
(2014) 09 CAL CK 0079
In the Calcutta High Court
Case No : M.A.T. No. 228 of 2014

Employees" Provident Fund Organization	APPELLANT
Vs	
Employees" Provident Fund Appellate Tribunal	RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

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

Citation : (2015) 144 FLR 481 : (2014) 4 LLJ 537 : (2015) LLR 387

Hon'ble Judges : Tapash Mookherjee, J; Jyotirmay Bhattacharya, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya and Shiv Chandra Prasad, Advocate for the Appellant; Soumya Mazumdar and Tarique Quasimuddin, Advocate for the Respondent

Judgement

1. Applicability of the Employees" Provident Fund & Miscellaneous Provisions Act, 1952 to the appellant viz. Mezban Restaurant is in question before us in this appeal at the instance of the Employees Provident Fund Organization and the Regional Provident Fund Commissioner. By an order dated 18th August, 2006 passed by the Assistant Provident Fund Commissioner, Kolkata under Section 7A of the Employees" Provident Fund & Miscellaneous Provisions Act, 1952, it was held that the provision of the said Act is applicable to the establishment of the respondent viz. Mezban Restaurant with effect from 13th January, 2003. The said establishment felt aggrieved. Accordingly, it filed an appeal before the Employees Provident Fund, Appellate Tribunal, New Delhi challenging the order dated 18th August, 2006 passed by the Assistant Provident Fund Commissioner, Kolkata. The said appeal was ultimately allowed by the Appellate Tribunal and the order passed by the Assistant Provident Fund Commissioner, Kolkata holding that the provisions of the said Act are applicable to the said establishment was set aside.

2. The legality and/or propriety of the said order of the Appellate Tribunal was challenged by the Employees Provident Fund Organization and Another viz. the appellants before us by filing a writ petition being W.P. No. 34052(W) of 2013

before the Learned Single Judge of this court. The said writ petition was dismissed by the Learned Trial Judge on 11th December, 2013 by holding, inter alia, that the writ petition at the instance of the provident fund authority, is not maintainable for want of locus.

3. The legality and/or propriety of the said order is under challenge in this appeal at the instance of the Employers Provident Fund Organization and Another.

4. In course of hearing of this appeal, our attention was drawn to different provisions of the said Act and the scheme made thereunder, to show as to who can file a writ petition as a party aggrieved for challenging such a determination made by the authorised officer under Section 7A of the said Act.

5. According to Mr. Bhattacharya, Learned Senior Advocate appearing for the appellants submits that since the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, which is an enactment in the nature of social security measure for the employees and implementation of the provision of the said Act vests with the Provident Fund Organization, the Provident Fund Organization has the right to challenge any order passed by the Tribunal affecting the interest of the employees for whose benefit such Act was enacted and the said organization exists.

6. He further submits, that "person aggrieved" has not been defined in the Act itself. Considering the background in which the said Act was enacted, "person aggrieved" according to him, cannot be given its literal meaning as one ordinarily understands.

7. Placing the object for which the said Act was enacted, in details, Mr. Bhattacharya submitted that the words "person aggrieved" mentioned in Section 7-I of the said Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interest as it has been interpreted by the Hon'ble Supreme Court in the case of Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, wherein it was held that meaning of the words "person aggrieved" may vary according to the context of the statute.

8. It was further held therein that normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "person aggrieved", but this restricted meaning cannot be given in the background of the statutes which do not deal with property rights but deal with professional conduct and morality.

9. The said decision which was cited by Mr. Bhattacharya was sought to be distinguished by Mr. Mazumdar, Learned advocate appearing for the respondents by referring to a decision of the Hon'ble Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, we feel that the principle laid down in the said decision has no application in the facts of the instant case as the Act under which the order was issued by the Transport Authority by granting route

permit is not an Act in the nature of Social Welfare Legislation unlike the present one which is now before us.

10. Since the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is an Act in the nature of Social Welfare Legislation and since the said Act was enacted for the benefit of the employees being the weaker section of the society and the administration of the provision of the said Act was vested with the Central Board, we are of the view that the principles laid down in the decision cited by Mr. Bhattacharya as referred to above is applicable in the facts of the instant case and as such we hold that the writ petition is maintainable at the instance of the organization.

11. Let us now consider as to whether the workers can be regarded as "person aggrieved" in the context of the submission of Mr. Mazumdar who contended that "person aggrieved" means only the person who is adversely affected by the order passed by the authority under Section 7A of the said Act. According to him it is the employer and/or employee who will be adversely affected by the order passed under Section 7A of the said Act, can challenge the legality of such order before the Appellate Tribunal under Section 7-I of the said Act, as a party aggrieved.

12. Even assuming we accept such submission of Mr. Mazumdar, then it necessarily follows that the employers, employees or the employees' union are necessary parties in the said proceeding and any of them against whom such determination is made may challenge the same in appeal before the Appellate Forum.

13. Here is the case where we find that Mr. Mazumdar's clients viz. the employer filed the appeal before the Learned Tribunal challenging the order passed by the Assistant Provident Fund Commissioner without joining either the employees or the employees' union though they were parties before the authorized officer in 7A proceeding. The appeal was filed by joining the Assistant Provident Fund Commissioner only who passed the impugned order.

14. Since the applicability of the said act was held by the authority to the benefit of the Employees, we feel that the employees should have been impleaded as parties in the said appeal before the Learned Tribunal. In our considered view, the Learned Tribunal ought not to have passed any order affecting the interest of the employees without hearing them. The appeal in our view, ought to have been dismissed by the Learned Tribunal on the ground of non-joinder of the necessary parties.

15. Accordingly, we dispose of this appeal by setting aside the impugned order of the Learned Tribunal passed on 18th August, 2006 with liberty to the private respondent to cure the defect in the said appeal before the Learned Tribunal within 8 weeks from date and if such steps are taken by the private respondent and the appeal is regularized after curing the defects in it as mentioned above, the Learned Tribunal will dispose of the said appeal on merit after giving

reasonable opportunity of hearing to all the parties.

16. The impugned order passed by the Learned Trial Judge stands set aside.

17. In view of the disposal of the appeal itself, no further order need be passed on the stay application which is deemed to be disposed of.

18. The application for stay being CAN 3073 of 2014 is thus, deemed to be disposed of. Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocate for the appellants immediately.