(2004) 02 RAJ CK 0050

In the Rajasthan High Court

Case No : .S.A. (W) No. 628 of 1998

Autogrinx Engineers Private Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(1), 7B

Citation : (2004) 102 FLR 846 : (2004) 3 LLJ 139 : (2004) 2 WLC 681

Hon'ble Judges : S.K. Keshote, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Rajendra Prasad, for the Appellant; Narendra Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—Admit. As the respondent is duly represented by the advocate, the matter is complete. On the request of the learned counsel for the parties, the matter is taken up for final hearing.

2. Having heard learned counsel for the parties, perusing the entire record of the writ petition, special appeal and the judgment of the learned single Judge challenged therein, we are satisfied that in the judgment of the learned single Judge passed in S.B. Civil Writ Petition No. 1986/1998, out of which this appeal arises, no interference is called for in this appeal.

3. In the writ petition aforesaid the petitioner appellant questioned before the learned single Judge two orders passed by the respondent - the Regional Provident Fund Commissioner, Jaipur (for short, ''the respondent Commissioner''), one is dated June 9, 1997 (Annexure-17) and another is dated March 4, 1998 (Annexure- 21). Under the order dated June 9, 1997 the respondent Commissioner extended the applicability of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act, 1952'') to the petitioner appellant establishment, Under order dated March 4, 1998

(Annexure-21) the respondent Commissioner has dismissed the review application filed by the petitioner appellant for review of the order aforesaid.

4. Section 7A of the Act, 1952 is a provision relating to determination of money due from the employers of the provident fund, family pension linked insurance etc. It provides that the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Central Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner, may, by order, in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such disputes; and determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such. inquiry as he may deem necessary.

5. Section 7B of the Act, 1952 is a provision for review of orders passed u/s 7-A of the Act, 1952. It provides that any person aggrieved by an order made under Sub-section (1) of Section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter, or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order. Suo motu power of review of the order has also been conferred upon the officer and the reference may have to the proviso to Section 7B of the Act, 1952.

6. Sub-section (5) of Section 7B of the Act, 1952 prohibits the appeal against the order of the officer rejecting an application for review. However, an appeal is provided against an order passed of grant of review as if the order passed under review was the original order passed by him u/s 7-A.

7. Section 7I of the Act, 1952 is a provision for appeals to the Tribunal. Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to Sub-section (3) or Sub-section (4) of Section 1, or Section 3 or Sub-section (1) of Section 7-A, or Section 7B, except an order rejecting an application for review referred to in sub-section. (5) thereof, or Section 7C, or Section 14B, may prefer an appeal to a Tribunal against such notification or order.

8. The respondent Commissioner under the order dated June 9, 1997 (Annexure-17) has decided the dispute raised by the petitioner appellant regarding applicability of the Act, 1952 to its establishment. The learned counsel for the petitioner appellant does not dispute also that this order Annexure-17 falls under Clause (a) of Section 7-A of the Act, 1952. The petitioner appellant has not permitted the respondent Commissioner to shift to second stage i. e. Clause (b) of Section 7-A of the Act, 1952 and determine the amount due from

the petitioner appellant under any of the provisions of the Act, 1952, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be.

9. The Act, 1952 is a benevolent piece of legislation, it is a social legislation. Thereunder the schemes are framed for family pension, employees deposit linked insurance etc. It provides for the benefits of provident fund, family pension, employees deposit linked insurance to the employees of the factories and other establishments. A mere perusal of the Scheme of the Act, 1952 broadly speaking the operation thereof does not depend on any decision being taken by the authorities under the Act, 1952. It depends on its own provisions. Looking to this Scheme of the Act, 1952 and more particularly a social legislation, beneficial interpretation to its provisions needed. The Courts should be very cautious, careful and countenance any subterfuge to defeat the provisions of such a social legislation.

10. The legislature while inducting a provision, more particularly a social legislation, may take care that unscrupulous employers may not take advantage thereof in their favour and detrimental to the right and interest of the beneficiaries thereof by adopting the tactics to stall final adjudication of the matters by challenging the interlocutory orders. There is a legislature competence on which there cannot be any dispute to provide or may not provide any right of appeal or review against order or judgment of the authority under a statute more particularly a social legislation.

11. A conjoint reading of the provisions of Sections 7-A, 7B and 7I of the Act, 1952 leaves no doubt whatsoever that the legislature appears to have deliberately not provided any right of appeal or review against the order of the authority under Clause (a) of Section 7-A of the Act, 1952. Intention of the legislature to make a particular provision is to be gathered from the object and purpose of the statute indicated by it.

12. Under Clause (a) of Section 7-A of the Act, 1952 the authority has been conferred with the power to decide a dispute that arises regarding applicability of the Act, 1952 to an establishment. The decision of the authority under Clause (a) of Section 7-A of the Act, 1952 at this stage is not made challengeable by the aggrieved person by way of the review or the appeal, as the case may be. Section 7-A of the Act, 1952 enjoins upon the authority to pass a composite order i. e. immediately after deciding the dispute regarding the applicability of the Act to the establishment forthwith to undertake exercise to determine the amount due from any employer under the provisions of the Act, 1952, any Scheme or the Family Pension Scheme or the Linked Insurance Scheme, as the case may be. The order which is appealable or reviewable is the complete order (composite order) made by the authority under Clauses (a) and (b) of Section 7-A of the Act, 1952. Against this composite order two remedies are available under the Act, 1952- the review u/s 7B or appeal u/s 7I thereof. The order u/s 7B of the Act, 1952 rejecting the review application is not appealable. But the order passed of acceptance of the review application is made appealable as if the

order is passed u/s 7A of the Act, 1952.

13. Provisions have been made by the Parliament in a given enactment so as to the very purpose and object of the social legislation may not be defeated. If what is contended by the learned counsel for the petitioner appellant is accepted then the poor employees are to face innings of the proceedings and litigation. One will start from the stage of passing the order u/s 7-A(1)(a) of the Act, 1952, it will go on review, writ petition, special appeal and the SLP. Even after success of employee at all these stages of this litigation, starts from the order of the authority u/s 7-A(1)(a) of the Act, 1952, the matter will not attain finality. The employer will start the second inning by challenging the order passed u/s 7-A(1)(b) of the Act, 1952. The employees have to undergo this second litigation.

14. A provision of social legislation is to be interpreted by the Courts in the context and subject as provided under a particular Act by the Parliament. Any interpretation to a provision which defeats the object and purpose of social legislation as far as possible to be avoided by the Courts. By not making the order passed u/s 7-A(1)(a) of the Act, 1952 appealable or reviewable, it has not been given finality by the legislature. It is subject to challenge by the aggrieved person but for which he is to wait till the proceedings are being finally decided i.e. after the order u/s 7-A(1)(b) thereof has been made. Thus, non providing of any review or appeal against the order under Clause (a) of Section 7-A of the Act, 1952 no prejudice or hardship is to be caused to the employer. A remedy is there but not at the stage so as to stall the final adjudication of the matter under the social legislation.

15. A bare perusal of the provisions of Clauses (a) and (b) of Sub-section (1) of Section 7-A of the Act, 1952, the same are not inseparable and the review u/s 7B of the Act, 1952 is against the order made under Sub-section (1) of Section 7-A of the Act, 1952, which consists of both the aforesaid clauses thereof.

16. It is a benevolent piece of social legislation and the Clauses (a) and (b) of Sub-section (1) of Section 7-A of the Act, 1952 is to be interpreted harmoniously with a pragmatic approach to avoid prolonged litigation between tie beneficiaries of this beneficial piece of social legislation and the employer. That what is contended by the learned counsel for the appellant is accepted the beneficiaries of this benevolent piece of social legislation are to play two innings i.e. one under Clause (a) of Sub-section (1) of Section 7-A and another under Clause (b) of Sub-section (1) of Section 7-A of the Act, 1952. It cannot be the intention of the legislature in enacting of this provision in the Act. We are to state at the cost of repetition that the order passed under Clause (a) of Sub-section (1) of the Section 7-A of the Act, 1952 is not having any immunity to challenge it only after the final order is passed under that Section.

17. The learned single Judge is correct in his approach and decision that in case interpretation put forward by the learned counsel for the appellant is accepted to the Clauses (a) and (b) of Sub-section (1) of Section 7-A of the Act, 1952, it will

lead to filing of separate review, separate appeal and separate writ against an order under Clause (a) of Sub-section (1) of Section 7-A of the Act, 1952 and after its conclusion, second inning of litigation under Clause (b) of sub-section 1 of Section 7-A of the Act, 1952 in the same form and if it is permitted, certainly it would be against the object and purpose and the mandate of the legislature disclosed under that Section. The scheme of Section 7-A and more particularly Sub-section (1) thereof is clear. In the case where it is held by the respondent Commissioner that the provisions of the Act, 1952 are applicable to the establishment then he is required to undertake immediately exercise of determining the amount due from the employer under the provisions of that Act or the Scheme framed thereunder by composite order so as to avoid prolonged litigation in two innings. In the case where it reaches to the conclusion that the provisions of the Act, 1952 are not applicable to the establishment then no question does arise for determination of the amount due from the employer under the provisions of the Act 1952 and the Scheme framed thereunder. In the further case the requirement of Section is to pass a composite order which amenable to the review or the appeal as envisaged u/s 7B and Section 7I of the Act, 1952.

18. We are in conformity with the decision of the learned single Judge that the Clauses (a) and (b) of Sub-section (1) of Section 7-A of the Act, 1952 are not inseparable and against the order passed under Clauses (a) and (b) of Sub-section (1) of Section 7-A of the Act, 1952 review or appeal is entertainable and not against the order passed under Clause (a) or Clause (b) of Sub-section (1) of Section 7-A of the Act, 1952.

19. As a result of the aforesaid discussion, this appeal fills and the same is dismissed.

