(1997) 09 PAT CK 0043

In the Patna High Court

Case No : Criminal Miscellaneous No''s. 6090, 10748-10752, 10786, 10917-10924, 12504-12509, 12518, 12520-12523 and 12599-12608 of 1992

Chaudhary Colour Company and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14, 14A, 16, 7A

Citation : (1998) 1 BLJR 199 : (1997) 2 PLJR 869

Hon'ble Judges : N.K. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Sinha, J.—This batch of 36 Criminal Miscellaneous cases u/s 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) seek quashing of the criminal prosecution of the petitioners in 36 complaint cases filed against them by the Inspector, Employees Provident Fund-CD.P. No. 2 including the order dated 14.5.1991 passed by the learned Chief Judicial Magistrate taking cognizance under Sections 14(1A) and 14(1B) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act) against them in each of the complaint cases. Since common questions of law and fact have been raised, they have been heard together and are being disposed of by this common judgment.

2. M/s. Chaudhary Colour Company petitioner No. 1 for short, the Company) is a small partnership firm and petitioner Nos. 2 to 6 are partners of the firm. The Company bring dry colour from out-side Mahnar and after wrapping them in small packet (Puria), push them in the market for sale. The Regional Provident Funds Commissioner granted sanction for prosecution of the petitioners for failure to submit the statutory return in Form-5 and consolidated statement of

contribution in Form 12A (R) as well as Annual Return in Form 3-A (R) and Form 6A (R) and on the basis of such sanction orders, O.P. No. 2 filed as many as 42 complaints including the present 36 complaints against the petitioners under Sections 14(1A) and 14(1B) and Para-76D of the E.P. Act Scheme, 1952 read with Sections 14(2) and 14A of the Act. A copy of the complaint petition including the sanction order in Criminal Misc. No. 6090 of 1992 are Annexures 9 and 9/A which were filed for the period February, 1981 to April, 1981. Similar complaint petitions and sanction orders for different periods have been filed in other complaint cases. Separate orders taking cognizance on the basis of the complaint petitions were passed on one and the same day, i.e. 14.5.1991 which are under challenge in these applications.

3. Shri Shivaiji Panday, learned Counsel appearing for the petitioners argued that the petitioner''s Company was not an establishment within the meaning of the Act and the Company had raised such a dispute before the competent authority which dispute was still pending and hence, the prosecution of the petitioner''s Company was incompetent. The Company is said to employ both regular and casual employees and at no point of time, their total strength had ever exceeded 16 to 17 persons in a day. Section 1 of the Act reads as follows:

1. Short title, extent and application,-(1) This Act may be called the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any Industry specified in Schedule 1 and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishment 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 this Act to any establishment employing such number of persons less than twenty as may be specified in the notification

Since the Company had not employed 20 or more persons, it was argued that it cannot be considered as an establishment within the meaning of Sub-section (3) of Section 1 of the Act and hence, the provisions of the Act were not applicable to the Company.

4. There is no dispute between the parties that the Company had raised an objection to the applicability of the provisions of the Act before the competent authority u/s 7A of the Act. Section 7A of the Act reads as follows:

7A. Determination of moneys due from employers.-(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any

Deputy Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order.

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be;

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

5. No counter affidavit was filed on behalf of O.P. No. 2 in any of the cases. Earned Counsel appearing for O.P. No. 2 could not deny that the petitioners'' Company had raised a dispute regarding the applicability of the Act and such a dispute was still pending before the competent Provident Fund Authority within the meaning of Section 7A of the Act. He, however, advanced the argument that the petitioners'' Company had been awarded Code No. BR/2325 which fact finds mentioned in Para 3 of the complaint petition and hence, the provisions of the Act were applicable to the establishment of the Company. Earned Counsel was, however, unable to bring to the notice of the court any provision of the Act or Rules framed there-under raising a presumption that once a Code number was allotted in relation to an establishment, any dispute raised regarding the applicability of the Act to such establishment, will be deemed to have been decided against the establishment.

6. The petitioners have filed a copy of the show cause filed on behalf of the Company before the Commissioner, Employees'' Provident Funds and Miscellaneous Provisions Act. The show cause is dated 20.10.1990 which is Annexure-6. It also refers to the earlier letters sent by the Company raising objection to the applicability of the Act and reiterating their earlier stand that the Company was not covered under the Act. The application also contains an averment that in the proceeding u/s 7A of the Act, the petitioners'' Company had filed attendance registers for a number of years for the satisfaction of the Provident Fund authority that the Company was not an establishment within the meaning of the Act.

7. The question for consideration is as to whether the petitioners''-Company could be prosecuted for non-compliance with the provisions of the Act when they had already raised a dispute regarding the applicability of the Act to their establishment before a competent Provident Fund authority u/s 7A of the Act. The Act has provided a mechanism as to how such a dispute raised has to be decided. It involves an inquiry which is quasi judicial in nature and the dispute regarding the applicability which may be raised under Clause (a) of Sub-section (1) of Section 7A of the Act, has to be decided only after giving reasonable opportunity to the employer concerned representing his case. Under the scheme only Central Provident Fund Commissioner, Additional Central Provident Fund

Commissioner, Deputy Provident Fund Commissioner and Assistant Provident Fund Commissioner are required to decide the dispute by an order after conducting an inquiry. Once such a dispute regarding the applicability of the Act to the establishment is raised, and is pending inquiry before the competent authority u/s 7A of the Act, such a dispute has to be decided first before determining the amount due from any employer under any provisions of the Act or the schemes within the meaning of Clause (b) of Sub-section (1) of Section 7A of the Act. This is because if the establishment was not covered under the Act, there was no question of determination of moneys due from the employers in course of the inquiry.

8. For the foregoing reasons, I am of the view that the Provident Fund authority, without deciding the dispute regarding the applicability of the Act to the petitioners'' Company raised by them in course of the inquiry proceeding u/s 7A of the Act, was not competent to launch any criminal prosecution against the petitioners for contravention of the provisions of the Act. The criminal prosecution launched on the basis of the complaint petitions including the order taking cognizance, are thus an abuse of the process of the court and their quashing is necessary to secure the ends of justice. I order accordingly and allow this batch of criminal miscellaneous cases.

9. Since the criminal prosecutions have been quashed on a technical ground, it shall be open to the competent Provident Fund Authority to decide the pending dispute and take action for criminal prosecution of the petitioners in accordance with law.

