

(2015) 11 CAL CK 0003
In the Calcutta High Court
Case No : W.P. 18200(W) of 2001

Bhagwandas Biswanath

APPELLANT

Vs

The Regional P.F. Commissioner, A & N Islands and
Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 CAL CK 0003

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Saptangshu Basu and R.P. Motilal, for the Appellant; Nilanjan Chatterjee, for the Respondent

Final Decision : Disposed Off

Judgement

Subrata Talukdar, J.—In this writ petition challenge is thrown to the determination of provident fund contribution qua the petitioner-firm under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short the PF Act) by the Assistant Provident Fund Commissioner, West Bengal by order dated 10th October, 2000 for the period between June 1977 to February, 1989.

2. The petitioner-firm carries on business of marketing branded packed "Beedi" under the trade name "Chhabi Beedi". The petitioner purchases beedis from unbranded beedi manufacturers and thereafter the beedis are packed and labelled in its industrial premises.

3. As pleaded at paragraph 4 of the writ petition the petitioner claims to employ a workforce not exceeding 20 in number. Till 31st March, 1990 the petitioner claims to have been a partnership firm comprised of the family of the Saraogis and from 1st April, 1990 one, Pawan Kumar Saraogi claims to be the sole proprietor of the petitioner-firm upon the dissolution of the erstwhile partnership

firm on 31st March, 1990.

4. The petitioner claims to be protected from the purview of the PF Act on the ground that the hand rolled unbranded beedis were purchased from independent beedi contractors and at all material times the regular employees of the petitioner were less than 20 thereby making the provisions of the PF Act inapplicable. However, the PF Inspector visited the factory premises of the petitioner in October, 1987 and again in March, 1989 whereupon on 30th March, 1989 the Regional Provident Fund Commissioner, West Bengal initiated 12 proceedings under Section 7A of the PF Act, 1952 covering the period 1st June, 1977 up to February, 1989.

5. Sri Saptangshu Basu, Ld. Senior Counsel appearing for the petitioner assisted by Sri Pinaki Chandra Motilal, Ld. Counsel submits that the issue of coverage of unbranded beedi home workers under the PF Act by treating such worker as an employee under the principal employer has been noticed by the Hon'ble Apex Court in a batch of writ petitions being P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, .

6. It is pointed out that the applicability of the PF Act to beedi home workers for the period June, 1977 to September, 1985, the latter being the month of delivery of the judgment In Re: M/s. P.M. Patel stood excluded for the said period in view of the general order of stay granted by the Hon'ble Supreme Court to beedi manufacturers.

7. Sri Basu argues that due to the deaths and illness of the senior partners of the erstwhile partnership firm, the present petitioner was utterly handicapped in the matter of presenting accounts and documents before the PF Authorities. Ld. Senior Counsel for the petitioner complains of arbitrariness in passing the order impugned dated 10th October, 1990 since the petitioner received no opportunity of presenting the complete facts before the competent Authority. Sri Basu further argues that independent contractors who sold the hand rolled beedis to the petitioner ought to have been summoned to appear in the 7A proceedings in order to determine the employment status of the beedi home workers.

8. Since the beedi home workers worked under the independent contractors and the identity of such home workers was not known to the petitioner, in the absence of the independent contractors in the 7A proceedings, the competent Authority cannot determine the extent of their coverage under the PF Act. Sri Basu further complains of the fact that the competent Authority passed the impugned order of demand merely on the basis of spot survey by the inspectors when, it was necessary in a quasi-judicial proceeding to summon the independent contractors and record evidence connected to the home workers attached to such contractors.

9. In any view of the matter since the home workers were not identified, the competent Authority could not have assumed a master-servant relationship between the petitioner and such home workers. Moreover, the Hon'ble Apex

Court in another judgment on the issue of beedi home workers qua their coverage under the PF Act being S.K. Nasiruddin Beedi Merchant Ltd. Vs. Central Provident Fund Commissioner, has clarified that there can be no demand for the period June, 1977 to September, 1985 qua the beedi manufacturers having regard to the general order of stay granted In Re: P.M. Patel & Sons as also clarified by the Government of India under Para 78 of the EPF Scheme.

10. Therefore, Sri Basu points out that the impugned demand in so far as its covers the period June, 1977 to February, 1989 must fail. Sri Basu raises the final two points that although an alternative remedy may be available by way of an appeal, the plea of alternate remedy ought to have been raised by the respondents at the earliest stage of admission of the appeal and the respondents are estopped from raising such plea at the stage of final hearing after 14 years of pendency of the writ petition. It is further argued by Ld. Senior Counsel for the petitioner that the direction of this Court in an earlier writ petition being WP 1875 of 1990 between the present parties does not operate as res judicata in as much as orders passed in the earlier writ petition were merely directory orders upon the competent Authority to examine the grievances of the writ petitioner.

11. In support of his arguments Sri Basu relies upon the following decisions:-- L. Hirday Narain Vs. Income Tax Officer, Bareilly, ; Food Corporation of India Vs. Provident Fund Commissioner and Others, .

12. Per contra, Sri Nilanjan Chatterjee, Ld. Counsel appearing for the respondents-PF Authority submits that the claim of the petitioner to have employed workers not exceeding 20 in number at all material time is ambiguous since under the licence granted to the petitioner-firm by the Assistant Labour Commissioner, Purulia there is no bar to employing more than 20 employees in the industrial premises of the petitioner. Further, by using the expression "not exceeding 20 in number" in its pleadings, the petitioner has given rise to the presumption that at least 20 could have been employed at its industrial premises thereby attracting the provisions of the PF Act.

13. Next, Sri Chatterjee submits that the cash memos annexed to the writ petition belong to different dates of the year 1990 and, therefore, are irrelevant to the demand for the period June, 1977 to February, 1989.

14. Seeking to demolish the argument of the petitioner that natural justice was violated, Sri Chatterjee points out that it will be evident from the order impugned dated 10th October, 1990 that the petitioner was represented and granted an opportunity to produce records before the PF Authorities but, did not do so. According to Sri Chatterjee, the plea of failure to trace out the records of the erstwhile partnership firm on the ground of deaths and illness of the senior partners is not believable. In any view of the matter the petitioner himself requested the Authority to proceed on the basis of the records submitted before the Income Tax Authorities in view of the failure of the petitioner to produce the records qua the PF demand for the period when the partnership was in existence.

15. Ld. Counsel for the respondents clarifies that there was no requirement to summon contractors in respect of whom cash memos have been annexed to the writ petition pertaining to the year 1990 and therefore unconnected to the demand period. Arguing strongly on the plea of alternate remedy, Sri Chatterjee points out that the impugned order dated 10th October, 2000 is an appealable order under Section 7(1) of the PF Act and, in the face of the voluminous facts, the adjudication lies within the domain of the PF Authorities to apply their expertise. The remedy of an appeal is an effective and efficacious remedy and the petitioner has been unable to demonstrate any violation of fundamental or legal rights, natural justice or due process in order to maintain an application under Article 226 of the Constitution of India.

16. Sri Chatterjee further argues that In Re: S.K. Nasiruddin (supra) the applicability of the PF Act to beedi home workers as upheld In Re: P.M. Patel (supra) was noticed and affirmed. Therefore, the point of applicability of the PF Act to the establishment of the petitioner purchasing beedis rolled by home workers through independent contractors is no more res integra.

17. Having heard the parties and considering the materials on record this Court notices that the applicability of the PF Act to beedi home workers attached to independent contractors as employees under the principal employer has been upheld.

18. This Court is also required to notice that P.M. Patel & Sons has been noticed In Re: S.K. Nasiruddin and the quantification of demand under Section 7A of the PF Act upon its applicability to the beedi home workers was also upheld however, with the rider that in light of the general stay order granted by the Hon'ble Apex Court In Re: P.M. Patel for the period June, 1977 to September, 1985 protects the petitioner from the demand in relation to the said period. Such position also stood clarified by the Government of India under Para 78 of the EPF Scheme.

The directions of the Hon'ble Apex Court to the above effect In Re: S.K. Nasiruddin are as follows:--

Headnote - "B. Hence, although he had not deducted the employees' contribution from the wages of the homeworkers concerned during the pendency of litigation, the appellant, held, not entitled to waiver of liability for contribution from the month succeeding the month of decision in P.M. Patel and Sons case (September 1985) till 3-5-1993, albeit by virtue of the clarification issued by the Government under para 78 of EPF Scheme as well as the general stay granted by Supreme Court, he stood protected for the period June 1977 to September 1985 - Employees' Provident Funds Scheme, 1952, paras 1 (3)(b)(Ixxxiii), 78, 30 and 32.

7. Inasmuch as the appellant is protected for the period of coverage by the general stay order given by this Court on the applicability of the Act to the industry in question till the date of the final judgment, otherwise steps would have been taken in terms of the formal notice issued to the appellant in 1977

itself. Thus in respect of period from June 1977 to September 1985 there was waiver of the liability by reason of the clarification issued by the Government under para 78 of the Scheme. On the disposal of the matter by this Court in September 1985 the liability to deposit the employees' to recover even for the period from June 1977 in view of the directions issued by the Government but that was not demanded. For period up to September 1985 and for subsequent period there is no manner of doubt and the dispute raised by the appellant cannot be stated to be bona fide at all. In the circumstances, we fail to understand as to how the appellant can rely upon his own laches in not deducting the wages from 1985 onwards (emphasis added) to enable him to make employees' contribution to the fund."

19. Therefore although ordinarily the present writ petition involving factual issues may lie within the domain of the Authority, noticing that the petitioner is entitled to a parity of treatment as laid down In Re: S.K. Nasiruddin (supra) and such parity of treatment has been denied by the Authority, this Court holds that the petitioner is protected from the demand raised against it for the period between June, 1977 to September, 1985.

20. This Court further notices that the Authority had fixed several dates of hearing for the petitioner to attend pursuant to an order of a Hon'ble Single Bench dated 12th June, 2000 in WP 1875 of 1990, commencing with its first notice dated 20th June, 2000. The petitioner, however, avoided the hearing and took adjournments on several dates thereafter being 22nd June, 2000, 7th July, 2000, 14th July, 2000, 21st July, 2000, 8th August, 2000 and, lastly the matter was fixed on 10th October, 2000.

21. During the above noted period two officers of the PF Authority entrusted with conducting the hearing received orders of transfer and the hearing had to be entrusted to a different officer and finally to the Assistant Provident Fund Commissioner who passed the order impugned. It is, inter alia, recorded in the decision of the said Assistant PF Commissioner dated 10th October, 2000 that the authorised representative of the petitioner submitted that the Authority can take a decision on the written statement already filed on behalf of the petitioner since records prior to 1978 are not available. It was also submitted by the authorised representative of the petitioner before the Authority on 10th October, 2000 that the hearing may be taken on the basis of the records submitted by the petitioner before the Income Tax Authority for the relevant period under scrutiny.

22. Therefore, to the mind of this Court there is no violation of the principles of natural justice since the petitioner itself failed to cooperate with the Authority and carry forward the order of the Hon'ble Single Bench dated 12th June, 2000. In this connection reference may be had to the salutary legal principle that the concept of natural justice is not a straightjacket formula and must be applied to the factual matrix in hand. Such settled principle finds mention in the judgments of the Hon'ble Apex Court reported in Union of India (UOI) Vs. Jyoti Prakash Mitter, and Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise

and Others .

23. This Court also notices that except the point that the petitioner ought to be extended parity of treatment as clarified In Re: S.K. Nasiruddin (supra) for the period June, 1977 to September, 1985, in respect of all other points as discussed in the order impugned dated 10th October, 2000 a writ petition is barred on the principle of availability of alternate remedy by way of an appeal. This Court therefore finds substance in the submissions of Sri Chatterjee that in the facts of the present case the writ petition could not be held to be maintainable, except to the extent noticed above.

24. In the further opinion of this Court the PF Act provides a comprehensive code of relief and an appeal in respect of the factual points attempted to be raised by the petitioner before the Authority is an adequate remedy. It is the PF Authority which is the expert to assess the facts qua the demand raised by it and not the Writ Court. In this connection this Court is required to notice the decisions of the Hon"ble Apex Court as reported in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, ; Prakash Roadlines (Pvt.) Ltd. Vs. Union of India (UOI) and Another, .

25. The competent PF Authority is therefore directed to re-compute the demand in dispute in this lis qua the petitioner commencing for the period October, 1985 to February, 1989 on the basis of the available records and, by giving the petitioner an opportunity of hearing. The Authority shall be free to take a decision in accordance with law and on merits. It is clarified that the Authority will not grant any unnecessary adjournment to the petitioner at the hearing and, shall be free to conclude the hearing on merits in the event the petitioner resorts to the practise of taking unnecessary adjournments.

26. The Authority shall communicate its reasoned decision to the petitioner. The entire exercise as directed above shall be completed within a period of 12 weeks from date.

27. WP 18200(W) of 2001 stands accordingly disposed of.

28. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.