

(2002) 04 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4246 of 2000

B.R. Spinners Private Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2003) 96 FLR 195 : (2003) 1 LLJ 325

Hon'ble Judges : G.S. Singhvi, J;Bakshish Kaur, J

Bench : Division Bench

Advocate : V.G. Dogra, for the Appellant; Rajesh Bindal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This is petition for quashing order dated 23.3.1998 and 16.9.1999 passed by the Regional Provident Fund Commissioner, Sub Regional Officer, Ludhiana (respondent No. 1) and the Presiding Officer, Employees Provident Fund Appellate Tribunal New Delhi (respondent No. 1) respectively.

2. The main ground on which the petitioner has challenged the assessment order passed by respondent No. 1 u/s 7-A and appellate order passed by respondent No.2 u/s 7-1 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the Act) is that its units is not covered by the provisions of the Act and the finding recorded by the respondents about the total number of employees employed in the establishment is based on a total misreading of evidence and is perverse.

3. In the written statement filed on behalf of respondent No. 1, it has been averred that the finding recorded by the respondents about the total number of persons employed in the factory of the petitioner is based on proper appreciation of evidence produced by the department and the petitioner cannot avoid its liability to pay the dues of the provident fund etc.

4. Shri V.G. Dpgra argued that the impugned orders are liable to be quashed because no tangible evidence was produced by the department before the respondents to prove that the total number of employees engaged by the establishment was 20 or more. He submitted that the lists produced by the Provident Fund Inspectors contained vague and incomplete information and the same could not have been made basis for recording and finding that the petitioner was covered by the provisions of the Act. He further submitted that Shri S.K.Gupta, who is said to have signed the list of employees prepared by the two Inspector,namely, Shri Kuldeep Singh and Shri Vinay Vashisth was not employed in the establishment of the petitioner and, therefore, the particulars contained therein could"not have relied upon for recording a finding on the issue of coverage. He then argued that the view taken by respondent No.2 on the inter-connection between the two establishments being run by the partnership firm and the private limited company not only suffers from self-contradiction, but is also unwarranted because the petitioner did not get opportunity to prove that the two units were independent of each other.

5. Shri Rajesh Bindal laid emphasis on the fact that the list prepared by the Inspectors were duly signed by the representative of the petitioner, namely, Shri S.K. Gupta and Shri Dewan Chand and argued that the respondents did not commit any illegality by relying upon the statistics contained therein for the purpose of recording a finding that more than 20 persons were employed in the establishment of the petitioner.

6. Before dealing with the arguments of the learned counsel for the parties, we deem it proper to notice the para-meters for issuance of a writ of certiorati. In Syed Yakoob Vs. K.S. Radhakrishnan and Others, , a Constitution Bench of the Supreme Court considered the scope of the High Court's power to issue a writ of certiorari and laid down the following propositions:-

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, writ of certiorari can be issued if it is shown that in recording the said finding, the

Tribunal had erroneously refused to admit the admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court."

7. In *Jitendra Singh Rathor v. Shri Baidyanth Ayurved Bhawan Ltd. and Anr.* AIR 1984 S.C. 1976 the Supreme Court, while dealing with the challenge to an award passed u/s 11-A of the Industrial Disputes Act, 1947, held as under:-

"The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon, remit, the matter to it for fresh disposal in accordance with law and directions, if any, The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it." (Underlining is . ours)

8. In view of the aforementioned decisions, it must be treated as well settled that the High Court will not interfere with the finding of fact recorded by a subordinate Court/Tribunal or quasi-judicial authority unless it is satisfied that such finding is vitiated by an error of law. An error, which can be discovered by lengthy arguments and on a re-appreciation of evidence produced by the parties before the subordinate Court/Tribunal or quasi-judicial authority, cannot be regarded as an error of law. Similarly, the mere possibility of forming an opinion different than the one already formed cannot lead to an inference that the order under challenge vitiated by an error of law. The High Court cannot interfere with the finding of fact only on the ground that the evidence produced before the subordinate Court/Tribunal or quasi-judicial authority are not sufficient to prove the particular fact. However, a finding of fact can be reversed if the High Court comes to the conclusion that in recording such finding, the subordinate Court/Tribunal or quasi-judicial authority had ignored material evidence or taken into consideration inadmissible evidence.

9. We may now advert to the impugned orders and determine whether the same are vitiated by an error of law, as contended by Shri V.C. Dogra or the concurrent findings of fact contained therein do not call for interference by this Court as argued by Shri Rajesh Bindal.

10. A perusal of order dated 23.3.1999 shows that on receipt of the report submitted by the two Inspectors, namely Shri Kuldeep Singh and Shri Vinay

Vashisth showing that 25 persons were employed in its establishment on 28.11.1997, the petitioner was provisionally brought under the purview of the Act. The coverage proforma and the lists of employees were signed by Shri S.K. Gupta, who was responsible person available in the establishment. Prior to this, Shri Dewan Chand, Machinery Incharge had signed the coverage proforma showing that on 6.6.1997, 50 persons were employed in the establishment of the petitioner of which Shri Kailash Chander Agarwal was shown as Managing Director and Shri Dinesh Aggarwal was shown as Director, The petitioner challenged the letter of provisional coverage by filing an appeal before respondent No.2 which was disposed of vide order dated 20.5.1998 with the observation that the objections may be raised before respondent No. 1. Thereafter, the petitioner filed objections against the reports submitted by the Enforcement Inspectors, respondent No. 1 fixed the case for hearing on some of the dates between October, 1998 and March, 1999. The representative/Advocate of the petitioner did not appear on some of dates and adopted the delaying tactics. After examining the record and the evidence produced before him and hearing the representatives/Advocates of the petitioner and the department, respondent No. 1 held as under: -

"(i) That not only once, but twice and estt. was found to have employed more than 19 employees by two different squads i.e. on 28.11.97 first squad found 25 employees working in the estt. and 29 employees found working as on 28.4.98 as per enquiry report of another squad.

(ii) Sh. S.K. Gupta, responsible person had supplied information and signed on the coverage proformas and list of employees on both the occasions and on second occasion has put official rubber stamp on the estt. and had signed on it.

(iii) As per above information given by Sh. Gupta estt. is having:-

a) Sh. Kailash Aggarwal as Managing Director and Sh. Dinesh Aggarwal Director in r/o of M/s. BR Spinners (P) Ltd., Rahon Road, Ludhiana and having regd. office at 155, Indl. Area "A" Ludhiana.

b) Sh. Diwan Chand is incharge of machinery of M/s. BR Spinners (P) Ltd., Ludhiana.

c) As per list of employees given at back of coverage proforma signed by Sh. Diwan Chand M/s. BR Spinners (P) Ltd. was having 50 employees as on 6.6.97.

d) As per information given by Sh. Gupta to second squad dt. 28.4.98, estt. namely M/s. BR Spinners (P) Ltd., vill. Seera, Rahon Road, Ludhiana, is having Sh. Ganesh Aggarwal as partner and estt. having employed 29 employees as on 28.4.98 and having Sh. Kailash Aggarwal as occupier with having address of branches at 143 Indl. Area "A",-Ludhiana.

e) The designation of Sh. Gupta has been shown as Supervisor as shown in the list of employees dt. 2.4,98.

f) As per information given in these proformas, estt. is doing the job of wool tab/yarn process w.e.f. 11.10.1994 as per enquiry report dt. 28.11.97 and w.e.f. 20.9.94 as per enquiry report dt. 28.4.98 and also having different registration numbers which require further scrutiny. From the above it is observed that:

(i) S/Sh. Kailash Aggarwal and Sh. Dinesh Aggarwal (or Sh. Ganesh Aggarwal) are the employers/responsible persons.

(ii) estt. is having regd office/branch at 155, Indl. Area "A", Ludhiana and at 143, Indl. Area "A", Ludhiana.

(iii) estt. is employing more than 19 employees on both the days of visit of squad as well as on 6.6.97.

(iv) the date of set up and registration no. of this estt. namely M/s. BR Spinners (P) Ltd. is different in both these enquiry reports.

(v) Had the estt. supplied relevant documents during the proceedings above facts could have been confirmed but for want of complete production of records and failure on the part of the estt. to do so, above facts have to be admitted." 11. He then referred to the attitude of non-cooperation adopted by the petitioner and recorded the following observations:-

"Now I proceed further with the case. The estt. after receipt of coverage letter dt. 27.1.98, instead of presenting to the competent authority i.e. Regional P.F. Commissioner, SRO, Ludhiana, against the coverage, preferred to file appeal before the Hon'ble E.P.F. Appl. Tribunal who vide orders dt. 20.5.98 disposed of the appeal as mentioned in the foregoing para and directed the estt. to raise objections before this authority i.e. Regional P.P. Commissioner. It was only thereafter that on 25.5.98 estt. submitted a letter to this effect. Thus the matter was seized u/s 7A of the Act and the estt. was asked to produce the records as mentioned in the notice dt. 5.10.98 but during the entire proceedings, the estt. adopted the method of prolonging the issue and failed to produce the records inspite of the fact that during each proceedings the same was asked for by giving reason for production of entire records but the estt. was adamant to produce the same with one pleas or the other throughout the 10 chances provided to the estt. on the principle of natural justice between 12.10.98 to 8.2.99. Sh. Ashok Rajput, Advocate of these estts. categorically refused to produce the records at one time and insisted for production of records yearwise during each hearing and that too on the basis that same be returned back at the close of each hearing. This was not found feasible by the depts. and insisted for examination of records at a stretch to find out the factual position.

On the other hand, in order to protect the interest of workers and keeping in view the guidelines in this regard, it was not advisable to prolong the proceedings just to convince the estt. to produce the records at a time instead of in piece meal and secondly keeping in view the delaying tactics adopted by the estt. the matter was ultimately kept as Reserve for orders.

Now as per above position, it is very clear that estt. soon after the receipt of coverage letter tried to evade the compliance by way of adopting tactics to prolong the matter by way of firstly having approached the Hon'ble EPF App. Tribunal instead of representing the competent authority and thereafter by either not appearing in the first hearing or thereafter by not producing records in the next 3 hearings and again during next proceedings till last proceeding which ultimately had to be restricted for undue prolonging of the matter could have been decided without delay of its applicability and clubbing with other estts. which is quite crystal clear from the fact that all these estt. except that of M/s BR Textile, Vill. Mangli, Chandigarh Road, Ludhiana (PN/16790) are having common ownership/managing, regd. office, same activities etc. and are clubbable prima facie. But for want of records, further scrutiny could not be done. Hence at least at this stage, matter of applicability can be decided and directions for further production of records and scrutiny can be given. It has been held in the case of Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others, that onus of proving employment strength below twenty lies on the petitioner who has challenged the applicability of the Act to his eslt. but here the Estt. always tried to prolong the issue instead of producing records in the entire 10 chances in a span of 5 months provided to it for the production of records. Had the estt. co-operative in these entire 10 proceedings, there would have been full, fair and effective opportunity to estt. to represent its cause but failed to avail this also."

12. The conclusion recorded by respondent No. 1 on the issue of coverage of the petitioner reads as under:-

"Thus in the light of above facts, documents, available as well as placed on the record and plea taken by both the parties and after having applied my mind to the facts and figures of the case as mentioned above by me in foregoing paras, I am of the opinion that estt. is deliberately trying to avoid the compliance by adopting tactics for delaying the matter by not producing the entire records for examination by the deptt. to examine the contentions of the estt. and by remaining un-co-operative throughout the proceedings and also by trying to avoid issue of clubbing with other estls. having common management. Hence, A.K. Chandok, Regional P.P. Commissioner, S.R.O. Ludhiana having powers confirmed upon me by virtue of section 7A of the Act, hereby decide the issue of applicability in favour of the Deptt. and hold that the estt. was rightly been covered under the Act by the Deptt. and the employer is statutorily duty bound to report compliance under the Act initially from the date of coverage and thereafter the Deptt. shall proceed further for deciding the issue of clubbability with other estts. as mentioned above for which all related estts. be directed to produce the records."

13. While dismissing the petitioner's appeal, respondent No. 2 took notice of photostat copies of the attendance and wages registers, cash books, ledger and balance-sheets for the years 1996-97 and 1997-98 produced by its

representative and observed as under:-

"It is open secret that the industrialists are not reflecting the true amount of wages being paid by them. They are showing these amounts in other heads and not in wages. Mostly the wages paid to the temporary employees is underlacted. Such a big factory cannot be suggested to be run with the help of only 12 persons who are required to manage the office alone. It is safer to rely on the report of the EOs who have visited the establishment of the appellant thrice. I do not hesitate to reject the affidavit of Shri Kailash Agarwal who is an interested person. No independent evidence has been produced by the appellant to prove that they are employing only 12 persons and not 25. Showing of the spinning charges in the final account of this private limited company also reflects that there is interconnection between the spinning mill and this combing mill. Having regard to the nature of the work in the partnership firm and this private limited company they appear to be interconnected being supplementary and

complementary to each other. The owner of both these establishments are the members of the same family. The spinning mill is already covered. So even without employing 20 persons this combing establishment is liable to be covered. Therefore, I am inclined to dismiss this appeal and confirm the impugned order."

14. A critical analysis of the two orders shows that respondent No. 1 examined the evidence produced by the department which included the lists prepared by the Enforcement Inspectors only signed by Shri S.K. Gupta and Shri Dewan Chand, who were employed in the establishment and recorded a well-reasoned conclusion that more than 20 persons were employed in the factory of the petitioner. Respondent No.2 did not record elaborate reasons, but confirmed the findings of fact recorded by respondent No. 1.

15. In our opinion, the concurrent finding recorded by the respondents on the issue of total number of persons employed in the factory of the petitioner does not suffer from any legal error requiring interference by the High Court.

16. The argument of Shri Dogra that the lists produced by the Enforcement Inspectors could not have been relied upon by the respondents because they did not contain full particulars and Shri S.K. Gupta was not employed in the factory of the petitioner deserves to be rejected because no evidence was produced on its behalf to contravert the facts embodied in the reports of the Enforcement Inspectors and the details contained in the lists prepared by them. The representative/Advocate of the petitioner could have made a request for cross-examination of the Enforcement Inspectors to prove that Shri S.K. Gupta was not employed in the factory, but no such attempt was made. The fact that Shri Dewan Chand employed as Machinery Incharge was not even controverted by the petitioner. Therefore, it is not possible to accept the submission of the learned counsel that the impugned orders are vitiated by an error of law.

17. No other point has been argued.

18. For the reasons mentioned above, the writ petition is dismissed.

Sd/-Bakhshish Kaur, J.