

**BEFORE THE PRESIDING OFFICER  
EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL  
7TH FLOOR, SKYLARK BUILDING, NEHRU PLACE  
NEW DELHI-110 019**

Case No. ATA.5(4)97

M/s. Self Employed Women's Association  
and 2 others

Petitioner

Versus

Regional Provident Fund Commissioner  
Ahmedabad and other

Respondent

1. This is an appeal against the order of RPFC first respondent dated 18.8.1989. Heard Ms. Anita Shenoy, Advocate for the appellant, Shri R.P.Bedi, Advocate for respondent No.2 and Shri Atul Nanda, Advocate for respondent No.1. The appellant are an Association of the home based bidi workers. They are manufacturing and supplying bidi to respondent No.2 as alleged by them before the RPFC. The respondent No.2 denied the relation of an employer and employee and contended that he was only purchasing bidies and not getting it manufactured from the members of this Association.

2. The R.P.F.C. examined some of the witnesses from both side himself and also instructed his <sup>subordinate</sup> supporting EO to inspect the premises of the employers to find out their working as well as the association of the members to find out if they were employees or not. A bench of 3 EOs inspected the SEWA Ashram as well as the employers premises and submitted their detailed report on the facts relevant for determining whether there was a relationship of employer and employee between the manufacturer and the workers of the Association.

3. The report of EOs dated 7.10.1988 as extracted by the RPFC in his impugned order shows that "home workers are rolling the different types of bidis at their home and rolled bidis are being purchased by M/s. Jivraj Bidi Works. Rolled bidis are taken out by home workers and examined by the paid employee of M/s. Jivraj Bidi Works and after being sorted out by checkers, the sub-standard, broken condition, and not properly rolled bidis are rejected by the Checkers and home workers have to bear such expenses of Tobacco, leaves (Timru Pan), Thread (Dora) and loss at their own risk. Various types

of bidis rolled by the home workers (at their home) are handed over to one paid employee of M/s. Jivraj Bidi Works, making entry day by day in Pakka Register indicating type of bidis, number of bidis. Four types of bidis are prescribed by the owner of M/s. Jivraj Bidi Works. Payments of bidis rolled is being paid by the purchaser".

4. Report of EOs dated 12.8.1988 which forms part of the impugned order has given a detail of the procedure how leafs and tobaccos were supplied to the bidi workers by the employers and how it was sold to M/s. Jivraj Bidi Works by the members of the appellat Association. The report is as follows:-

"Rolled bidis taken out by the home workers and examined by the paid employees of M/s. Jivraj Bidi Works and being sort-out by checkers, sub-standard broken condition, not properly rolled are rejected by checkers and home workers have to born such expenses of tobacco, leafes, threads (Dora) and loss at their own risk.

Rolled bidis of various type of bidis rolled by the workers to hand over the bidis to the one paid employee of M/s. Jivraj Bidi Works making entry in pakka register, (speciman photocopy of purchase register is enclosed herewith) indicating type of bidis, number of bidis. Type of bidis are prescribed by the owner of M/s. Jivraj Bidi Works. Payments of bidis rolled, purchaser deduct the amount raw material like tobacco, leafe, dora (if they want to purchase) purchaser will apply the three different type of token steel. One round token for quantity of tobacco, square for loans and another for cotton dora and home workers are purchasing above raw materials from M/s. Shreenathji Trading Company and hand over the token and getting the materials. If materials not to be purchased then rolled bidis are purchased at the rate of Rs.11.00 to Rs.12.00 for one thousand bidis from home workers. M/s. Shreenathji Trading Company is situated just near the M/s. Jivraj Bidi Works. Details and documents for examining the relation between M/s. Jivraj Bidi Works and M/s. Shreenathji Trading Company by spot memo and another unit viz.

*Dm*



M/s. Jivrajbhai Gordhanbhai who is selling the Jivraj Bidi to various traders are also asked to produce the records and details by spot-memo for examining the relation between these three units".

5. The RPFC first respondent in his order after quoting the judgement of the Hon'ble Supreme Court has said that "so far as legal position of the coverage of home workers within the definition of <sup>employee</sup> 'sample' under Section 2(f) of the EPF & MP Act, 1952 is concerned there is left no doubt after the judgement of the Hon'ble Supreme Court of India in writ petition Nos. 3605 to 3609 of 1978, in the case of M/s. B.M. Patel & Sons and Others Vs. Union of India and Others but he distinguished the facts of the present case on the ground that in the present case the workers were selling bidis to the respondent No.2 and they were not manufacturing it for the respondent". Although in para.12 he has said "in the case under discussion it is not disputed that M/s. Jivraj Bidi Works exercise control in the matter of selecting/-rejecting rolled bidies but he further says that there is no evidence that the said bidi rollers could be regarded as the employees of M/s. Jivraj Bidi Works". He goes on "what is happening is that bidi rollers purchase raw material like tobacco, leaves and dora from another establishment viz. M/s. Shreenathji Trading Company; they take the raw material to their homes, roll the bidis and sell it to M/s. Jivraj Bidi Works. It is at this point of purchasing the bidis from the bidi rollers that M/s. Jivraj Bidi Works select or reject the rolled bidis, as the case may be".

6. If by the team of the EOs it has not been found that "type of bidis are prescribed by the owner of M/s. Jivraj Bidi Works. Payment of bidis rolled, purchaser deduct the amount of raw material like tobacco, leave, <sup>jam</sup> horn (if they want to purchase), purchaser will supply the three different type of token. One round token for quantity of tobacco, square for loans and another for cotton dora and home workers are purchasing above raw materials from M/s. Shreenathji Trading Company and handing over the token and getting the materials. If materials not to be purchased then rolled bidis are purchased @ Rs.11 to 12 for one thousand bidis from the home workers. M/s. Shreenathji Trading Company is situated just near the M/s. Jivraj Bidi Works". Then

*Dh*  
मिनिस्ट्रि मंत्रालय  
(कृते संकेतकार)  
श्री मंत्रालयधिकरण

they have concluded "in view of the above it is felt that the work of manufacturing, trading of bidis are artificially divided in different units, namely, (1) M/s. Jivraj Bidi Works, (2) M/s. Shreenathji Trading Company (3) M/s. Jivrajbhai Gordhanbhai Patel. All the above three units are inter-related with each other (that details of unit No.2 and 3 are awaited). Persons employed in M/s. Jivraj Bid Works are getting benefit of PF whereas home workers are not getting".

7. Annexure-E of the memorandum of appeal gives the name of partners in all the three forms and it shows that partners of all the firms are members of one family. The learned counsel present for the respondent No.2 does not dispute this relationship but he contends that one owner can have different establishments and there is no bar and because of that all the establishments cannot be clubbed together. There is <sup>quarrel</sup> ~~quarred~~ about the correctness of this preposition but if the establishment set up by single owner are interdependent then certainly they should be clubbed together for the purposes of the EPF & NP Act.

8. The learned counsel for the respondent No.2 further contends that interdependence can be found only if one unit cannot exist without the other. A manufacturer can exist without a seller because he may sell his products to other sellers likewise a seller can purchase bidis to be sold by him from any manufacturer. Since if any of the four sister concerns is closed, the rest will survive. The preposition of law propounded by the learned counsel for the respondent No.2 is correct in every respect but the facts of the present case are that the one firm issues tobacco leaves, dora etc. on the token issued by the other sister firm and the third one sells the bidis purchased by second firm. Thus, although they may exist independently but in practice are banking upon each other. Therefore, law should be applied on the facts and not on imagination.

9. In view of the foregoing discussions I am of the opinion that the RPFC did not apply his mind to the facts of the case. He did not consider the evidence on record. He failed to see that there is no purchase and sale between the manufacturer and workers, it is just a colour given to dupe the law. The order of the RPFC is not maintainable. The appeal is fit to be allowed.

Dh

प्रतिनिधि स्थापित  
(कते राजद्वारा)

करीलीय व्यापार