IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Tariq Parvez

CIVIL APPEAL NO. 95/2005
(Against the judgment dated 5.12.2003 passed by High Court of Sindh, Karachi passed in Cons.P. No.1443/1996)

M/s Pakistan International Airlines Corporation

Appellant(s)

Versus

The Board of Trustees, EOBI etc.

Respondent(s)

For the Appellant(s):	Mr. Anwar Mansoor Khan, Sr. ASC. Mr. Mehr Khan Malik, AOR.
For the Respondent(s):	Mr. Tariq Bilal, ASC. Mr. Babar Bilal, ASC. Mr. M. S. Khattak, AOR. Noor Ahmed, Dy. Director, Law, EOBI
On Court's Notice:	Mr. Abdul Rasheed Awan, D.A.G.
Date of Hearing:	20.01.2016.

ORDER

MIAN SAQIB NISAR, J:- This appeal, by leave of the Court, entails the facts, in that, the appellant had challenged the order dated 24.11.1995 passed by the Adjudicating Authority of the Employees' Old Age Benefits Institutions *(EOBI)*, whereby the kitchen and engineering departments of the appellant were declared to be establishments within the purview of the Employees' Old-Age Benefits Act, 1976 *(the Act)*, before the Board of Trustees of EOBI/respondent No.1 which dismissed the appeal *vide* order dated 10.6.1996. Both these orders were assailed by the appellant by filing a constitutional petition before the learned High Court of Sindh, which *(petition)* was dismissed *vide* the impugned judgment, hence the appellant approached this Court. Leave in this case

was granted *vide* order dated 3.2.2005, the relevant part wherefrom is reproduced as under:-

> *"(i) Whether clause (c) & (f) and proviso of section 47 of Employees Old Age Benefits Act XIV of 1976 read with section 33 of the said Act have been correctly and rightly interpreted by the High Court?*
>
> *(ii) Whether the definition of "Manufacture" and "Manufacturing Process" given in the various dictionaries in the absence of definition under the Factories Act could be made basis of the judgment against the petitioner?*
>
> *(iii) Whether the provision of Act XIV, 1976 and Factories Act, 1934 and the P.I.A.C. Act, 1956 have been erroneously interpreted/considered in the impugned judgment? and*
>
> *(iv) Whether the petitioner-Corporation being statutory corporation under Government of Pakistan through Ministry of Defence, would be governed by any other law than P.I.A.C. Act, 1956 and Rules & Regulations made thereunder?"*

Adding to the facts, it may be mentioned that the Assistant Director (Inspection), EOBI moved a complaint under Section 33 of the Act before the Adjudicating Authority, EOBI that the kitchen and the engineering departments of the appellant require compulsory registration with EOBI and are liable to pay contributions under the Act, which the appellant has not so done and this is a lapse on its part, thus a direction to that effect be given. The Adjudicating Officer, after seeking a reply from the appellant, passed the order dated 24.10.1995 wherein considering that both the kitchen and the engineering departments have been registered by the appellant under the Factories Act, 1934 *(Factories Act)* and also by

interpreting various relevant provisions of the Act has come to the conclusion that the departments are “establishments” within the purview of the law and they require compulsory registration. It may be mentioned that with regard to the interpretation of the relevant provisions the working/functioning of both the departments have been taken into consideration. In appeal before respondent No.1, the order dated 24.10.1995 has been upheld but on examination of the order dated 10.6.1996 passed by it, we find that such upholding has been done without giving any separate or additional reasons.

2. Learned counsel for the appellant has argued that clauses (c) and (f) of Section 47 read with Section 33 of the Act have not been correctly and rightly interpreted by the learned High Court; the departments, such as the kitchen and engineering departments, of the appellant cannot be segregated into separate entities to be termed as “establishments” for the purposes of invoking the provisions of the Act; Section 3 of the Act contemplates the concept of an “establishment” which is an organization as a whole and not of its different departments/components; the term “establishment” as defined in Section 2(e) of the Act is not applicable to the various departments of an establishment as a whole; the fact that the two departments were registered under the Factories Act, cannot be taken as a ground for registering those departments for the purposes of the Act on account of Section 2(e)(iii) *(of the Act)*; the kitchen and engineering departments do not engage in manufacturing process.

3. On the other hand learned counsel for the respondent has argued that the factum of registration of the kitchen and engineering departments under the Factories Act is sufficient per se to render them to be liable to registration under the Act and therefore the question of

whether or not they are "factories" by virtue of their respective functions does not remain. Further, he made reference to Section 4(2)(e) of the Pakistan International Airlines Corporation Act, 1956 *(PIAC Act)* and the relevant portion of the impugned judgment, to argue that since the appellant repairs equipment of other airlines, the exemption under Section 47 of the Act does not apply. He further stated that the appellant being a corporation registered under the Companies Ordinance, 1984 *(Ordinance)* was no longer immune from the applicability of the Act. To support his arguments, learned counsel for the respondent relied upon **Province of N.W.F.P. through Secretary, Local Government and Rural Development, Peshawar v. Pakistan Telecommunication Corporation through Chairman and others (PLD 2005 SC 670)**, **Don Basco High School v. Assistant Director, E.O.B.I. and others (PLD 1989 SC 128)** and **Lahore Race Club through Secretary v. Deputy Director, Employees' Old-Age Benefits Institution, Lahore and 2 others (1998 SCMR 1571)**. The learned Deputy Attorney General has submitted that the order of respondent No.1 is sketchy and that there was no proper adjudication of the matter neither by the Adjudicating Authority nor the respondent No.1, making this a case fit for remand.

4. Heard. The key questions involved in this matter are:- first, whether the kitchen and engineering departments of the appellant are "establishments" within the meaning assigned in the Act; and secondly, whether the Act is not applicable to the appellant by virtue of Section 47 of the Act. In order to appreciate the above, the relevant provisions *(parts)* of the law are reproduced as below:-

> *"**Employees' Old-Age Benefits Act, 1976***
>
> ***2. Definitions.** – In this Act, unless the context otherwise requires,–*

*(e) "**establishment**" means-*

(iii) a factory as defined in the Factories Act, 1934 (XXV of 1934);

***47. Act Not to Apply to Certain Persons.**– Nothing in this Act shall apply to–*

(f) person in the service of statutory bodies other than those employed in or in connection with the affairs of a factory as defined in section 2 (j) of the Factories Act, 1934 (XXV of 1934), or a mine as defined in the Mines Act, 1923 (IV of 1923):

Provided that workshop maintained exclusively for the purposes of repair or maintenance of equipment or vehicles used in such statutory bodies shall not be treated as factories for the purposes of this clause;

Factories Act, 1934

***2. Definitions.**– In this Act, unless there is anything repugnant in the subject or context—*

(g) "manufacturing process" means any process—

(i) for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or

(j) "factory" means any premises, including the precincts thereof, wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power but does not include a mine, subject to the operation of the Mines Act, 1923 (IV of 1923);"

5. Now coming to the first question as to whether the kitchen and engineering departments of the appellant are "establishments"

within the meaning assigned in the Act, Section 1(4) of the Act provides for the Act to be applicable to every establishment, Section 3 states that there is to be compulsory insurance of all employees in an establishment, and Section 11 deals with registration of establishments, which *(registration)* was directed by all the fora below in the instant matter, thus an elucidation of the meaning of "establishment" is necessary. However before proceeding we find it pertinent to deal with the argument of the learned counsel for the appellant that the various departments of an organisation cannot be "establishments" rather it has to be the organisation as a whole; suffice it to say that there may very well be organisations comprising of a vast array of sub-organisations wherein each sub-organisation carries out an activity that may be wholly or substantially different from that of another sub-organisation, rendering only one or some of the sub-organisations as "establishment(s)" under the Act and not the others. To hold that an "establishment" as provided for under the Act only contemplates organisations as a whole/composite and not its individual departments/sub-organisations would mean to deprive the employees of insurance benefits who would otherwise be entitled as the sub-organisation they work for may fall within the definition of "establishment" under the Act. Hence, we are of the opinion that the kitchen and engineering departments of the appellant are not precluded from falling within the definition of "establishment" as provided for under the Act.

The definition of "establishment" has been provided in Section 2(e), the relevant sub-clause of which is (iii), that is, a *"factory as defined in the Factories Act, 1934"*. "Factory" has been defined in Section 2(j) of the Factories Act *(reproduced above)*, wherein the determinative factor for our purposes is that of "manufacturing process", which in turn has been

assigned a meaning in Section 2(g) of the Factories Act, the germane sub-clause of which is (i). The question boils down to whether such "manufacturing process" is being carried out in the kitchen and/or engineering departments of the appellant. With regard to the kitchen department, flight kitchen production or flight catering consists of mass-scale food production, where food is prepared, cooked and arranged for final service for countless number of passengers and flight crew on numerous local and international fights round the clock every day. This makes it lose its semblance to a regular kitchen, and renders it more akin to a food manufacturing plant, where finished dishes are made from the raw material *(fresh food items, etc.)* and finally packed and loaded onto flight catering carts for use on-board the appellant's air carriers, thereby bringing such process within the "*process for making...packing...any article or substance with a view to its use...*" making it a "manufacturing process" and consequently rendering the kitchen department a "factory" in terms of the Factories Act. Accordingly, such department would necessarily constitute an "establishment" for the purposes of the Act. Suffice it to say that there is no provision in the Act which provides that objects ancillary to the main object of an organisation such as the appellant would not be subject to the application of the Act, and the argument of the learned counsel for the appellant in this regard is unconvincing. Further with regard to his submission that the food is being prepared for the appellant's own use, we do not find this to be a reason within the relevant law to make the Act inapplicable to the kitchen department, and in any case, the services being provided by the said department are very much a part and parcel of the appellant's object to provide air-transport to passengers. With respect to the engineering department, even if it is accepted that no manufacturing whatsoever is taking place within such

department as submitted by the learned counsel for the appellant, but repairing and servicing of airplanes, which is admittedly being carried out, would certainly bring it within the definition of "factory" since a "manufacturing process" is taking place, which encompasses *"repairing"* of the airplanes *"with a view to its use"* as per Sections 2(g)(i) and 2(j) of the Factories Act. Consequently, the engineering department is also an "establishment" under the Act.

6. Adverting to the second question, we find it important to state at this juncture that this appeal was previously decided *vide* judgment dated 19.4.2011 on the primary ground that Section 47 was only meant for "persons" employed to be excused from making payments/contributions as required by the Act, and not the appellant as an employer. Subsequently the review petition filed by the appellant was allowed and the appeal restored to its original number for re-hearing *vide* order dated 4.3.2015 on the main ground that Section 47 was a part of the original Act at which time employees were under no obligation to make any payments/contributions to the EOBI Fund, suffice it to say that we find this to be the correct position and thus the appellant as an employer is entitled to take the benefit of the provisions of Section 47.

For ease of reference, Section 47(f) may be divided into three parts:- (i) persons in the service of statutory bodies; (ii) other than those employed in or in connection with the affairs of a factory as defined in Section 2(j) of the Factories Act; and (iii) the proviso, that workshops maintained exclusively for the purposes of repair or maintenance of equipment or vehicles used in such statutory bodies shall not be treated as factories for the purposes of Section 47(f). It is an undisputed fact, that the appellant is a statutory body, having been established by statute, i.e. the Pakistan International Airlines Corporation Act, 1956,

and its employees consequently in the service of a statutory body. It may be pertinent to mention here that we find force in the argument of the learned counsel for the appellant that the mere factum of registration of the kitchen and engineering departments under the Factories Act *(which is undisputed)* will not be sufficient to satisfy the second part of Section 47 for the reason that the phrase *"registered under"* was taken out of Section 47(f) of the Act and replaced with *"as defined in"* by virtue of an amendment *(Employees' Old-Age Benefits (Amendment) Ordinance, 1983)*. Be that as it may, as opined above in paragraph 5, the kitchen and engineering departments are nevertheless "factories" within the meaning provided in Section 2(j) of the Factories Act, hence the Act would be applicable to the employees of the appellant working in the said departments. The attempt of the learned counsel for the appellant to bring at least the engineering department within the purview of the proviso to Section 47(f) by stating that such department repairs airplanes of the appellant only is inapt, as it has come on the record *(in the form of an affidavit vide CMA No.385/2016)* that repair and maintenance services are also being provided to airplanes of airlines other than that of the appellant, which in any case is a public domain fact in our opinion; and that the appellant also repairs and services the aircrafts and equipment of the Pakistan Navy and Air Force was admitted by the appellant in the proceedings before the Adjudicating Authority, EOBI, therefore, bringing the appellant out of the ambit of the proviso to Section 47(f), consequently rendering the provisions of the Act applicable to the persons working in the engineering department of the appellant.

7. Finally, there is nothing on the record such as a Form A or Form 29 issued by the Securities & Exchange Commission of Pakistan to suggest that the appellant has been conclusively converted into a limited

company under the Ordinance to enable us to decisively hold that the Act would apply to the appellant on this account.

8. In light of the foregoing, we find that no case for interference with the impugned judgment has been made out; therefore, this appeal is dismissed with no order as to costs.

Judge

Judge

Judge

Announced in open Court
on **09.02.2016** at **Islamabad**
Not Approved For Reporting
Ghulam Raza/*