

(2011) 09 PAT CK 0030

In the Patna High Court

Case No : LPA No's. 1037 and 1396 of 2011 in CWJC No. 13932 of 2008 with
Interlocutory Application No. 6783 of 2011 in CWJC No. 13932 of 2008

Bihar State Electricity Board

APPELLANT

Vs

Regional Provident Fund Commissioner, Regional Office,
R''Block, Patna-1 and Others
 The Regional Provident
Fund Commissioner, Regional Office, R. - Block, Patna and
Others Vs Bihar State Electricity Board and Another

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Bihar Contract Labour (Regulation and Abolition) Rules, 1970 — Rule 72, 73
Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 17,
2, 6, 7A

Citation : (2012) 133 FLR 939 : (2012) LLR 777 : (2012) 1 PLJR 248

Hon'ble Judges : R.M. Doshit, C.J.;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : V.N. Sahay, Arun Srivastava in LPA No. 1037 of 2011 and M/s
Prashant Sinha, Shailendra Kumar Sinha in LPA No. 1396 of 2011, for the
Appellant; Prashant Sinha, Shailendra Kumar Sinha for the Respondent Nos. 1 to
3 in LPA No. 1037 of 2011, M/s Umakant Shukla, Amrendra Kumar Sinha,
Shailendra Kumar Singh -1 for the Respondent No. 4 in LPA No. 1037 of 2011, M/
s V.N. Sahay, Arun Srivastav for the Respondent No. 1 in LPA No. 1396 of 2011
and M/s Umakant Shukla, Amrendra Kumar Sinha, Shailendra Kumar Singh -1
for the Respondent No. 2 in LPA No. 1396 of 2011, for the Respondent

Judgement

Hon''ble R.M. Doshit, Chief Justice

Re. Interlocutory Application No. 6783 of 2011

1. The delay of 58 days occurred in filing the Letters Patent Appeal No. 1396 of 2011 is condoned. Interlocutory Application stands disposed of.

Re. Letters Patent Appeal No. 1037 of 2011

And

Letters Patent Appeal No. 1396 of 2011

2. These two Appeals preferred under Clause 10 of the Letters Patent arise from the judgment and order dated 17th May 2011 passed by the learned single Judge in above CWJC No. 13932 of 2008.

3. The Letters Patent Appeal No. 1037 of 2011 is preferred by the Bihar State Electricity Board (hereinafter referred to as "the Board"), the writ petitioner. The Letters Patent Appeal No. 1396 of 2011 is preferred by the respondent Regional Provident Fund Commissioner, Patna (hereinafter referred to as "the Commissioner").

4. The Board filed above CWJC No. 13932 of 2008 under Article 226 of the Constitution to challenge the order dated 23rd February 2007 made by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA 209(3)/2001 arising from the order dated 15th January 2000 made by the Assistant Provident Fund Commissioner, Bihar (hereinafter referred to as "the Assistant Commissioner") u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act"). Under the above referred order dated 15th January 2000, the Assistant Commissioner held that the provision of the Act were applicable to the Board to the extent that the Board was liable to extend the Provident Fund benefits to the labourers engaged through the contractors working at Muzaffarpur Thermal Power Station. The Assistant Commissioner assessed the provident fund dues of Rs. 2.23,64,855/- for the period from 1986 to April 2000. The said order was challenged by the Board before the Tribunal. The Tribunal dismissed the appeal. Therefore, the writ petition.

5. According to the Board, the Board is exempt from the applicability of the Act and the schemes made thereunder. The Board is, therefore, not liable to deduct the amount of provident fund nor the Board is liable to maintain a separate account for the amounts so deducted nor the Board is liable to make its own contribution.

6. Learned single Judge has considered the contentions raised by the Board. Sections 16 & 17 of the Act and the effect of the exemption to the workmen employed through labour contractors. The learned single Judge has also considered the scope and ambit of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 and the Bihar Rules framed thereunder. Learned single Judge has held that in terms of Rules 72 and 73 of the said Rules, it is the duty of the principal employer to ensure disbursement of wages to the worker of the contractors to maintain a wage register, and a register of contractors.

7. Learned single Judge has held:-

It is evident that the workers supplied by the contractor(s) to the different establishments of the Board are also entitled to the benefits in the light of the

scheme framed under the Act. The contribution made by the workers together with the contribution of the employer (contractor) is required to be deposited by the contractor with the provident fund authorities after obtaining a code number from the authorities of the provident fund organization. Until such code number is taken by the contractor from the authorities, it is the responsibility of the Board (principal employer) to ensure that necessary deductions are made from the bills payable to the contractor and deposited with the provident fund authorities in the light of the provisions contained in Section-6 of the Act and paragraph-30 of Chapter-V of the schema.

8. Feeling aggrieved, the Board has preferred above Letters Patent Appeal No. 1037 of 2011.

9. The learned single Judge, however, set aside the order made by the Assistant Commissioner on the premise that the Assistant Commissioner had failed to examine that the concerned labourers were engaged throughout the period in question. The learned single Judge has remitted the matter to the Assistant Commissioner to verify the period for which concerned labourers were engaged by the Board. Feeling aggrieved, the Regional Provident Fund Commissioner has preferred the above Letters Patent Appeal No. 1396 of 2011.

10. Learned advocate, Mr. Prashant Sinha has appeared for the Regional Provident Fund Commissioner. He has submitted that in course of enquiry u/s 7A of the Act, the Assistant Commissioner had relied upon the list of the workmen supplied by the concerned contractors. The said list was never contested by the Board. The Assistant Commissioner had proceeded after issuing notice to the workmen. There is no justification for setting aside the order made by the Assistant Commissioner or by the Tribunal.

11. Learned advocate Mr. V.N. Sahay has appeared for the Board. He has assailed the judgment passed by the learned single Judge. He has submitted that the Board is exempt from application of the Act and the Schemes made thereunder. He has relied upon Sections 16 and 17 of the Act. He has submitted that as early as in 1960 by notification issued by the appropriate Government, the Board has been granted exemption from the operation of the provisions of the Schemes made under the Act. He has submitted that the Board has framed its own provident fund and pension scheme and the same applies to the employees of the Board. The Board is, therefore, not governed by the provisions made under the Act and the Schemes.

12. Section 16 of the Act specifically excludes, inter alia, the establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under the act governing such benefits. Section 17 of the Act empowers the appropriate Government, by notification in Official Gazette, and subject to such conditions as may be specified in the notification to exempt from the operation of all or any of the provisions of any Scheme, any

establishment if the rates of provident fund of which are not less favourable to the employees than the benefits provided under the Act or any Scheme. Mr. Sahay has submitted that in view of provident fund and pension scheme adopted by the Board, the appropriate Government has exempted the Board from the operation of the Act and the Schemes made thereunder. He has, however, candidly submitted that the notification having been issued in 1960, copy is not available nor he is aware of the terms and conditions subject to which such exemption may have been granted.

13. We may also refer to Section 2 (f) of the Act. The said clause (f) of Section 2 of the Act defines the word "employee", to mean 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-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment.

14. Thus, it is apparent that an establishment is not only liable for provident fund for its own employees but it is also liable for the provident fund dues of the contract labourers hired by such establishment. The matter at issue is whether the Board is exempt from the applicability of the Act in respect of the contract labourers and not in respect of the employees of the Board. As recorded hereinabove, the definition of the word "employee" in Section 2(f) of the Act enfolds in its compass the contract labourers also.

15. Learned Advocate Mr. Sahay has failed to establish that exemption granted u/s 17 of the Act applies in respect of the contract labourers also. In absence of such exemption we are of the view that the learned single Judge is right in holding, "until such code number is taken by the contractor from the authorities, it is the responsibility of the Board (principal employer) to ensure that necessary deductions are made from the bills payable to the contractor and deposited with the provident fund authorities in the light of the provisions contained in Section-6 of the Act and paragraph-30 of the Chapter-V of the scheme".

16. We agree with Mr. Prashant Sinha that the impugned order has been made by the Assistant Commissioner after due identification of the workmen. In absence of any contest either by the concerned contractors or by the Board, the principal employer, there was no need for remitting the matter for identification of the workmen.

17. For the aforesaid reasons, the Letters Patent Appeal No. 1037 of 2011 is dismissed. Letters Patent Appeal No. 1396 of 2011 is allowed to the extent the learned single Judge has set aside the order dated 15th January 2000 made by the Assistant Commissioner of Provident Fund, Bihar made u/s 7A of the Act and

consequently the order dated 23rd February 2007 made by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA 209 (3)/2001. The direction issued by the learned single Judge in respect of remittance of the matter to the authority below is set aside. The above CWJC No. 13932 of 2008 filed by the Board is dismissed. Parties will bear their own cost.