Insurance  
Act—Hence, both concerns were totally independent concerns.*

D Respondent-company claimed infancy protection under the Employees'  
Provident Funds and Miscellaneous Provisions Act, 1952. Appellant was of  
the view that Respondent was nothing but a department of M/s. Continental  
Exporters, a proprietorship concern whose proprietor was also the Managing  
Director of Respondent-Company. Assailing the adjudications, Respondent  
E filed writ petition before High Court contending that the two concerns were  
separate and distinct having separate balance sheets and audited statements.  
High Court after analyzing the factual position held that there was nothing  
in common between the two establishments and that merely because the  
proprietor of one concern was the Managing Director of the other concern,  
that by itself is not sufficient to establish that one was the branch of the other.  
F Accordingly the contention of Respondent was accepted and the impugned  
order under Section 7A of the Act was held not sustainable. Hence the present  
appeal.

Dismissing the appeal, the Court

G. HELD: Unless there is clear evidence to show that there was any  
supervisory financial control, it cannot be said that one is the branch of the  
other. As noted by the Single Judge of High Court, the respondent was  
separately registered under the Factories Act. It was separately registered  
under the Central Sales Tax Act and the Employees State Insurance Act. It

has also been found by Single Judge that there was total independence of the two units. The Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s. Continental Exporters. [Para 7] [639-C-D]

*Regional Provident Fund Commissioner and Anr. v. Dharamsi Morarji Chemical Co. Ltd.* [1998] 2 SCC 446, relied on.

*Pratap Press etc. v. Their Workmen* (1960) 1 LLJ 497, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7345 of 2000.

From the Final Judgment and Order dated 27.10.1999 of the High Court of Karnataka at Bangalore in W.A. No. 2587/1997.

Ashok Bhan, Asha G. Nair and (For Sahil Kumar Dwivedi) for the Appellant.

Bharat Sangal, R.R. Kumar, Samyadeep Chatterji and Suchita Sharma for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J. 1.** Challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court dismissing the Writ appeal filed by the appellant. The learned Single Judge, whose order was under challenge before Division Bench had allowed the writ petition filed by the respondent holding that the order passed under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (in short the 'Act') was not sustainable.

2. Background facts in a nutshell are as follows:

Respondent claimed in-fancy protection under the provisions of the Act. It started production in 1984. The respondent was of the view that it was an extension on the branch of M/s Continental Exporters, a proprietorship concern of one Sampathraj Jain, who was also the Managing Director of the respondent-company. Appellants' view was that the respondent was nothing but a department of the aforesaid "M/s. Continental Exporters". Assailing the adjudication, respondent filed a writ petition stating that there was no financial integrity. It was separately registered under the Factories Act, Central Sales Act 1956, Income Tax Act, 1961 and the Employees State Insurance Act. The

A concerns are separate and distinct. They have separate Balance Sheets and audited statements. The High Court accepted the contention and held that there was total independent exercise of power in the two concerns. Though the manufacturing of goods was in respect of the same article, that by itself was not sufficient to hold that it was a branch or department of M/s Continental Exporters. The High Court as a matter of fact found that there was total independence exercise of the management and control of the affairs, the employees were separately appointed and controlled. Taking into account these factors it was held that that the respondent company and M/s Continental Exporters were not one and the same.

C 3. Challenge was made to the order of learned Single Judge in the Writ Appeal. The High Court after analyzing the factual position came to hold that there was nothing in common between the two establishments. Merely because the proprietor of the one concern was the Managing Director of the other that by itself is not sufficient to establish that one was branch of the other. Accordingly the Writ Appeal was dismissed.

D 4. In support of the appeal, learned counsel for the appellant submitted that factual scenario clearly establish that the respondent was a branch of M/s. Continental Exporters. Learned counsel for the respondent on the other hand submitted that in view of the findings recorded by both the learned Single Judge and the Division Bench of the High Court, there is no scope for any interference.

E 5. At this juncture it would be appropriate to take note of Section 2A of the Act. The same reads as follows:-

F “For the removal of doubts, it is hereby declared the where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.”

G 6. In *Pratap Press, etc. v. Their Workmen*, (1960) 1 LLJ 497 it was inter-alia held as follows :

H “The question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard and fast rule can be laid down for the decision of the question and each case has to be decided on its

own peculiar facts. In some cases the two activities each of which by itself comes within the definition of "industry" are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer." A B

7. In *Regional Provident Fund Commissioner and Anr. v. Dharamsi Morarji Chemical Co. Ltd.*, [1998] 2 SCC 446, it was held that unless there is clear evidence to show that there was any supervisory financial or managerial control, it cannot be said that one is the branch of the other. As noted by learned Single Judge, the respondent was separately registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees State Insurance Act. It has also been found by learned Single Judge that there was total independence of the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s. Continental Exporters. C D

8. The appeal is sans merit, deserves dismissal, which we direct. There will be no order as to costs.

B.B.B.

Appeal dismissed.