Supreme Court of India
Regional Provident Fund ... vs Dharamsi Morarji Chemical Co. ... on 9 December, 1997
Equivalent citations: (1998) 2 SCC 446
Bench: S Majmudar, M J Rao
ORDER

1. In this appeal the Regional Provident Fund Commissioner and the Union of India have brought in challenge the judgment and order rendered by the learned Single Judge of the Bombay High Court in Writ Petition No. 1129 of 1980. It has been held by the learned Judge that the respondent-Chemical Company had established a new concern at Roha in Kolaba District of Maharashtra State on 9-7-1977. The said new concern which was to manufacture organic chemicals had nothing to do with the existing factory of Respondent 1-Company at Ambarnath in Thane District which was being run since 1921. The contention of Respondent 1 is to the effect that Roha factory was an infant industry which was entitled to earn exemption from the operation of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). As per Section 16(l)(b) of the Act the claim for exemption was for three years from the date of its establishment in 1977. Though initially the exemption was claimed for three years for Roha factory, on account of the representation of the workmen of the said factory the claim for exemption was confined only for two years from its establishment, that is for two years from 9-7-1977. It is not in dispute that thereafter Roha factory also got covered by the Act and is complying with the provisions of the said Act. The authorities functioning under the Act did not accept the said contention of the respondent-Company and took the view that it was not an infant industry at all but was a part and parcel of the parent factory of the respondent-Company at Ambarnath which was being run since 1921. In short, it was not treated as a new and infant industry. Therefore, benefit under Section 16(l)(6) was denied by the authorities functioning under the Act. That brought the respondent-Company to the High Court by way of writ petition under Article 226 of the Constitution of India. The learned Single Judge of the High Court after hearing the parties came to the conclusion in the light of the evidence led before him by way of documentary evidence consisting of affidavits and supporting material that Roha factory was a separate establishment and only because it was also owned by the same respondent-Company which had already established since 1921 its Ambarnath factory it could not be said that Roha factory was a part and parcel of Ambarnath factory or that it was not entitled to any infancy benefit as a new establishment. In order to come to this conclusion various salient features of the case which were well established on record were noted by the learned Judge. The salient features noted by the learned Judge in this connection read as under:

"As indicated, the Amharnath Factory was established as long back as in the year 1921 or thereabout while the Roha factory was established as late as in July 1977. The Ambarnath factory manufactures heavy inorganic chemicals and mainly fertilizers while the Roha factory manufactures only organic chemicals. The products manufactured at these two factories are thus separate, distinct and different. The workers of these two factories are also separate. Though at the time when the Roha factory was established or set up, about 5 or 6 employees of the Ambarnath factory were sent to Roha factory to take advantage of their expertise and experience and help set up the Roha factory, this circumstance by itself has hardly any significance in deciding as to whether in law the two factories constitute one or separate establishments. In the very nature of things when a new factory

is sought to be set up, the benefit of such expertise and experience is and surely can be availed of. This by no stretch can be considered to conclude that the two factories, therefore, constitute one establishment.

4. Other facts and circumstances also militate against the contention on behalf of the respondents that the two factories are indeed one for the purpose of the Act. Thus, the two factories have separate registration numbers. The same are also separately registered under the Factories Act. The said factories also maintain and draw up separate profit and loss accounts. The said two factories also have separate works managers and plant superintendents. And each factory also has a separate and independent set of workmen or employees who are not as such transferable from one factory to the other. The workers at the Roha factory were recruited directly from outside sources. One also does not find any supervisory control by either of these factories on the other. The two factories do not have any interconnection as such in the matter of supervisory, financial or managerial control. Inference and conclusion is irresistible that these two factories constitute distinctly different entities and separate establishments."

2. In view of these salient features found to be well established on the record, in our view, it could not be said that Roha factory only because it is owned by the respondent-Company was not a new establishment or could be treated to be a branch or department of Ambarnath factory which by itself was an establishment admittedly covered by the Act as it was an old establishment since 1921.

3. Learned counsel for the appellant vehemently contended that the aforesaid findings reached by the High Court could not be said to have contraindicated the applicability of the Act from the very inception of the establishment of Roha factory because in his view it was squarely covered by the provision of Section 2-A of the Act. Section 2-A reads as under:

"2-A. Establishment to include all departments and branches.-- For the removal of doubts, it is hereby declared that 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."

4. It is true that if an establishment is found, as a fact, to consist of different departments or branches and if the departments and branches are located at different places, the establishment would still be covered by the net of Section 2-A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. However, on the facts of the present case, the only connecting link which could be pressed in service by the learned counsel for the appellant was the fact that the respondent-Company was the owner not only of the Ambarnath factory but also of Roha factory. On the basis of common ownership it was submitted that necessarily the Board of Directors could control and supervise the working of Roha factory also and therefore, according to the learned counsel, it could be said that there was interconnection between Ambarnath factory and Roha factory and it could be said that there was supervisory, financial or managerial control of the same Board of DirectOrs. So far as this contention is concerned the finding reached by the High Court, as extracted earlier, clearly shows that there was no evidence to indicate any such interconnection between the two factories in the matter of

supervisory, financial or managerial control. Nothing could be pointed out to us to contraindicate this finding. Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned counsel for the appellant for culling out interconnection between Ambarnath factory and Roha factory was that both of them were owned by a common owner, namely, the respondent-Company and the Board of Directors were common. That by itself cannot be sufficient unless there is clear evidence to show that there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned counsel for the appellant that Roha factory was a part and parcel of Ambarnath factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921.

5. In view of this factual situation which has been borne out on the record of this case, it cannot be said that the High Court was in error in granting infancy benefit under Section 16(l)(b) to Roha factory in the first two years of its establishment. We make it clear that our present decision is rendered in the light of the peculiar facts and circumstances of the case and the findings reached by the learned Single Judge on the facts pressed in service before him by contesting parties.

6. In the result, the appeal fails and is dismissed. No costs.