

(2009) 07 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 18932 (W) of 2006

Bhikhari Chandra Pradhan

APPELLANT

Vs

Employees" Provident Fund Organisation and Others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(4), 16, 2, 4

Citation : (2009) 123 FLR 364 : (2010) 1 LLJ 462

Hon'ble Judges : Jayantha Kumar Biswas, J

Bench : Single Bench

Advocate : Arunava Ghosh, Saumya Majumdar and Anindya Lahiri, for the Appellant; Mihir Kundu, for the Respondent

Judgement

Jayantha Kumar Biswas, J.—The petitioner in this writ petition dated August 11, 2006 is questioning the orders of the Assistant Provident Fund Commissioner and Assessing Officer dated November 30, 2005, Annexure P-5 at p.49 and July 26, 2006, Annexure P8 at p.79. The orders were made under Sections 7-A and 7-B respectively of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952.

2. The petitioner is the proprietor of a bookbinding business run under the name Shiva Shakti Binder. Saraswati Press Limited, a Government of West Bengal undertaking, engaged him from time-to-time as a contractor. On May 27, 2002 he applied for a voluntary coverage of his establishment. Then the Provident Fund Authority issued a coverage notice dated January 15/February 4, 2003 informing him that the provisions of the Act and the Schemes framed thereunder would apply to his establishment from November 1, 2002. No notification u/s 1(4) was, however, issued and published. He started complying with the provisions of the Act and the Schemes framed thereunder.

3. On December 3, 2003 the enforcement officer concerned submitted a report that the establishment should be covered u/s 1(3)(b) of the Act with effect from

February, 2001. It was mentioned in the report that the establishment had complied with the provisions of the Act and the Schemes upto October, 2003. Under the circumstances, the provident fund authority issued requisite summons initiating the Section 7-A proceedings. The petitioner participated in the proceedings. In the final order dated November 30, 2005 the authority held that the establishment should be covered from June, 1998. Discarding the wage registers produced by the petitioner and relying on the wage sheets produced by the enforcement officer with his report dated December 3, 2003, the authority ascertained the wages the establishment paid its employees for June, 1998, and then determined the establishment's liability from that month.

4. On December 26, 2005 the petitioner filed a review application u/s 7-B. In the application he took a specific point that the Section 7-A order was made in gross violation of the principles of natural justice, since the wage sheets for the month of June, 1998 produced by the enforcement officer with his report and relied on by the authority had never been disclosed to him and that the wage sheets were disclosed for the first time in the Section 7-A order. He also took the point that, since bookbinding was not an industry specified in Schedule I, the provisions of the Act were not applicable to the establishment. As many as three supplementaries to the review application were filed before the authority.

5. The petitioner also contended that even if the provisions of the Act and the Schemes were applicable to the establishment, the aspect of determination of the establishment's liability needed a thorough review, since wages actually paid to the employees for June, 1998 and thereafter were not correctly ascertained by the authority who relied on the undisclosed wage sheets, discarded the wage registers, and included amounts which could not be included under the head wages. He contended that commission received by him was also included by the authority under the head wages paid to the employees. By the order dated July 26, 2006 the authority rejected the review application holding that the Act was applicable to the establishment.

6. Mr. Ghosh, counsel for the petitioner, has made a two-fold submission: (i) since bookbinding is not one of the industries specified in Schedule I to the Act, and on the contrary, the bookbinding industry has been specifically excluded, as will appear from Schedule I, the authority was wrong in holding that the provisions of the Act and the Schemes were applicable to the establishment and (ii) even if the Act and the Schemes were applicable to the establishment, the impugned orders cannot be sustained as to the amount of liability, since the amount was determined on the basis of undisclosed materials and taking into consideration amounts which could not form part of wages paid to the employees of the establishment.

7. Section 1(3) of the Act provides that subject to the provisions contained in Section 16, the Act shall apply to every establishment which is a factory or any industry specified in Schedule I and in which twenty or more persons are employed, and to any other establishment employing twenty or more persons or

class of such establishments which the Central Government may by notification in the official gazette, specify in this behalf, provided that the Central Government may, after giving not less than two months' notice of its intention so to do by notification in the official gazette, apply the provisions of the Act to any establishment employing such number of persons less than twenty as may be specified in the notification. The word "Industry" has been defined by Section 2(i) to mean any industry specified in Schedule I and includes, any other industry added to the Schedule by notification u/s 4.

8. One of the several industries added to the schedule by a notification dated July 4, 1956 is:

Printing other than printing industry relating to newspaper establishments as denied in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), including the process of composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding.

9. It is evident from the provisions that the Act shall apply to any industry engaged in the manufacture of printing except a printing, industry concerning a newspaper establishment as defined in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. I am unable to accept the arguments that the provisions also exclude any, industry engaged in process of composing types for printing, printing by letter press, lithography, photogravure or other similar process or bookbinding. These things have rather been included in the category of printing industry. I am, therefore, unable to accept the case of the petitioner that to his establishment engaged in a bookbinding business the Act could not be applied.

10. It appears that with the passage of time the petitioner's application for voluntary coverage lost its significance. He applied for voluntary coverage on May 27, 2002. Although the authority issued the applicability notice stating that the provisions of the Act and the Schemes would apply to the establishment from November 1, 2002, the requisite notification u/s 1(4) was never issued and published. The petitioner, however, of his own accord, started complying with the provisions of the Act and the Schemes. Once the investigation made by the enforcement officer revealed that the establishment was liable to be covered from a prior date, the authority issued summons initiating the proceedings under, Section 7-A. The petitioner duly participated and produced records.

11. The authority made the final Section 7-A order dated November 30, 2005 recording that the petitioner admitted that in June, 1998 the establishment had engaged as many as thirty-one employees. On the basis of such admission the authority held that the provisions of the Act and the Schemes would apply to the establishment, in view of the provisions of Section 1(3) of the Act, from June, 1998. It was never the petitioner's case in the review application that the authority wrongly recorded in the order dated November 30, 2005 that he

admitted the fact of engagement of thirty-one employees by the establishment in June, 1988. I, therefore, do not find any reason to hold that the provisions of the Act and the Schemes were wrongly applied to the establishment from June, 1998. In my opinion, there is no reason to interfere with the finding of fact recorded by the authority on the basis of the petitioner's admission.

12. In the Section 7-A order dated November 30, 2005 the authority recorded that the wage registers produced by the establishment were not reliable, and hence he would prefer to rely on the wage sheets produced by the enforcement officer with his report dated December 3, 2003. The authority then fixed the amount of wages paid by the establishment to its employees for June, 1998. In the review application the petitioner took a specific plea that the wage sheets disclosed for the first time in the Section 7-A order could not be relied on by the authority without first disclosing them to the establishment and giving it an opportunity to deal with the contents thereof. He also contended that even commission paid by Saraswati Press to the establishment was taken to be wages paid by the establishment to its employees.

13. It is evident from the Section 7-B order dated July 26, 2006 that the authority rejected the review application without considering the plea. The authority giving the decision has decided only the question concerning applicability of the provisions of the Act to the establishment. The provisions of Section 7-B empowered the authority to review the Section 7-A order for any sufficient reason. In my opinion, when the petitioner specifically contended that the determination of liability was vitiated by violation of principles of natural justice, the authority was under an obligation to examine the plea and give his decision, and by not examining the plea and giving the decision, the authority has committed a jurisdictional error.

14. For these reasons, I dispose of the writ petition ordering as follows: The authority is directed to give a further decision in the Section 7-B application concerning the amount of liability determined by the Section 7-A order dated November 30, 2005. The question of applicability of the Act and the Schemes to the establishment from June, 1998 shall not be reopened and it will not be examined once again. The further decision in the Section 7-B application shall be given after giving the establishment reasonable opportunity of hearing. There shall be no order for costs.

15. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the Section concerned.