**(1997) 04 DEL CK 0023**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 3608 of 1992

Delhi State Mineral Industrial Development Corporation Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

**Date of Decision :** 24-04-1997

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (1997) 70 DLT 311

**Hon'ble Judges :** Dalveer Bhandari, J

**Bench :** Single Bench

## Judgement

Dalveer Bhandari, J.

(1) This writ petition has been preferred on behalf of the Delhi State Mineral Industrial Corporation Ltd. In this writ petition, the petitioner Corporation has prayed that order dated 1.6.1992 be quashed. The petitioner has further prayed that the respondents be restrained from giving effect to the said order in any manner for instituting any further proceedings in pursuance of the said- order. The petitioner-corporation is a Company incorporated under the provisions of the Companies Act, 1956. The petitioner-Company is entirely a Government owned Company. The petitioner-corporation has become a separate and legal entity and was named as the Delhi State Mineral Development Corporation from the year 1986. Prior thereto, it was part of the Delhi State Industrial Development Corporation and was carrying out activities including mining and other connected activities in Delhi. In the year 1986, the petitioner-corporation was created. It is stated in the petition that the petitioner-corporation is in no way dependent upon or connected with the Dsidc, which is an independent legal entity as is clear from the Articles of Association and Memorandum of Association of the Corporation.

(2) The Government had published a notification dated 17.5.1989 enhancing the Employees Provident Fund from 8.33 per cent to 10 per cent as per the notification.< /p> (3) Ms. Anusuiya Salwan, learned Counsel for the petitioner submitted that the petitioner-corporation is not carrying on the activities

mentioned in the Schedule and not covered by the notification. Since the petitioner is not covered by the notification, Therefore, the petitioner-corporation not under an obligation to pay the 10 per cent towards the Employees Provident Fund.

(4) The notification dated 17/05/1989 regarding Employees Provident Fund by which the rate has been enhanced from 8.33% to 10% the relevant portion of the notification reads as under :

"IN exercise of the powers conferred by the first proviso to Section 6 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of1952), the Central Government hereby specifies, with effect from the 1st day of June, 1989, every establishment in the industries specified in the said schedule, as the establishments and classes of establishments to which the said proviso shall apply."

(5) It is mentioned that the notification shall be applicable to the following categories of mining:(a) Bauxite(b) China Clay(e) Chromite(d) Diamond(e) Dolomite(f) Graphite(g) Iron ore(h) Lignite(i) Lime stone(j) Magnetic(k) Manganese; and(1) Mica

(6) According to the learned Counsel for the petitioner the aforesaid notification is not applicable to the petitioner-corporation and the petitioner-Corporation is not under any obligation to pay that enhanced rate of Employees Provident Fund from 8.33% to 10%. On 5/02/1992, the representative of the petitioner-corporation made submissions before the Regional Provident Fund Commissioner, New Delhi and submitted written submissions. In the written submission it was categorically mentioned that the petitioner-corporation has nothing to do with the Delhi State Industrial Corporation Limited. The petitioner-corporation by no stretch of imagination is a unit of the DSIDC.

(7) It was categorically stated that the petitioner-corporation does not mine any of the products/minerals stated in Serial No. 67 aforementioned in the notification. The petitioner-corporation was engaged only in mining of what is known in common parlance as ''Badarpur'', and technically as Quartzite sand, Yamuna sand and Stone (Jellys) used in the construction activities are the petitioner''s mining ventures. The Regional Fund Commissioner has mentioned in the order that the petitioner-corporation i.e. Delhi State Mineral Development Corporation Limited was originally part of the Delhi State Industrial Development Corporation, DSIDC. It is also mentioned that the Dsidc is covered under the schedule" Commercial and Training Establishment" and rate of contribution has been ''enhanced to 10% to the establishment covered under schedule "Trading and Commercial Establishment" and accordingly the department has claimed that the establishment is required to contribute at enhanced rate. The Regional Provident Fund Commissioner has mentioned the fact that the petitioner-corporation is a separate legal entity and is of no significance for the purpose of applicability to enhanced rate contribution and the prayer of the petitioner-

 

corporation was rejected and directed the petitioner-corporation to pay at the enhanced rate. The fact that the petitioner-corporation is not mining any of the products/minerals stated in Serial No. 67 of the notification is not disputed.

(8) It may be pertinent to mention that by the order of this Court dated1.8.1995, an opportunity was given to the respondents to place on record, whether in fact the petitioners are carrying on the activities which are included in the Schedule. Order dated 1.8.1995 reads as under:

"COUNSEL for the respondent seeks time to ascertain whether main objects mentioned in the Memorandum of Association are being undertaken by the petitioner or not. Request allowed. Let her file affidavit, if she so likes, within four weeks with advance copy to Counsel for the petitioner, who may file the counter-affidavit, if any, within four weeks thereafter. List this application as well as main writ petition for final disposal on 2 6/10/1995 at the end of "After Notice Misc. Matters".

(9) On 26/10/1995, further four weeks'' time was granted to the respondent but the affidavit was not filed. On 1 1/03/1996, one week''s further time was granted and till date, no affidavit has been filed. Learned Counsel for the respondents submits that even today she is not in a position to file an affidavit that the petitioners are covered by the Schedule of the notification.

(10) Admittedly, when the petitioner-corporation is not mining any of the products/minerals stated in Serial No. 67 of the notification in that event whether the liability of enhanced E.P.A. rate can be made applicable to the petitioner-corporation only on the ground that once upon a time the petitioner-corporation was part of the Delhi State Industrial Development Corporation is the only question for adjudication in this petition.

(11) I have heard learned Counsel for the parties at length and perused the notification issued by the respondent. The petitioner-corporation was part of the Delhi State Industrial Development Corporation until 1986. In the year 1986, the petitioner-corporation became a separate legal entity and was named as the Delhi State Mineral Development Corporation. Admittedly, the petitioner-corporation is not mining any of the products/minerals stated in Serial No. 67 of the notification and is engaged in mining of Badarpur technically known as Quartzite sand, Yamuna sand and Stone (Jellys) used in construction activities.

(12) The petitioner-corporation is admittedly a separate and distinct legal entity since 1986. The obligation of enhanced payment of employees provident fund cannot be imposed on the petitioner-corporation of the ground that one upon a time(before 1986) the petitioner-corporation was a part of the Dsidc (Delhi State Industrial Development Corporation). It is wholly uncontroversial position that since 1986 the petitioner-corporation is a separate and distinct legal entity.

(13) In this view of the matter, this writ petition deserves to be allowed, andI order accordingly. The impugned notification shall stand quashed as far as the

 

petitioner Corporation is concerned. In the fact and circumstances of this case, I direct the parties to bear the costs.

 