(2009) 09 JH CK 0041

In the Jharkhand High Court

Ashiana Housing Limited APPELLANT

Vs

The Assistant Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2010) 1 LLJ 523

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Judgement

Sushil Harkauli, J.—Affidavits have been exchanged. I have heard both sides at length.

2. The impugned order dated 30.01.2009 has been passed by the Assistant Provident Fund Commissioner Jamshedpur u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. A copy of that order is Annexure-5 to this writ petition. By that order the petitioner has been directed to pay the computed amount of Rs. 1,08,62,124/-(Rupees one crore eight lacs sixty two thousand one hundred twenty four only) on account of Provident Fund Pension Fund, Insurance Fund and Administrative charges. In addition, the petitioner has also been required by the said order to pay an amount of interest of Rs. 76,64,583/- (Rupees seventy six lacs sixty four thousand five hundred eighty three only) within 15 days.

3. The case of the petitioner is that the petitioner is engaged in construction industry and in the said industry the petitioner has employed certain long term employees for whom the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and the Scheme are being followed regularly. However, the petitioner alleges that there are certain casual workers who came to work at the construction sites of the petitioner for a day or for a few days and thereafter move away without leaving any forwarding address.

4. The petitioner claims that these workmen are not identifiable and it is

practically very difficult, in fact almost impossible, to comply with the requirements of the provident fund Scheme in respect of such migrant labourers.

5. From the petitioner''s side a clarification dated 14.6.1999 has been shown which has been issued exempting casual workers in the construction industry from the Employees'' State Insurance Act, 1948 allegedly on somewhat similar grounds.

6. The petitioner also relied upon the averment that the scheme proposed before the Delhi High Court and was approved by the Delhi High Court for a centralized data-base of the casual labours with a permanent account number and a pass book has not yet been Implemented by the respondent department. The petitioner contends that as a result the benefit of the amount sought to be collected cannot be passed on to the relevant workmen for whom it is intended. The contention Is that in such circumstances the collection from the employer becomes purposeless.

7. The petitioner''s contention is that having regard to the above the Delhi High Court had initially stayed the collection under the Scheme till the modified scheme is formulated and implemented. But later the Delhi High Court disposed of the petition on an ill-informed statement regarding Implementation of the new modified scheme, which was actually not implemented at that time and has not been implemented even till date.

8. The petitioner also relies upon a decision of the Bombay High Court in case of Sandeep Dwellers Pvt. Ltd., Nagpur v. Union of India reported in 2007 I LLJ 246. In that case the Bombay High Court also raised the question of identifiability and directed collection to be limited to the Identifiable workmen.

9. Another decision of the Supreme Court in case of H.P. State Forest Corporation Vs. Regional Provident Fund Commissioner, has also been shown. In that decision the Supreme Court has laid down as follows:

We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference drawn on this score.

(emphasis supplied)

10. The learned Counsel for the respondent Is not able to show any findings in the impugned order about the identifiability of all or any of the workmen on whose account provident fund was sought to be realized by the Impugned order. Even in the counter affidavit or in the supplementary counter affidavit there was no averment about identifiability. In absence of the necessary averment regarding identifiability, in the impugned order and even in any of the counter affidavits, the impugned order is contrary to the law laid down by the Supreme

Court in the aforesaid decision and accordingly cannot be sustained.

11. The impugned order is, therefore, quashed. The matter will be re-examined by the respondents in accordance with the law laid down by the Supreme Court and the petitioner will render all assistance in the forms or whatever records are available with it.

12. Before parting with the case, it would be desirable to deal with one of the aspects argued from the petitioner''s side, namely, the alleged ''practical difficulty'' in filling up the requisite forms and making the deposits of the employers'' and the employees'' contribution towards the provident fund. It has been argued that often the casual labour do not have any permanent address and are reluctant to allow deduction from their wages and are even reluctant in giving the cooperation required for filling up the requisite forms.

13. Firstly, it has not been demonstrated that the filling up of the requisite forms is "impossible". Some of the workers not having a permanent address, in the sense of not being connected to immovable property would by itself not be a ground for holding that filling of the forms is "impossible". ''Difficulty'' and ''impossibility'' are different things. Therefore the petitioner cannot get any help from the principle that the law does not expect the impossible. Secondly, it must be remembered that the Act and the Scheme are welfare measures intended for long term benefits of a particular deprived class of the citizens. Normally, any person of that class would be reluctant to part with even a small portion of his wages at present for making provision for future contingencies. However, if the statutory obligation of the employers is enforced strictly by the provident fund department and the employers are compelled, to the extent possible, to elicit the cooperation from their employees to fill up the requisite forms, deduct forcibly the employees'' contribution, these casual labours may, in due course, get a change of their mindset and, in any case, hopefully they would be tempted to collect and utilize the details of their provident found accounts when they move to another worksite, if for nothing else then at least to recover whatever has been deducted from their wages towards provident fund. Therefore, I am not inclined to accept the argument that because of reluctance of employees or the alleged "practical difficulties" the employers could be absolved of fulfilling their obligation under the Act and the Scheme. Further, if such forms are filled up, even leaving out some of the details if all the details are not forthcoming, it is bound to help in identifiability of the workers.

14. The Bank guarantee of Rs. 75,00,000/- (Rupees seventy five lacs only), which was given by the petitioner under interim order of this Court, will be discharged upon the petitioner furnishing a fresh bank guarantee of Rs. 25,000/- (Rupees twenty five thousand only) which will be held till the adjudication pursuant to this order by the provident fund department.

15. This writ petition is disposed of with the aforesaid direction.

