

(2000) 12 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 8140 of 1988

Bata India Ltd. and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17(1), 17(1A)

Citation : (2001) 49 BLJR 887 : (2001) 89 FLR 1092 : (2001) 2 LLJ 212 : (2001) 2 PLJR 79

Hon'ble Judges : S.K. Singh, J;S.K. Katriar, J

Bench : Division Bench

Advocate : K.D. Chatterjee and U.S. Sahaya, for the Appellant; Ram Shankar Pradhan, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to quash the impugned orders dated July 8, 1988 (Annexure 1), issued by the respondent-authorities to petitioner Nos. 3 to 5, and dated August 25, 1988 (Annexure 2), from the respondent-authorities to petitioner Nos. 1 and 2. Petitioner Nos. 1 and 2 are engaged in the manufacture and sale of footwear, and petitioner Nos. 3 to 5 are contractors who provide labourers to the former.

2. Petitioner No. 1 is a public limited company having its registered office at Calcutta and one of its factories is at Mokama. Petitioner No. 2 is a functionary of the company at Mokama, Petitioner Nos. 3 to 5 are contractors who supply labourers to petitioner Nos. 1 and 2 for the Mokama unit. Petitioner Nos. 1 and 2 were initially governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), and the Employees' Provident Fund Scheme, 1952 (hereinafter referred to as "the Scheme"). By its notification dated February 8, 1965, published in the Gazette of India of February 20, 1965 (Annexure 3), Government of India in the

Department of Social Security had, in exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 17 of the Act, exempted the Mokama unit and other units of the petitioner-company mentioned therein from the operation of the Scheme with effect from the dates mentioned in the notification with respect to the different units. The petitioner-Company has set up a Trust for managing the accounts of provident fund of its employees. It took the stand that in view of the exemption granted by the respondent-authorities, the petitioner was completely exempted from the provisions of the Act and the Scheme which would mean that the trust shall maintain the accounts of its direct employees only, and is no longer obliged to maintain the provident fund accounts of contractors' labourers. The Company and the Contractors have been acting in tandem. It appears that there was exchange of letters between the petitioners and the respondent-authorities who did not agree with the stand taken by the petitioners. Petitioner Nos. 1 and 2 wrote to petitioners 3 to 5 vide letter dated June 8, 1988 (Annexure 5 series) that the latter should extend the benefit of provident fund to their employees. Consistent with the same, petitioner Nos. 3 to 5 wrote to the respondent-authorities to allot separate code numbers to them. The same has been rejected by the impugned order vide letter dated July 8, 1988 (Annexure 1), from the respondent-authorities to petitioner Nos. 3 to 5, informing that fresh code numbers cannot be allotted to the contractors. By letter dated August 25, 1988 (Annexure 2), and impugned herein, the respondent authorities have written to the petitioner-Company to submit the wanting reports with respect to the contractors, employees. In other words, the petitioners have taken the stand that consequent upon exemption granted under the Act, the petitioner-Company is no longer obliged to maintain the accounts of provident fund of the employees of contractors, whereas the respondent-authorities have taken the stand that in view of the exemption, the Trust set up by the petitioner-Company shall also cover the employees of the contractors. Petitioner Nos. 3 to 5 have further prayed that they should be allotted separate code numbers.

3. While assailing the validity of the impugned action of the respondent-authorities, learned Counsel for the petitioners has submitted that literal construction on the wordings of Section 17 of the Act would lead to the conclusion that once exemption is granted to the petitioner-Company from the operation of the Scheme, it is no longer within the purview of the Act and the Scheme which were applicable to it during the pre-exemption stage obliging it to maintain the accounts of the employees of the contractors, no longer holds good. No such exemption has been granted to the contractors and, therefore, they are still within the purview of the Act. He has relied on various authorities.

4. Learned Counsel for the respondent-authorities has taken me through the provisions of the Act and the Scheme in an effort to establish that the employees of the principal employer as well as the contractors go together and, therefore, exemption only means that accounts of all of them shall no longer be maintained under the Scheme, but shall be maintained by the Trust created by the petitioner-Company on a consideration of which the exemption was granted. He has relied

on two unreported Judgments of this Court.

5. Having considered the rival submissions, I am of the view that this writ petition ought to be allowed. I must at the outset state that the problem is not free from difficulties but we have preferred to take the present view for the reasons indicated hereinbelow. Learned Counsel for the respondents has submitted that it is manifest from the definitions of "employee" , "exempted employee" and "exempted establishment", occurring in Section 2 of the Act, that employees included the employees of the principal employer as well as those of the contractor. He also relies on Section 8A of the Act which prescribes the mode and manner of recovery of money by employers and contractor and, in his submission, is to the effect that contribution with respect to the employees of the contractor may be recovered by the employer from the contractor, either by deduction of any amount payable to the contractor under any contract or as a debt payable by the contractor. In other words, the amount recoverable from the contractor by way of contribution of its employees or cost can be recovered from the principal employer who, in its turn, may realise or recover it from the contractor. He also relies on Clause 30 of the Scheme which provides that it shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employer directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Clause 30 of the Scheme lays down that every employer shall send to the Commissioner, within 15 days of the commencement of the Scheme a consolidated return to the Commissioner. Clause 36-B of the Scheme lays down to the effect that every contractor shall, within seven days of the close of every month, submit to the principal employer a statement showing the recoveries of contributions in respect of employees employed by or through him and shall also furnish to him such information as the principal employer is required to furnish under the provisions of the Scheme to the Commissioner.

6. Learned Counsel for respondent No. 1 further submits that paragraph 3 (a) of the aforesaid notification (Annexure-3) granting exemption states to the effect that the employer shall maintain accounts of the provident fund in such manner and submit such returns to the Regional Provident Fund Commissioner as the Central Government may from time to time direct. Relying on the provisions of Section 17(I-A)(d) of the Act, he submits that it is manifest that the Board of Trustees constituted under Clause 17(b) of the Act shall maintain detailed accounts to show the contribution credit, withdrawal made and interest accrued in respect of such employees. It is, therefore, submitted that in view of the, provisions of the Act and the Scheme, the entire responsibility is on the employer for realisation, payment and maintenance of the accounts of provident fund of its own employees as well as those of the contractor.

7. Before we examine the contention advanced on behalf of the respondents, we must notice the provisions of Section 17 of the Act whereunder the exemption has been granted. It is manifest that powers of exemption u/s 17(a) and 17(b)

are exercisable under different situations. It follows as a matter of corollary that the employer is no longer required to forward the contribution of provident fund of its own employees to the authorities under the Act and the Scheme. The employer is instead obliged to get up a Trust which will look after and maintain the accounts of its own employees. The aforesaid provisions relied on by the learned Counsel for the respondents to the effect that the employee includes the employees of the contractor as well is only when the exemption has not been granted. Those provisions apply only when the contributions have to be recovered and the accounts maintained as per the provisions of the Scheme. This appears to be the literal construction on a conjoint reading of the provisions noticed hereinabove. I am of the view that the aforesaid provisions have to be given a strict and literal construction in the facts and circumstances of the present case.

8. Learned Counsel for the petitioners has, therefore, rightly relied on the judgment of the Supreme Court, *Jugal Kishore v. Raw Cotton Company* AIR 1955 SC 376, right hand column in relevant portion (paragraph 6) of which is set out hereinbelow for the facility of quick reference.

"... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But, if no such alternative construction is possible, the Court may adopt the ordinary rule of literal interpretation. In the present case, a literal construction of the rule leads to no apparent absurdity and, therefore, there can be no compelling reason for departing from that golden rule of construction."

Learned Counsel has rightly relied on the following passage from MAXWELL on INTERPRETATION OF STATUTES (1976 Edn., page 28).

"1. THE PRIMARY RULE LITERAL CONSTRUCTION

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. "The length and detail of modern legislation", wrote LORD EVERSHED M.R., has undoubtedly reinforced the claim of literal construction as the only safe rule." If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases."

The rule of construction is "to intend the Legislature to have meant what they have actually expressed. The object of all interpretation is to discover the

intention of Parliament, "but the intention of Parliament must be deduced from the language used, "for "it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law."

9.1 must at this stage specifically deal with two particular provisions on which the learned Counsel for the respondent relies. Condition 3 (a) of the aforesaid gazette notification reads as follows:

".. .The employer shall maintain accounts of the provident fund in such manner and submit such returns to the Regional Commissioner as the Central Government may from time to time direct..."

Once the strict and literal construction is put on the wordings of the relevant provisions, it follows as a matter of corollary that in the event of exemption, the employer shall maintain accounts of his own employees only and shall submit returns to the Regional Commissioner with respect to his own employees only for his verification. After exemption, he is no longer obliged to submit accounts with respect to the employees of the contractor.

10. I must also notice the contention advanced on behalf of the respondents. It is contended that it appears from a plain reading of Section 17(1-A)(d) of the Act that after exemption is granted, the Board of Trustees constituted under Clause (d) shall, inter alia, maintain detailed accounts to show the contribution credited, withdrawal made, and interest accrued in respect of each employee including those of the Contractor. I am unable to accede to this contention for the reason that Section 17(1-A) of the Act applies only where an exemption has been granted to an establishment under Clause (a) of Section 17(1), whereas in the present case, it has been granted u/s 17(d) of the Act. In that view of the matter, the provisions of Section 17(1-A) of the Act is wholly inapplicable to the facts and circumstances of the present case.

11. I must also notice the two judgments of the Supreme Court relied on by the learned Counsel for the respondents which are reported in P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, and The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, . He has also relied on two unreported judgments of this Court which are annexed to the counter-affidavit. One of them is the order dated August 18, 1988 (Annexure-A) passed by a Division Bench of this Court in C. W. J.C. No. 3700 of 1988, Shanker Agency through Prakash Gupta v. Food Corporation of India and Ors., and the other order is dated April 7, 1988 (Annexure-B) passed by a Division Bench of this Court in C.W.J.C. No. 579 of 1988(R), Ganesh Chandra Shaha v. Union of India and Ors.. The four judgments are of no assistance in the present case because neither dealt with the situation of exemption relating to exercise of powers u/s 17 of the Act.

12. It is well established that literal construction is the primary and golden rule of construction, unless the same leads to absurd results. The length and detail of model legislation has undoubtedly reinforced the claim of literal construction as

the only safe rule. On a combined reading of the relevant provisions of the Act and the Scheme, it is clear that in case exemption from operation of the Scheme is allowed to the principal employer, he is out of the net of the Scheme. He is then obliged to set up a Trust and maintain the accounts of his employees. Such a literal construction, therefore, naturally leads to the conclusion that the contractors are within the mischief of the Scheme. Not having obtained any exemption within the meaning of Section 17 of the Act, they (the Contractors) are still covered by the Scheme and obliged to obtain separate code numbers under the Act and the Scheme and deposit the contributions with the authorities under the Act.

13. I must reproduce the orders dated February 14, 1989 and July 25, 1989 passed by this Court at the earlier stages of this proceeding:

"February 14, 1989. The main thrust of the argument of Mr. K.D. Chatterjee appearing on behalf of the petitioners is that in the background of the exemption from the scheme of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the petitioner No. 1, Bata India Ltd., cannot be asked to enforce the Act and the Scheme with respect to contractor (petitioner Nos. 3 to 5) employees. The case raises an important question of law which requires a full-dress hearing. Let this writ petition be, therefore, heard by a Division Bench.

2. In the meantime, the contractors (petitioner Nos. 3 to 5) shall make deductions of provident fund with respect to their employees as envisaged under the Act and the Scheme and deposit the same with the Regional Provident Fund Commissioner (respondent No. 2), and on their failure, the deposit will have to be made by the Bata India Ltd, (petitioner No. 1) with right to recover the same from the bill of the contractors (petitioner Nos. 3 to 5). This arrangement is without prejudice to the contentions of the parties. The respondent No. 2 is entitled to call for a full list of the employees of the contractors from the petitioner No. 1 and for such assistance as may be required to ensure that the contribution with respect to employees of the contractors is made in accordance with law."

"July 25, 1989. A petition has been filed on behalf of the Regional Provident Fund Commissioner, Patna (respondent No. 2), for modification of the interim order passed by us while admitting this writ petition.

2. Mr. Giri states that the same principle would be applicable in the like establishments who have been exempted u/s 17 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and are employing contractors in their establishments. According to the learned Counsel, there are many such establishments where the principal employer is refusing to deposit the provident fund of the contractor's workers in view of the interim order passed by this Court in this case on February 14, 1989. As such, this is a very important matter which should be decided by this Court at an early date.

3. So far as this case is concerned, we have fully protected the contractors"

workers and have made responsible the principal employer on failure of the contractors to give full list of workers and/or failure to make deposit of provident fund, when such a complaint is received by the Provident Fund Commissioner. Since a general principle for the applicability of provident fund in cases of like nature is involved, we give leave to the respondents' Counsel to move the Hon'ble Chief Justice for getting an early date fixed for hearing of this case."

It is thus manifest that petitioner Nos. 3 to 5 have been depositing the provident fund of its employees with the Provident Fund Commissioner which shall continue to be done in accordance with the provisions of the Act and the Scheme.

14. In the result, the impugned orders dated July 8, 1988 (Annexure 1), and August 25, 1988 (Annexure 2), are hereby set aside. It is held that in view of the exemption granted to the establishment of the petitioner-Company from the provisions of the Act in exercise of the powers conferred by Section 17 of the Act, there is no legal duty on it to maintain the provident fund accounts of the employees of the contractor. The latter are still within the mischief of the Scheme. The respondents are hereby directed to allot separate code numbers to petitioner Nos. 3, 4 and 5. There shall be no order as to costs.

S.K. Singh, J.

15. I agree.