

(2006) 02 CAL CK 0027

In the Calcutta High Court

Case No : Writ Petition No. 20043 (W) of 2005

Belal Biri Factory Private Limited and Another

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2A, 7A

Citation : (2006) 2 CALLT 202 : (2006) 4 CHN 566 : (2006) 110 FLR 145 :
(2006) 3 LLJ 532

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : P.N. Chatterjee and K.J. Tewari, for the Appellant; Ashok Das Adhikary and Aparna Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—It appears from the records that this writ petition was entertained by this Court on 23rd September, 2005 when direction was given for filing affidavits in connection with this writ petition in the presence of the respondents. It appears from the said order that an interim order was also passed in this writ petition.

2. Subsequently an application for amendment of the writ petition was filed by the petitioners for incorporating certain subsequent events therein. In the proposed amendment additional reliefs have also been sought in the changed scenario.

3. When the said application for amendment was taken into consideration, a preliminary objection regarding the maintainability of this writ petition was taken by Mr. Das Adhikary, learned Advocate appearing for the respondent No. 1 for the first time. Mr. Das Adhikary submitted that since the petitioners have challenged the legality of the show-cause notice issued by the Regional Provident Fund Authority at Jharkhand this Court cannot entertain this writ petition for

want of territorial jurisdiction. It was further contended that writ of certiorari which has been prayed for in this writ petition cannot issued, as the custodian of the records relating to the dispute lies within the jurisdiction of Jharkhand High Court at Ranchi.

4. Mr. Das Adhikaty further submitted that the entire cause of action for this writ petition arose within the jurisdiction of the High Court at Ranchi. As such, this Court cannot entertain this writ petition for want of territorial jurisdiction.

5. Mr. Das Adhikary pointed out that the impugned show-cause notice was issued by the Regional Provident Fund authority, Jharkhand within whose jurisdiction the petitioners admittedly maintain their establishment relating to their Biri Manufacturing process. Mr. Das Adhikary further pointed out from annexure "P-6" to this writ petition that the petitioners' establishment in Bihar now in Jharkhand was assessed under the Employees' Provident Fund and Miscellaneous Provision Act, 1952 with effect from 15th September, 1978 and a separate code number had also been allotted in favour of the petitioners' establishment in Bihar now in Jharkhand by the concerned authority in Bihar now in Jharkhand.

6. Mr. Das Adhikary thus contended that when admittedly the petitioners maintain their establishment in Jharkhand and a separate code number has also been allotted in respect of the said establishment by the Jharkhand authority notwithstanding allotment of a separate code number earlier by the Regional Provident Fund authority in West Bengal in respect of their establishment within West Bengal, the Jharkhand authority has certainly jurisdiction to determine the petitioners' dues towards the provident fund of their employees engaged in their establishment at Jharkhand.

7. Mr. Das Adhikary further submitted that Section 2A of the said Act was incorporated in the statute only for the purpose of ascertaining the applicability of the said Act to an establishment which employs more than 20 employees altogether in the principal establishment as well as in its other branches and/or departments. Mr. Das Adhikary further submitted that once it is ascertained that an establishment is covered under the said Act by applying the principles as laid down u/s 2A of the said Act, the competent authority may determine the liability of the establishment regarding the payment of provident funds dues of its employees in respect of each of the branches and/or departments independently.

8. In support of such submission, Mr. Das Adhikary relied upon the following decisions of the Hon'ble Supreme Court :

(i) U.P. State Electricity Board v. Shri Shiv Mohan Singh and Anr. JT 2004(8) SC 272

(ii) Jagdish and Others Vs. Harendrajit Singh,

9. Relying upon the said decisions. Mr. Das Adhikary submitted that the Jharkhand authority, viz.. the respondent No. 2 did not exceed its jurisdiction in issuing the impugned show-cause notice for determination of the dues of the

petitioners" establishment in Jharkhand.

10. Mr. Das Adhikary thus submitted that when the independent determination of the dues in respect of each of the departments/ branches is permissible, the impugned cause of action of this writ petition which arose within the territorial jurisdiction of Jharkhand can only be challenged before the High Court of Jharkhand at Ranchi and not before this Court, as cause of action arose in Jharkhand is separable from the cause of action which allegedly arose in West Bengal.

11. Mr. Chatterjee, learned senior advocate, appearing for the writ petitioners, submitted that the situation of the office of the respondent is not the only factor on which the jurisdiction of the High Court to issue writs under Article 226 of the Constitution of India, depends. Mr. Chatterjee submitted that if a part of the cause of action arose within the territorial Jurisdiction of one High Court, the said High Court can certainly entertain such a writ petition even though the office of some of the respondents or even the office of the principal respondent, situates beyond the jurisdiction of the said High Court.

12. In support of such contention, Mr. Chatterjee relied upon a decision of the three Judges Bench of the Hon"ble Supreme Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, .

13. Mr. Chatterjee contended that for ascertaining the objection regarding maintainability of the writ petition before this Court, this Court should consider such objection in the light of the pleadings as pleaded in the writ petition; by accepting such pleadings as true and correct,

14. By referring to the pleadings in the writ petition, Mr. Chatterjee pointed out that the establishment of the petitioners is covered under the said Act since 1967 and a provident fund code number was allotted by the Regional Provident Fund Commissioner, West Bengal, the respondent No. 1 herein with effect from 1967. The allotted code number is WB/12335. Mr. Chatterjee further pointed out from the writ petition that the liability of the establishment of the petitioners towards the provident fund dues of its employees in the principal office including the employees engaged by the petitioners in their branches and/or departments within West Bengal and Jharkhand, have been assessed by the Provident Fund authorities in West Bengal.

15. Mr. Chatterjee thus contended that when the liability of the establishment of the petitioners in respect of their branches and/or departments in Jharkhand have already been determined by the Regional Provident Fund authority in West Bengal, viz., the respondent No. 1 herein, the Regional Provident Fund authority in Jharkhand, viz., the respondent No. 2 herein has no jurisdiction to issue the impugned notice and/or to determine the dues of their employees in Jharkhand independently in view of Section 2A of the said Act.

16. Mr. Chatterjee contended that when the different departments and/or

branches are treated as a part of the principal establishment u/s 2A of the said Act, the provident fund dues of the employees of the principal establishment including the dues of the employees of its branches and/or departments irrespective of the place of its location should be determined in the hands of the principal establishment by treating the branches and/or departments as a part of the principal establishment and such determination should be made by the competent authority within whose jurisdiction the principal establishment is located.

17. In support of such submission, Mr. Chatterjee relied upon the following decisions of the Hon"ble Supreme Court: -

(i) (1996) 5 SCC 552 (Regional Provident Fund Commissioner, Jaipur v. Naraini Udoyog and Ors.)

(ii) Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others, .

18. Relying upon the aforesaid decisions, Mr. Chatterjee submitted that when the liability of the petitioners' principal establishment including that of the employees of its branch at Jharkhand has already been assessed by the respondent No. 1, the respondent No. 2 exceeded its jurisdiction by issuing the impugned notice for determination of the dues of the employees of the petitioners in Jharkhand independently by allotment of a different code number in respect of its Bihar/ Jharkhand Unit.

19. Thus, Mr. Chatterjee submitted that in this background it cannot be said that this Court has no territorial jurisdiction to entertain this writ petition as a substantial part of the cause of action arose within the territorial jurisdiction of this Court.

20. Heard the learned Advocates of the parties. Considered the materials on record.

21. Admittedly the office of the respondent No. 2 is located at Ranchi within the territorial jurisdiction of Jharkhand High Court at Ranchi. It is also an admitted fact that the principal challenge in this writ petition is with regard to the impugned notice which was issued by the said respondent No. 2. Undisputedly no relief has been claimed against the respondent No. 1 in this writ petition.

22. Thus, if the maintainability of this writ petition is considered with reference to the situation of the office of the respondent No. 2 whose action is under challenge in this writ petition, then this Court cannot hold that this Court has territorial jurisdiction to entertain this writ petition particularly in view of the fact that a writ of certiorari has been prayed for.

23. But since the location of the office of the respondent is not the only criteria for determination of the Court's jurisdiction to entertain a writ petition, this Court has considered the pleading of the writ petition to find out as to whether

any part of the cause of action has arisen within the territorial jurisdiction of this Court. This exercise is being done by this Court by keeping in mind the decision of the Hon'ble Supreme Court in the case of *Kusum Ingots and Alloys Ltd. v. Union of India and Anr.* (supra) wherein it was held that "keeping in view the expressions used in Clause 2 of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter".

24. On consideration of the pleadings of the writ petition, this Court finds that a part of the cause of action has arisen within the territorial jurisdiction of this Court as the jurisdiction of the Jharkhand authority to initiate such a proceeding is linked with the jurisdiction of the West Bengal authority to determine the provident fund dues of the petitioners even in respect of the employees of the petitioners' establishment at Jharkhand.

25. The principal establishment of the petitioners is within the jurisdiction of the West Bengal authority. It is alleged by the petitioners that the entire establishment of the petitioners including the employees of Bihar now in Jharkhand Unit has already been assessed for the disputed period by the West Bengal authority.

26. Section 2A of the said Act makes it clear that for the purpose of ascertainment of applicability of the act as well as for determination of the total dues of an establishment having different branches and/or departments in different places, all the departments and/or branches will be treated as a part of the principal establishment. This conclusion is arrived at by this Court by following the decisions of the Hon'ble Supreme Court which are as follows:

(i) (1996)5 SCC 552 (*Regional Provident Fund Commissioner, Jaipur v. Naraini Udayog and Ors.*)

(ii) *Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others*, .

27. If that be so, then this Court cannot conclude that this Court has no territorial jurisdiction to entertain this writ petition as the cause of action which arose within West Bengal certainly constitutes a substantial part of the entire cause of action for this writ petition.

28. The decisions which were cited by Mr. Das Adhikary as aforesaid have no application in the facts of the instant case at least for the present purpose, as the facts in those cases as well as the points for consideration therein were completely different from that of the facts of the present case.

29. That apart, such an objection should have been raised by the respondents at the time of entertainment of this writ petition. Such objection having not been raised at the initial stage of entertainment of this writ petition, this Court holds that the petitioners cannot agitate such objection as a preliminary objection at this stage.

30. Before concluding, I must point out another incidental fact which is also relevant for the aforesaid purpose. Prior to the filing of this writ petition, the petitioners earlier filed a writ petition being C.O.No. 1731(W) of 1992 before this Court by challenging the determination of the dues of the petitioners u/s 7A of the said Act in respect of its employees in the State of Jharkhand by the Jharkhand authority. The said determination was set aside by the learned single Judge of this Court on 21st July 2005 for various reasons as indicated in the said order being annexure T-7" to this writ petition. By the said order the competent authority was directed to give a fresh decision in that regard within eight weeks from the date of receipt of the copy of the order.

31. Neither the authority of the Jharkhand nor the authority of West Bengal objected to the entertainment of the said writ petition by this Court. On the contrary, both the said authorities not only accepted the jurisdiction of this Court but also accepted the decision of the Court as binding on them.

32. Since all through out the parties have submitted to the jurisdiction of this Court, the respondents at this stage cannot raise such an objection regarding the jurisdiction of this Court to entertain this writ petition as and by way of preliminary objection.

33. Accordingly, this Court holds that the preliminary objection regarding entertainability of this writ petition by this Court, as raised by Mr. Das Adhikary is devoid of any substance. Such objection, thus, cannot be sustained.

Let the application for amendment of the writ petition being CAN 9716 of 2005 filed by the petitioners be posted for hearing a week hence.

Later:

After passing of the order, Mr. Das Adhikary, learned Advocate for the respondents, prayed for stay of operation of the order for enabling his clients to prefer an appeal against this order.

Such prayer for stay of operation of the order is opposed by the learned Advocate for the petitioners.

Having considered the submissions of the respective parties, this Court feels that the operation of this order should remain stayed for a limited period.

Accordingly, the operation of this order will remain stayed for a period of three weeks from date.

Urgent xerox certified copy of this Judgment, if applied for, be given to the parties, as expeditiously as possible.