(1990) 08 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6828 of 1983 and W.A. 45 of 1989

Bhaskara Ceramic Industries APPELLANT

Vs

Regional P.F. Commissioner RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 2

Citation : (1993) 3 LLJ 864

Hon'ble Judges : Sivaraman Nair, J;Sardar Ali Khan, J

Bench : Division Bench

Advocate : G. Ramachandra Rao and M. Rama Rao, for the Appellant; I.A. Naidu in W.P. 6828/83 and W.A. 45/89 for No. 2 and K. Jagannadha Rao for Central Government for Respondent No. 1 in W.A. 45/89, for the Respondent

Final Decision : Dismissed

Judgement

Sardar Ali Khan, J.—Writ Appeal No. 45 of 1989, arising out of Writ Petition No. 5209 of 1982, and Writ Petition No. 6828 of 1983 are based on common questions of law and fact and arc, therefore, fit to be disposed of by a common judgment.

2. In W.P. No. 6828 of 1983 the petitioner is seeking a writ or order of direction calling for the records relating to Case No. AP/7083/RJY/Enf. II/4918 on the file of the respondent-Regional Provident Fund Commissioner and to quash the order dt. 30.6.1983 passed therein.

3. The prayer in W.P. No. 5209 of 1982, against which W.A. No. 45 of 1989 arose, is for issue of a writ of certiorari quashing the order dt. 2.6.1982 passed by the Ministry of Labour, Government of India, New Delhi u/s 19-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''Act'').

4. It would be in the fitness of things to narrate a few facts as emerging from the affidavit filed in support of Writ Petition No. 6828 of 198 3 to indicate the legal

controversy arising in these cases.

5. In W.P. No. 6828/83 the petitioner is challenging an order passed u/s 7-A of the Act determining the amounts payable as employer''s and employees'' contributions under the Act. It may be mentioned that in W.P. No. 5209/82 the petitioner challenged the proceedings dt. 2.6.1982 passed on behalf of the 1st respondent u/s 19-AoftheAct.

6. The petitioner-Bhaskara Ceramic Industries were established in the year 1966 at their premises bearing No. 2/31 Main Road, Dowleshwaram, East Godavari District as a small scale industry. They are engaged in the manufacture of pickle jars without the aid of power employing about 7 or 8 persons. According to the petitioner, this establishment was leased out to one Smt. D. Rajamma, w/o Shri D. Shankar Reddy for a period of three years with effect from, 1.1.1977 and thereafter it was leased out to another person with effect from 1.1.1981. In the year 1969 the Andhra Pradesh Industrial Infrastructure Corporation, Hyderabad allotted a plot in the Industrial Estate at Dowleshwaram, marked as Plot No. 1. The plot as well as the equipment for the manufacture of pickle jars was leased out to one Sri D. Mastan Reddy and he carried on the business till 1976. Thereafter the said premises including the equipment were leased out to another person with effect from 1.1.1977 who was carrying on business in the manufacture of pickle jars under the name and style of ''Matha Refractories and Ceramics''. In the year 1975 the petitioner herein, who is the proprietor of M/s. Bhaskara Ceramic Industries, was allotted a plot bearing No. B-7 in the Industrial Estate, Dowleshwaram by the Andhra Pradesh Industrial Infrastructure Corporation. After the construction of buildings and erection of equipment, the petitioner started manufacturing jar body and glazes without the aid of power under the name and style of "Bhaskara Ceramic Industries". He was also allotted another plot bearing No. B-8 at the same industrial estate and there also he started manufacturing pickle jars engaging about 12 persons. Thus, the petitioner was carrying on manufacturing process at two plots, i.e., Plot No. B-7 and Plot No. 8. The petitioner asserts that he has nothing to do with the manufacturing of pickle jars by the lessees in the other two premises of which he was the owner a reference to which has been made earlier in this judgment.

7. In 1980 some Inspectors attached to the Central Squad under the Central Provident Fund Commissioner, New Delhi, inspected the petitioner-industries and recorded statements from the proprietor. Thereafter some more inspections were carried out by the members of the staff of the respondents-Department. Finally, proceedings dt. 8.12.1981 purporting to cover the petitioner''s establishment were issued u/s 1(3)(a) of the Act on the ground that the said establishment was engaged in the Refractories which is included under Schedule I of the Act and called upon the petitioner to submit returns and comply with the provisions of the Act and the scheme framed thereunder. The petitioner made a representation to the respondent disputing the applicability of the provisions of the Act. Thereupon a notice was issued to the petitioner calling upon him to attend the

enquiry on 13.4.1982 with all the relevant records. The petitioner also filed an application u/s 19-A of the Act before the Central Government to make an enquiry and device the applicability of the provisions of the Act to the petitioner-establishment. An enquiry was held on the said application on 2nd June, 1982 at Hyderabad by the local officer attached to the Ministry of Labour on behalf of the Government of India and an order was passed holding that the provisions of the Act are applicable to the petitioner-establishment by computing the total number of persons employed in all the four establishments referred to above. It was also held that the provisions of the Act are applicable on the ground that the petitioner-establishment would come under the heading "crockery" under Schedule of the Act. Challenging the said order passed u/s 19-A of the Act, the petitioner filed W.P. 5209/82.

8. If is significant to note that through coverage intimation dt. 8.12.1981 the petitioner was requested to implement the scheme provisions in respect of the employees of all the three units with effect from 1.7.1977. The petitioner disputed the coverage of his establishment under the Act on the ground that Matha Refractories Ceramics and Balkrishna Ceramics have been leased out from the beginning and are being run independently by the lessees. An enquiry was ordered for determination of the amount due from the employer and also to decide the applicability of the Act in respect of the above units. The said enquiry was posted to 13.4.1983. However, before the enquiry could be finalised u/s 7-A of the Act, the petitioner made a representation before the Central Government u/s 19-A of the Act challenging the coverage of the establishment. As stated earlier, the Government of India vide order dt. 2nd June, 1982 upheld the coverage of the establishment while clubbing three units and confirmed the date of coverage as 1.6.1977. Thereafter, summons were issued to the petitioner for production of records from 1.6.1976 onwards and the enquiry u/s 7-A of the Act was posted to 7.3.1983. On the said date the petitioner appeared and produced the records in respect of the units run by him directly and failed to produce the records in respect of other two units which have been leased out. It is on record that the enquiry was adjourned on several occasions, viz., 11.4.1983, 9.5.1983 and 27.6.1983. On 27.6.1983 also the petitioner appeared for the enquiry and he submitted that he could not produce the records in respect of the other two units which have been leased out. It is also pertinent to note that summons issued to Matha Ceramics Refractories and Balakrishna Ceramics, the alleged lessees, were not served, who have avoided service of the same. Since the petitioner did not avail himself of the opportunity given to him at the enquiry to substantiate his claim that there has been wrong clubbing of the units by the authorities concerned, he cannot now turn round and say that the determination of the amount due on ex parte basis on the material available in the office records is illegal and unenforceable. He was given several opportunities to adduce such evidence as may be necessary to contest the proceedings u/s 7-A of the Act but he has failed to produce the same before the concerned authorities.

9. Section 7-A of the Act deals with determination of moneys due from

employees. The officer conducting the inquiry under the said section has the same powers as are vested in a Court under the Civil P.C. for trying a suit in respect of enforcing the attendance of any person or examining him on oath or requiring the discovery and production of documents etc. It is a matter of record that the petitioner was given ample opportunity to contest the determination of the amount by the authorities concerned. Since the petitioner did not do so, there was no other alternative but to hold that the employees working in both the above units are eligible to membership of the Provident Fund from the date of coverage. Hence, under the order passed u/s 7-A of the Act on an ex parte basis, a total sum of Rs. 49,499.70 was held to be due from the employer for the period from January 1977 to December 1982. In the order passed u/s 19-A of the Act it was held by the Central Government that it the registration certificate issued by the Department of Industries the manufacturing activity has been stated to be "Ceramic jars and fire bricks''''. The Department has covered the establishment with effect from. 1.6.1977 under the Schedule head "Refractories". But the petitioner at the relevant time was manufacturing only pickle jars which fall under the schedule head "Crockery". In that view of the matter the coverage of the petitioner under the provisions of the Act was held to be valid. The two main questions arising for consideration in this writ petition are (a) whether the coverage of the petitioner by clubbing of all the units by the authorities is valid or not and (b) whether the term "crockery" includes the manufacture of pickle jars which are supposed to be earthernware vessels. It may not be necessary to consider the coverage of the petitioner under the heading "Refractories" because at the relevant time the petitioner was not engaged in the manufacture of any item which falls under the heading "Refractories".

10. The ordinary meaning of the word "crockery" as given in the various dictionaries and Law lexicon is as follows:

"Shorter Oxford English Dictionary, Third Edition - "Earthernware Vessels".

Webster''s Third New International Dictionary, 1967 Edition - "Vessels formed of fired clay, especially for domestic use: Earthenware".

Webster''s New World Dictionary, Second College Edition - "Earthernware pots, jars, dishes, etc".

The Random House Dictionary of the English Language (The Unabridged Edition) - "Crocks collectively: earthenware".

"6. Crock - an earthern pot, jar or other container".

Collin''s New National Dictionary - "Vessels and dishes of all kinds, generally made of earthenware".

Chamber''s Twentieth Century Dictionary (Revised Edn.) - "earthenware; vessels of baked clay".

The Reader''s Digest Great Encyclopaedic Dictionary (Second Edition) -

"Eartheware vessels, especially for domestic use''''.

11. It is, therefore, evident that all kinds of earthernware vessels of baked clay for domestic use fall within the term "crockery''''. Even according to the manufacturing process given by the petitioner, pickle jars are manufactured as earthern vessels and thereafter there is a process of glazing and heating of the material up to a certain degree. Therefore, it cannot be denied that pickle jars which were being manufactured at the relevant time by the petitioner are in fact crockery within the meaning of the term as employed in Schedule I of the Act. In the order passed by the Central Government u/s 19-A it is clearly stated that no evidence was produced in respect of the claim of the petitioner to prove to the contrary the contention of the authorities that the petitioner is engaged in the business of manufacture of crockery. Therefore, in view of the unity of ownership, functional integrality, geographical proximity and general unity of purpose all the units were treated as part and parcel of one establishment and were liable to cover under the provisions of the Act. In Commr. of Sales Tax v. Blue Spot 1919 43 STC 376 (Madh Pra.), a similar view has been taken of the matter. It was held therein that the word "crockery" is wide enough to include jars of all types and the term "crockery" cannot be confined only to tableware alone and not to kitchenware as such.

12. The learned counsel for the petitioner has relied upon a decision reported in Karachi Bakery v. P.P. Commissioner 1990 2 APLJ 40, wherein a Division Bench of this High Court held that the bakery employing six regular and five part-time employees entered into a contract with two other bakeries for supplying certain bakery products. The two bakeries were conducting the manufacturing process in their own premises employing machinery belonging to them. M/s Karachi Bakery had no ownership of the premises or machinery of those two other bakeries. There is no clause in the agreement purporting supervision or control of the work of the employees of those two other bakeries who were 18 in number and therefore cannot be treated as employees of the establishment and consequently they do not fall within the meaning of Section 2(f) of the Act. It is essential to realise that the decision in the above-said case is based purely on the terms of the agreement existing between the petitioner-bakery and the other two bakeries which were supplying bakery products without any check or supervision of the petitioner-backery. In other words, the terms of the contract applicable between the petitioner-bakery and the two other independent units owned by others were the determining factor for holding that all the three units cannot be clubbed together. We are quite clear that such is not the case in the matter before us. Admittedly the site, buildings and machineries of all the units belonged to the petitioner. Though he pleaded that he had leased out two of the units, he did not produce the lease deeds not did he lead any evidence about the terms of the lease. Admittedly he was receiving most of the manufactured produce from those units. These facts were rightly taken into account to enter a finding that all the units consisting or building, machinery, etc., owned by the petitioner really form one unit. The petitioner has never adduced any evidence before the authorities

either u/s 19-A or in the proceedings u/s 7A to substantiate his claim that he had nothing to do with the manufacturing process of the other units which have been clubbed together in this case. The petitioner has not adduced, despite the opportunities given to him, any documentary or oral evidence before the authorities to show that he does not have any control or exercise any supervision over the manufacturing activity of the other units. We are, therefore, unable to see any force in the argument that the unit of the petitioner has been wrongly clubbed with the other units by the authorities concerned.

13. Learned counsel for the petitioner next relied upon the definition of the term ''employee'' as given in Section 2(f) of the Act and tried to contend that the personnel working in the other units cannot be said to be employed by him in connection with the work of his establishment. The term "employee" has been defined u/s 2(f) of the Act which is in the following words:

"''Employee'' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment."

Relying upon the above definition of the "employee" u/s 2(f) of the Act does not help the case of the petitioner in any manner. The whole question to be considered is whether all the three units are part and parcel of the establishment of the petitioner or not. On the facts of the case the authorities have come to the conclusion that indeed the petitioner has got supervision and control over all three units which has not been rebutted in any manner by the petitioner by adducing evidence to the contra. We fail to see how the petitioner can further his case by relying upon the definition ''employee'' in this regard.

14. In P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, the term "employee" has been given a wider amplitude and it was held that it includes not only person employed directly by the employer but also person employed through a contractor. Furthermore, it was held that it includes not only persons employed in the factory but also persons employed in connection with the work of the factory. Accordingly, a home worker, who is involved in any activity connected with the work of the factory is also an ''employee'' within the definition of the Act. It may be emphasised that the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 is a piece of beneficial legislation which is primarily designed with the object of extending the benefits to the workers in the establishments which come under the coverage of the Act. Any interpretation of the said piece of legislation is to be in consonance with the upliftment and betterment of the working condition of the employees as such. Taking into consideration all the facts of the case we reject the contention of the learned counsel for the petitioner that the clubbing together of the units is wrong or suffers from any infirmity in law. It is also evident in view of the definition of the term "crockery" as stated above that the manufacture of pickle jars falls within

the term "crockery".

15. For all the above reasons, the writ petition as well as the writ appeal are dismissed. No costs.