

(1976) 08 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1343 of 1967

Daulat Ram Dharam Bir

APPELLANT

Vs

Regional Provident Fund Commissioner etc.

RESPONDENT

Date of Decision : 27-08-1976

Acts Referred:

Citation : (1976) ILR Delhi 768 : (1977) LabIC 1010

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : C.V. Francis, S. Pappu and C.K. Mahajan, for the Appellant;

Judgement

(1) M/S. Daulat Ram Dharam Bir is a, partnership firm. They are engaged in the business of automobile and tractor parts. That the partnership firm was covered by the Employees Provident Fund Act, 1952 is not disputed.

(2) To begin with the petitioner firm employed more than 20 persons. During April 1965 to Mar 1966 the case of the petitioner firm is that the strength of their employees fell below 15. The petitioner firm sent returns to the Regional Provident Fund Commissioner saying that they were not covered by the Act as during this period the strength of their employees was below 15. Therefore, nothing by way of contribution was payable by them, they said. The Regional Provident Fund Commissioner denied this. He claimed that for the period in dispute i.e. from April 1965 to March 1966 the petitioner firm was liable to pay Rs. 1688.60. He asked the Collector to recover the amount from the petitioner.

(3) On September 14, 1967, the petitioner firm brought a writ petition under Art. 226 and 227 of the Constitution. In the petition two prayers were made. The first was that the Employees' Provident Funds Act 1952 (the Act) and the Scheme framed there under be declared as unconstitutional. The second prayer was that the order of the Regional Provident Fund Commissioner directing the Assistant Collector to recover Rs. 1668.60 from the petitioner firm be quashed.

(4) The counsel for the petitioner has not prsed the first prayer of the writ

petition. He has confined himself to the second. The only question which remains for decision is: whether the amount of Rs. 1668.60 for the period from April 1965 to March 1966 is due from the petitioner firm on account of employer's contribution.

(5) Counsel for the petitioner says that during the relevant period from April 1965 to March 1966 the petitioner never employed more than 14 persons and Therefore the Act and the scheme had ceased to apply to the establishment and he had been sending nil returns during this period as no employee was eligible for membership of the scheme, none having completed 240 days of continuous service with the petitioner. Counsel does not dispute that the Act is applicable to the petitioner firm. All that he says is that from April 1965 onwards the firm did not engage employees who had completed 240 days of continuous service. This is the sole ground on which he disputes the liability to pay the employer's contribution to provident fund.

(6) The Regional Provident Fund Commissioner opposes the petition. In the counter-affidavit it is said that the petitioner firm submitted "nil returns" only for the period from April 1965 to December, 1965. On behalf of the Regional Provident Fund Commissioner it is argued that the petitioner firm had incurred the liability under the Act as it did not give any notice as required by S. 1(5) of the Act. S. 1(5) of the Act reads:

"1.(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty: Provided that where for a continuous period of not less than one year the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any Scheme framed there under, with effect from the beginning of the month following the expiry of the said period of one year, but he shall, within one month of the date of such cessation, intimate, by registered post, the fact thereof to such authority as may be specified by the appropriate Government in this behalf."

(7) The proviso to sub-s. (5) lays down the method by which the employer in relation to his establishment may cease to give effect to the provisions of the Act and the Scheme framed there under. Otherwise the establishment to which the Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below 20. The only method laid down in the proviso for getting out of the application of the Act is that if for a continuous period of not less than one year the number of persons employed has been less than 15, then at the expiry of such year a notice may be given to the authority concerned. The establishment can cease to give effect to the application of the Act from the beginning of the month following the expiry of the period of one year in which the number of employees was less than fifteen. But the only prescribed method in which the establishment can "cease to give effect to the provisions of this Act and any Scheme framed there under" is to give

within one month of the date of such cessation intimation by registered post to the specified authority of such cessation.

(8) Therefore the rule is that the establishment to which the Act applies will continue to be governed by the provisions of this Act except where the notice is given at the expiry of one year provided during that year the number of workers fell below 15. If this notice is not given the Act continues to apply. This is the only mode by which the employer can get rid of the liability under the Act. As the statute prescribes this mode no other mode can be adopted for achieving this object. (See *Taylor v. Taylor* (1876) 1 Ch.D. 426 AIR 1936 253 (Privy Council) *State of Uttar Pradesh Vs. Singhara Singh and Others*, .

(9) Admittedly in this case the petitioner firm did not give any notice. All that they did was that they filed nil returns from April, 1965 to December, 1965. In my opinion the Regional Provident Fund Commissioner is right in asking the petitioner to pay Rs. 1668.60. If the notice under the Act is not given by registered post the Act does not cease to apply. In the proviso the important words are :

"THE employer may in relation to such establishment may cease to give effect to the provisions of the Act and any Scheme framed there under."

provided at the end of one year he gives notice by registered post of the fact that for a continuous period of not less than one year the number of persons employed in his establishment had been less than 15. If intimation is given to the authority in this manner at once the employer "may cease to give effect to the provisions of the Act and the scheme framed there under".

(10) Counsel for the petitioner has argued that there shall be no liability of the employer if he is able to show to the Regional Provident Fund Commissioner that during a particular period there were no employees engaged by him who had completed 240 days of continuous service with the petitioner. For this he relies on paragraph 26 of the Scheme framed by the Central Government u/s 5 of the Act. Paragraph 26 appears in chapter Iv which is entitled "Membership of the Fund." Paragraph 26 deals with the qualifications of employees who are entitled to join the fund. It has nothing to do with the application of the Act. I do not think that an employer can "cease to give effect to the provisions of the Act and the Scheme framed there under" without informing the authority in the manner prescribed. The employer cannot get away with his liability merely by filing nil returns. He cannot say : "As the number of employees has fallen below 151 do not give effect to the provisions of the Act". The Act is quite clear. It says :

"AN establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty."

(11) Mere reduction in the number of employees does not alter the position. "The Act does not automatically cease to apply the moment the number of persons fall

below fifteen. The employer has to give notice by registered post as prescribed by the proviso to sub-sec. (5) of S.I of the Act. Only then he can cease to give effect to the provisions of the Act.

(12) The view that I have taken above has been expressed in several unreported decisions of the High Courts. The first in point of time is a decision of the Division Bench of the Madhya Pradesh High Court in Messrs. Shrikrishna Rice Mills Barghat v. The Regional Commissioner, Employees Provident Fund Madhya Pradesh, Misc. Petition No. 172 of 1967, decided on November 26, 1969 by Bishamber Dayal C.J. and K. D. Pandey J, The second is the decision of a single judge of the Andhra Pradesh High Court in Takasi Satyanarayana Bus owner v. Regional Provident Fund Commissioner, Andhra Pradesh, Hyderabad, Writ Petition No. 5576 of 1968 decided on November 27, 1970,(5). The third is a decision of this Court in Cr. R. No. 309 of 1973-Santosh Kumar Gupta v. The Provident Fund Inspector, decided on March 25, 1974,(6) by R. N. Aggarwal J.

(13) I am aware that H. L. Anand J. in Amar Nath and Others Vs. Regional Provident Fund Commissioner, Delhi, , (7) has taken a somewhat different view. It appears that the above cited three decisions were not brought to his notice. I also find that the facts of that case were different from the present one. I say nothing about the judgment of H.L. Anand J. as a letters patent appeal is pending against his decision.

(14) Counsel for the petitioner referred me to The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, . In my opinion that case is of no assistance to us in deciding the point at issue.

(15) For these reasons I would dismiss the writ petition with costs. Counsel's fee Rs. 250.