(1977) 11 OHC CK 0025

In the Orissa High Court

Case No : Second Appeal No. 267 of 1974

A. Rajeswar Rao APPELLANT

Vs

The Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 15-11-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14B, 15(2), 17, 17(5)

Citation : (1978) 45 CLT 187

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : N.V. Ramdas, for the Appellant; Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Plaintiff filed Title Suit No 15 of 1968 in the Court of the learned Subordinate Judge of Berhampur on 24-4-1968 for a declaration that the S. S. V. Talkies - a cinema exhibition hall at Berhampur is not an ''establishment'' to which the provisions of the Employees'' Provident Funds Act of 1952 (hereinafter referred to as the Act'') would have application and for a declaration that the various proceedings taken by the Commissioner and the certificate proceedings initiated against the establishment before the Defendant No. 3 - Certificate Officer were not tenable and for other consequential reliefs. He pleaded that he was the Managing Proprietor of the exhibition hall and the said hall was in existence for about forty years. Though in paragraph 4 of the plaint it had been stated that the establishment did not have more than twenty employees, it has been the case of the Plaintiff that the strength of the employees was less than the statutory requirement of 20 and on that ground mainly, the Act had no application. There is no dispute that if 20 or more employees work in an establishment and other conditions are satisfied, the establishment would come within the purview of the Act. Plaintiff alleged that an order u/s 7A of the Act had been made in June, 1965, requiring him to deposit an estimated sum of Rs. 2,000/- as the employer''s contribution. There had been no assessment of liability and yet such a demand bad been raised. Plaintiff disputed his liability and on 16-2-1967, Defendant No. 1 again raised a demand of Rs. 4,696 50 and administrative charges of Rs 196.90 fur the period between August, 1961 and December, 1966, vide Ext. 12 and called upon the Plaintiff to pay the same. This amount was also said to be approximate. For default of payment, two certificate cases being Nos. 381 of 1966 and 256 of 1967 were initiated against the Plaintiff before the Certificate Officer (Defendant No. 3). According to the Plaintiff, there has been no determination of liability in accordance with the Act; there has been no assessment as provided and, therefore, the action taken against the Plaintiff by Defendant No. 1 before Defendant No. 3 was not maintainable.

2. Defendants 1, 3 and 4 filed a common written statement and maintained that the suit was not maintainable, inasmuch as jurisdiction of the Civil Court in the matter has been ousted by statute. Plaintiff''s exhibition hall was an establishment to which the Act applied. Originally, there was a demand of Rs. 2,000/- which stood revised at Rs. 4,696.50 together with contribution of Rs. 196.90 as administrative charges. It was further pleaded that the notice u/s 80 of the CPC was defective, inasmuch as it had disputed the liability of Rs. 2,000/- and there was no dispute in regard to the balance amount.

3. Before the trial Court, two witnesses were examined for the Plaintiff - one being the Manager of the cinema halt and the other claiming to be the proprietor of the cinema business. Both sides produced several documents. The learned Additional Subordinate Judge who tried the suit, dismissed it holding against the Plaintiff on all counts. In appeal, Plaintiff has also lost and this second appeal has been directed against the confirming decree of the lower appellate Court.

4. Two demands had been raised against the Plaintiff. The first demand (Ext. 7) was to the following effect:

In defiance of the registered notice u/s 7-A of the Employees'' Provident Funds Act the management of Sree Sitaram Vilas Talkies, Berhampur have tailed to produce their records in my office so as to enable me to assess the total Provident Fund contribution etc. due from the management I, Shri D. P. Tripathi, I. A. S, Regional Provident Fund Commissioner, Orissa, in exercise of the powers conferred on me u/s 7-A of the Employees Provident Funds Act, 1952, hereby order that a sum of Rs. 2,000/-. (Rupees Two thousand) only being the estimated amount due from the management be recovered through Revenue Recovery Proceedings which will be adjusted after verification of records.

The other demand is under Ext. A, the material portion whereof runs thus:

A sum of Rs. 4.696.50 In Employees'' Provident Fund account No. 1 and Rs. 196.90 (approximately) in Employees'' Provident Fund account No. 2 for the period Aug''61 to Dec''66 has been reported to be due from you. Please pay up this amount immediately failing which we shall have no alternative but to resort to revenue recovery proceedings for the entire period and take action envisaged u/s 14 read with para 76 of the Employees'' Provident Fund Scheme which please note.

5. Under the Act, power to determine the amount due from any employer is conferred upon the Commissioner, Deputy Commissioner or Regional Commissioner. Arrears due are recoverable as public demand. The relevant provisions are in Sections 7-A and 8 of the Act which provide:

7A (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may by order, determine the amount due from any employer under any provision of this Act or of the Scheme and for this purpose may conduct such inquiry as he may deem necessary.

(2) ....

(3) ....

(4) An order made under this section shall be final and shall not be questioned in any Court of law.

8. Any amount due -

(a) from the employer in relation to a factory to which any Scheme applies in respect of any contribution payable to the fund, damages recoverable u/s 14-B, accumulation required to be transferred under Sub-section (2) of Section 15 or under Sub-section (5) of Section 17 or any charges payable by him under any other provisions of this Act or of any provisions of the Scheme;

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable u/s 148 or any charges payable by him to the appropriate Government under any provisions of this Act or under any of the conditions specified u/s 17, may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue.

According to the Defendants, the demand u/s 7-A had been raised in this case and when there was default, the certificate proceedings had been initiated. It has also been claimed that the, suit is not main tamable in view of the provisions in Section 7-A(4) of the Act.

6. Learned Counsel for the Appellant places reliance on the Bench decision of this Court in the case of Balasore Motor Association Vs. The Regional Provident Fund Commissioner, . In that case, the order of demand which was to the following effect was in the same terms as in Ext. 7 of this case:

In defiance of the registered notice u/s 7-A of the Employees'' Provident Fund Act, 1952, the Management of Balasore Motor Association, Balasore, have failed to produce their records in my office so as to enable me to assess the total Provident Fund contribution etc., due from the management, I, Sri D.P. Tripathi,

I. A. S., Regional Provident Fund Commissioner, Orissa in exercise of the Powers conferred on me u/s 7A of the Employees'' Provident Funds Act, 1952, hereby order that a sum of Rupees 5,000/- (Rupees five thousand only) being the estimated amount due from the management be recovered through revenue recovery proceedings.

Dealing with the order, the Court observed:

It would appear on a bare look at the requirements of law. It is patent from the material on record that liability was being disputed by the Petitioner, and therefore a determination of the liability was a condition precedent to the making of an order Section 7A of the Act. Liability does not appear to have been determined by any other separate order; at least there is none placed on the record though a counter-affidavit has been filed. No material is forth coming from the impugned order as to how and on what basis a sum of Rs. 5,000/- was estimated as the amount due from the Management. Section 6 of the Act provides the rates of contribution and any determination u/s 7. A of the Act has to be only on the basis of the calculation s to be arrived at by adopting the rates indicated in Section 6 of the Act. The demand in this case, therefore, seems to be not in compliance with the provisional of the Statute and cannot be justified.

Power u/s 7A of the Act appears to be very wide, and, as a matter of fact, there is no provision for a forum where the demand u/s 7A can be questioned. Sub-section (4) of Section 7A makes the demand final, and in fact the jurisdiction of the Civil Court has also been barred. It is of paramount importance that where wide powers vested in the statutory authority and further provision is not made to challenge such order, the exercise of that power should be made in a careful manner so that the result may not be arbitrary.

The ratio indicated in the aforesaid decision clearly stipulates that if liability under the Act is disputed, the same has not to by determined as a condition precedent to raising of demand. Again, Section 7A of the Act envisage a demand by determining the lability. There is no scope for an estimate particularly when the order is contemplated to be final. The first order demanding Rs. 2,0001- on the aforesaid basis is clearly misconceived; the second order which gives an approximate demand is equally defective, and both the orders do not comply with the requirements of the status.

7. Undoubtedly, jurisdiction of the Civil Court has been u/s 7A(4) of the Act. It has been pointed out by the Judicial Committee" of the Privy Council in the celebrated case of AIR 1940 105 (Privy Council) :

... It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure....

This dictum has been repeatedly followed by Courts in this country. 1 have already indicated that the statutory requirements have not been followed and, therefore, the demand raised by Defendant No. 1 does not have the protection of the statute. On the facts of the case therefore, the bar of jurisdiction u/s 7A(4) of the Act would not be attracted.

8. The only other question which had been canvassed at the hearing is about the efficacy of the notice u/s 80 of the Code of Civil Procedure. As it appears, the notice u/s 80 had mentioned about the first demand and there was no indication about the second demand. The challenge in this suit was mainly to the extension of liability to the Plaintiff''s cinema hall and not with reference to the quantum of demand. The objection raised in the written statement could at the best relate to the second certificate proceeding, inasmuch as the first certificate proceeding is in respect of Rs. 2,000/- and the second one is in regard to the extra demand of Rs. 2,893.40 paise as pleaded in paragraph 7(a) of the written statement. In the circumstances, I do not think, the objection is fatal to the litigation.

9. The appeal is accordingly allowed. The suit is decreed to the extent that both the certificates are cancelled. It is, however, open to the Defendants to take fresh proceedings subject to the provisions of the Act for determining the liability of the Plaintiff to be assessed under the Act and thereafter to make an appropriate assessment in accordance with law notwithstanding the present decree. Parties are directed to bear their own costs throughout.

Appeal allowed.