

Karnataka High Court Devesh Sandeep Associates & Ors. vs Regional Provident Fund . . . on 5 June, 1996 Equivalent citations: 1996 (3) KarLJ 683, (1997) ILLJ 1167 Kant Bench: H Dattu ORDER 1. Petitioners are before this Court, inter alia questioning the correctness or otherwise of the order passed by Regional Provident fund Commissioner dated September 9, 1986 holding that M/s. Devesh Sandeep Associates - 1st petitioner herein, is bound to comply with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the P.F. Act') for the period from August 1, 1985 to July, 1986 in respect of employees working in the firm M/s. Devesh Sandeep Associates and Mody Sales Service, No. 23, Ulsoor Road, Bangalore. 2. Brief facts are : First petitioner is a partnership firm of which petitioners 2 to 4 are partners. Main business of the firm is selling and marketing of leather cloth upholstery, wall paper and tiles. Between July 1, 1985 and June 30, 1986, the total sales of the firm has been approximately to the tune of Rupees Eighty Five lakhs. It is asserted in the petition that out of the aforesaid turnover leather cloth sale alone constitutes Rs. 76 lakhs. Sale of leather cloth is mainly to dealers in the market and bulk consumers such as furniture makers. The remaining sales of Rs. 9 lakhs is of other items like Marble flooring, tiles, wall fabric covering wall paper, floor covering sheets etc., to outside dealers, contractors and bulk consumers, out of 9 lakhs, approximately 1/10th of the sales to Mody Sales and Services. 3. M/s. Mody Sales and Services was constituted on December 16, 1983, which is also a partnership firm, registered under Indian Partnership Act. Petitioners 2 and 3 are partners in the said firm. At the relevant point of time, the firm was engaged in sale of Marbled tiles, wall paper and wall fabric covering and laying and fixing of those products. The main business activity of the firm seems to be servicing of wall paper and tiles. 4. Provisions of the P.F. Act were made applicable to M/s. Devesh and Sandeep Associates and M/s. Mody Sales and Services both are situated in the same premises with effect from June 1, 1985. On the combined strength of the employees of the two units exceeded during the month of May, 1985 and the establishment also satisfied the other conditions stipulated under Section 1(3)(b) of the P.F. Act. After giving a code number to the units, they were asked to comply with the provisions of the P.F. Act. In reply to this direction, petitioners 2 and 3 for and on behalf of two firms, contended that the firms are two different establishments and distinct legal entities and separately registered under the Partnership Act and therefore clubbing of the two units for the purpose of bringing them into the net of the provisions of the P.F. Act is improper and illegal. Thereafter, the 1st respondent has taken up the matter under Section 7-A of the P.F. Act to determine the question whether two units in which petitioners 2 and 3 are partners are separate establishments or formed part of the composite unit. On behalf of the two units, the Commercial Manager and Chartered Accountant appeared in the proceedings. Their main stand in the proceedings is that the two units are independent of each other, since both units are registered separately as 'firms' under the Indian Partnership Act and hold separate Registration Numbers. Under all fiscal legislations the units are separate and distinct establishments and both establishments are not interdependent. They had further stated before the

1st respondent that the employees strength in both the units is less than and the provisions of the Provident Fund Act would not apply to them. They had further stated that the business activity of M/s. Devesh Sandeep Associates is mainly wholesale and retail business of wall paper and tiles and that of M/s. Mody Sales and Services is that of servicing of wall papers and tiles. Their further statement is that even though both the firms are situated in the same premises and the partners in both the firms are same, the two units could not be clubbed together as one unit as the activities of the two units are different and separate and the establishments are not interdependent. However, Assistant Provident Fund Commissioner appearing on behalf of Regional Provident Fund Commissioner has stated that there is general unity of purpose between the two units, the units have common object and separate registration as two different firms is only to get out of the net of the Provident Fund Act. Main emphasis of the department was that both the units are integral parts of a single trading establishment. 5. Regional Provident Fund Commissioner by his order dated September 8, 1986, being of the view that both units are one single integral unit, directed petitioners 2 and 3 to deposit certain amounts towards provident fund contribution, towards Family Pension Fund contribution, towards deposit Linked Insurance contribution for the period from August 1, 1985 to July, 1986. Aggrieved by this order, petitioners are before this Court. 6. In the writ petition, petitioners have raised several issues only to point out that the two firms are separate, different and distinct units and for no reason, they could be clubbed together to bring it within the net of Provident Fund Act. The learned Counsel appearing for petitioner did not only reiterate the grounds urged in the writ petition but also submitted that the first respondent has not adverted to the test of functional integrality and if he had adverted to this aspect, he would not have come to the conclusion that the two units are in reality one, and the departments of one another. In support of his contention, the learned Counsel would strongly rely on the decision of Apex Court in the case of Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani v. Their Workmen (1960-I-LLJ-1) and also the decision of this Court in the case of B. Ganapathy Bhandarkar v. Regional Provident Fund Commissioner 1989 (2) Kar. L.J. 480. In sum and substance, plea of the petitioner's Counsel is that to treat the two units as separate, distinct and different units. 7. Sri Shylendra Kumar, learned Senior Standing Counsel for Central Government appearing for respondents strongly sought to justify the impugned order dated September 9, 1986, passed by 1st respondent. 8. The Provident Fund Act, is a piece of social legislation which provides for institution of Compulsory Provident Fund, Family Pension Fund and Deposit linked Insurance Fund for the benefit of the employees in factories and other establishments. The Act, subject to the provisions contained in Section 16 applies to every establishment in any industry specified in Schedule I and in which twenty or more persons are employed. Section 2-A of the Provident Fund Act declares that when an establishment consists of different departments or has branches, whether situated in the same place or in different places, all such departments or s branches shall be treated as part of the same establishment. The concept of one establishment has been explained

by Supreme Court in Associated Cement Companies Limited's case (Supra). In that case, a question arose before the Court whether the limestone quarry and the cement factory were separate establishments or one establishment for the purpose of Section 25-E of Industrial Disputes Act, 1947. The Court was pleased to observe that the Act having not prescribed any tests for determining what is one establishment, it was necessary to fall back on such considerations as in the ordinary industrial or business sense to determine the unity of an industrial establishment having regard to the scheme and object of the Act. The Court was further pleased to observe as under : "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 arts, 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. Thus in one case, the unity of ownership, management and control may be the important test, in another case functional integrity 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 time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterprises may have functional integrity between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with units or plants which are owned. In the midst of all these complexities it may be difficult to discover thread of unity. In an American decision, *Donald L. Nordling v. Ford Motor Company*, 1950 28 ALR 2d 272, there is an example of an industrial product consisting of 3,800 or 4,000 parts, about 900 of which came out of one plant, some came from other plants owned by the same company and still others came from plants independently owned, and a shutdown caused by a strike or other labour dispute at any one of the plants might conceivably cause a closure of the main plant or factory".

9. The tests laid down in Associated Cement Company's case (supra), was followed in the 1 case of management of *Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union, Delhi* (1960-I-LLJ-497). In that case, the Apex Court was pleased to emphasise on the test of functional integrality. The Court was pleased to observe as under : "In all such cases therefore, the Court has to consider with care how far there is "functional integrality" meaning thereby such functional inter-dependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment, the employer has actually kept the two units distinct or integrated".

10. In the case of *Ganapathy Bhandarkar* (Supra), this Court following the observations made in Associated Cement Company's case (supra) and in *Management of Pratap Press's case* (Supra), was pleased to observe that test of substantial mutual dependability is the most relevant test of financial integrality test. In the sense whether one unit can exist in the absence of another unit in the alternative whether 2nd unit could survive on the closure of

first unit. This Court while propounding the test of functional integrality in its usual succinct way has squeezed all the test and theories so far propounded in one phrase by stating ‘can one unit survive in the absence of another unit’. This is the test that is required to be applied by the authorities under Provident Fund Act to determine whether one unit is separate establishment or merely branch of department of an earlier establishment. 11. Keeping in view the law laid down by Apex Court and the observations made by this Court in B. Ganapathy Bhandarkar’s case (supra), the question that requires to be considered by this Court is whether M/s. Modi Sale and Services can survive even if the trading establishment of M/s. Devesh Sandeep Associates is closed for ever. In the order dated September 9, 1986 the 1st respondent on this crucial question has only said that,-”So far as unity of Management and Control is concerned, two partners are common in both. Of the two other lady partners Smt. Godavari Mody, wife of T. B. Mody died on January 5, 1985, leaving Sri T. B. Mody, Smt. Anuradha Mody and Sri Ashok Mody as partners. Smt. Anuradha Mody is the wife of Sri Ashok Mody. Sri T. B. Mody and Shri Ashok Mody are also the partners in Devesh Sandeep Associates. Thus it is seen that the set of persons who are family members are partners of the two concerns. Both the units are located in the same premises. Thus not only its functional integrality is established but unity of Management and Control and Geographical proximity is also established which further fortifies my decision that the two units are in reality one and the departments of one another“. 12. To answer and to satisfy the test of functional, integrality, the respondent has applied only the fact of common ownership of the two units and the location of two units in the common premises. In my view, the fact recorded and the test applied by respondent 1 is not the relevant test to consider the applicability of Section 2-A of Provident Fund Act. The predominant test as enunciated by Supreme Court and this Court in Ganapathy Bhandarkar’s case (supra), is whether subsequent unit viz., M/s. Mody Sales and Service could survive on closure of M/s. Devesh Sandeep Associates and whether in matters of finance and employment, the employer has actually kept the two units distinct or integrated. Mere fact of common ownership of the two units and mere location of the two units in common premises by itself is not sufficient to satisfy the test of functional integrality and further mere common object of the two units to carry on the business of sale and servicing of wall papers and similarly when two units work for each other would also not answer the test of functional integrality. The first and the foremost to establish the test of functional integrality would be whether the second unit would survive in the absence of first unit or when the first unit is closed whether the second unit continues to do its business activity. This aspect has not been noticed by first respondent in its order dated September 9, 1986 and in my view, the test applied by first respondent is not the relevant test laid down by decisions of Supreme Court and this Court in Ganapathy Bhandarkar’s case (supra). In this view of the matter, the impugned order dated September 9, 1986 passed by 1st respondent is not only opposed to the provisions of the Provident Fund Act but also to the decision of jurisdictional Court. 13. In this view of the matter, the first respondent has to re-examine the entire issue afresh in the light of the

observations made in this order. For this purpose the entire matter requires to be remanded to the first respondent for fresh inquiry in the light of the observations made in this respondent No. 1 must hold a detailed enquiry afresh and pass appropriate orders after examining all the facts and circumstances of the case in the light of this order and after applying all the relevant tests. 14. For the reasons, petition deserves to be allowed. The impugned order of 1st respondent in No. KN 10761, dated September 9, 1986 is quashed and the matter is remanded to the first in accordance with the observations made in this order. Before passing the final order, the first respondent is directed to afford sufficient opportunity of hearing to the petitioners. 15. With these observations and directions, writ petition is disposed off. Rule made absolute. In the facts and circumstances of the case, parties are directed to bear their own costs.