(2012) 08 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13175 of 2012

Assistant Provident Fund Commissioner APPELLANT

Vs

M/s. Kanya Kubj Lime Works and Another RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 7A, 7A(2)
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2012) LLR 1096

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Shobhitaditya, for the Appellant;

Final Decision : Dismissed

Judgement

1. Order dated 24.11.2010 is being assailed vide this petition, whereby, the Employees Provident Fund Appellate Tribunal set aside the order dated 29.2.2008 passed by the Assistant Regional Provident Fund Commissioner u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (tor short ''Act''). That in pursuance to enquiry report dated 11.10.1995, the respondent establishment was proceeded against u/s 7A of the Act for assessment of dues for the period from October, 1995 to October, 2001 and by order dated 29.2.2008 was found liable for an amount of Rs. 3,00,982 and for damages u/s 14/B.

2. The liability was arrived at on a finding that the establishment was running from 11.11.1995 to 30.10.1998. Accordingly, the explanation tendered on behalf of the establishment that the unit was operated for only 8/9 days in the year 1995 was overruled. The manner in which the conclusion is arrived at by the Assistant Provident Fund Commissioner in a proceedings u/s 7A of the Act imposing the liability is interesting, it records:

None appeared on 29.1.2002 and subsequent dates of 11.2.2002, and 25.2.2002 due to illness of employer as informed over phone. Vide tile noting dated 3.1.2002 it is clear that the establishment was laying closed for some time. Again vide file noting dated 3.1.2002, it is mentioned that Ed had visited the establishment on 30.10.2001 and reports that the establishment is closed for last three years but it was running prior to that. The squad report dated 11.10.1985 mentions that the establishment was running for five years. Therefore, it can be inferred that the establishment was running from 11.10.95 (the date of coverage) to 30.10.1998 (3 years prior to Eo report dated 30.10.2001. It is again being clarified that it is being done on the basis of reasonable logic and not to be treated as precise. None appeared on subsequent dates of 3.7.2006, 3.8.2006, 7.9.2006, 5.10.2006 and 6.11.2006. Therefore, the Eo was directed to submit his report on the basis of the minimum wages in absence of any record.

3. Apparently, it is on the basis of inferences and presumption and without taking recourse to the procedure prescribed u/s 7A(2) of the Act that the existence of facts are presumed. Section 7A(2) of the Act stipulates:

7A. Determination of moneys due from employers.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely :

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

4. In Food Corporation of India Vs. Provident Fund Commissioner and Others, 8, it is held:

9. It will be seen from the above provisions that the Commissioner is authorised to ''enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract question of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

5. In the case at hand mandatory it was for the Authority concern to have discharged its obligatory duty of establishing the facts rather than taking recourse to the guess work, which has no place in a case where liability is to be ascertained for payment of contribution.

6. The Tribunal though has interfered with the order for different reasons which the petitioner submits are based on non-existing facts,; however, on the finding recorded by the Assistant Provident Fund Commissioner in a proceeding u/s 7A which is based on inferences and the guess work, we are not inclined to interfere with the order passed by the Tribunal. In view whereof, the petition fails and is hereby dismissed.