(2003) 05 CAL CK 0010

In the Calcutta High Court

Case No : Writ Petition No. 15046 (W) of 2000

Gajanand Commercial Pvt. Ltd. and Another APPELLANT

Vs

Central Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 17(1)

Citation : (2003) 3 CALLT 81 : 108 CWN 622 : (2004) 1 LLJ 540

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : P.S. Sengupta, Debashis Kundu and Sandip Agarwal, for the Appellant;B.R. Bhattacharya, Tapas Banerjee and Triptimoy Talukdar for Respondent Nos. 6 to 11, for the Respondent

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—Megna Mills Co. Ltd. had two jute mills known as Megna North Mill and Megna South Mill at Jagatddal, West Bengal which were lying closed for a long time. By an agreement between said Megna Mills Co. Ltd. and the petitioner No. 1, approved by this Court, the said Megna Mills Co. Ltd. transferred, sold and conveyed its South Mill in favour of the petitioner No. 1 for a consideration and the petitioner agreed to make payment of all liabilities of Megna Mills Co. Ltd. amounting to Rs. 650 lakhs. The petitioners started running the said mill under a scheme approved by this Court which came into effect from 1st March, 1987.

2. An exemption had been granted u/s 17(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to the said company on 17th October, 1957.

3. In the year 1999 the terms and conditions of exemption originally granted to the said establishment u/s 17(1) of the said Act were sought to be revised and accordingly a notice dated April 23, 1999 was issued proposing introduction of

revised terms and conditions for grant of exemption to which the petitioners were to file their objection within 30 days. The petitioners filed their objection by letter dated May 21, 1999. The respondents issued show-cause notice dated December 27, 1999 to the petitioners calling upon them to show cause within 15 days of the receipt of the said notice as to why (a) exemption granted to the establishment be not recommended for cancellation to the appropriate authority for violations mentioned in the said notice and (b) prosecution case u/s 14 be not launched against the establishment and reasonable persons.

4. The petitioners gave reply to the said show cause notice.

5. When without giving the petitioners any hearing by a letter dated 13th July, 2000 the respondents purported to cancel the exemption, the present writ application was filed challenging such course of action.

6. During pendency of the said writ petition, on September 28, 2000, the learned counsel appearing for the Regional Provident Fund authorities informed that the authorities have disposed of the said show cause notice and has recommended withdrawal of exemption granted originally to the petitioners and an appropriate notification has already been proposed. By the said order an interim order was passed directing stay of operation of the recommendation and the Central Government was restrained from publishing any notification withdrawing the exemption. The said interim order was extended by subsequent orders.

7. The said recommendation by the Regional Provident Fund Commissioner and the proposed notification were brought on record by a supplementary affidavit filed by the petitioners.

8. The respondent Nos. 1 to 4 also filed affidavit-in-opposition to the writ petition dealing with the case made by the petitioners.

9. Mr. Partha Sarathi Sengupta, learned counsel for the petitioners contended that the respondent Nos. 1 to 4 in paragraph 4 of the said affidavit-in-opposition disclosed the following facts:

"4. With reference to the allegations made in paragraphs 11, 12, 13, 14, 15 and 16 of the said application, I deny the same. I say that the terms and conditions of exemption granted to M/s. Megna Jute Mills u/s 17(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) was sought to be revised and accordingly, by a notice dated 23rd April, 1999, the 29 points of revised conditions of exemption was forwarded to the petitioners with a direction to file their objection, if any, on the said 20 points of revised conditions of exemption with 30 days from the date of receipt of the above notice. I say that the petitioners filed their objections to the said 29 points of revised conditions of exemption by a letter dated 21st May, 1999, the objection put forward by the petitioners in para 13, 14 and 15 were not convincing and lacked precision and legal sanctity. The said objection were not acceptable to the concerned respondents and accordingly, a show-cause notice dated 27.12.99 was issued to the petitioners calling upon them to show-cause within 15 days on receipt of the said notice as to why exemption granted to the establishment be not recommended for cancellation to the appropriate authority for violations as mentioned in the notice dated 27.12.99."

10. The above pleading read with recommendation made by the Regional Provident Fund Commissioner and the proposed notification, make it clear that the terms and conditions of exemption granted to the company originally u/s 17(1) of the said Act were sought to be revised and accordingly a notice dated 23rd April, 1999 were issued proposing 2 revised conditions for exemption and when the petitioners filed their objection thereto and such objection found not convincing and lacked precision and legal sanctity, the said show cause notice dated 27th December, 1999 was issued to the petitioners calling upon them to show cause within 15 days on receipt of the said notice as to why exemption granted to the establishment originally be not recommended for cancellation to the appropriate authority. In such circumstances, it is contended by the petitioners that according to the own case of the respondents, the show cause notice was issued proposing cancellation of the exemption only because the objection filed by the petitioners to the proposed revised conditions were found not acceptable and this according to Mr. Sengupta, learned counsel for the petitioners, amounted to malice in law and vitiated the proceeding initiated by the show cause notice as in such circumstances, the original exemption could not be proposed to the cancelled. It is stated that the said show cause notice was issued as a coercion compelling the petitioners to accept the revised terms and conditions.

11. It is further contended by Mr. Sengupta that according to the provisions contained in Section 17(4) of the said Act that exemption once granted can be cancelled only by an order in writing by the authority which granted exemption and in the present case there being no order passed by the Central Provident Fund Commissioner, the notification proposed to be published cancelling the exemption cannot be at all allowed to be published.

12. Mr. Sengupta, learned counsel appearing for the petitioners also advanced contention with regard to the grounds contained in the show cause notice for showing that those are neither permissible in law nor are possible on facts. But as the merit of the show cause notice and its reply are required to be considered by the appropriate authority in accordance with law as referred to hereinabove, the same cannot be considered as a subject matter of the present writ petition.

13. Mr. Bikash Ranjan Bhattacharjee, learned counsel appearing for the Workers Union, supported the contentions of the petitioners in respect of the said show cause notice.

14. Mr. Chakraborti, learned counsel for the respondents authorities advanced contentions that the matter was duly considered by the Regional Provident Fund Commissioner and on the basis of such consideration he duly recommended for

cancellation which is absolutely permissible within the scope of the law applicable in respect thereof. On behalf of the said respondents authorities, it is further contended that the action of the authorities in this respect could not be challenged in the manner it has been done in the present writ petition.

15. Considering the aforesaid contentions, I find the provisions of law relevant for the present purpose are contained in Sub-section 1, 1A and 4 of the Section 17 of the said Act, which are set out herein below;

"Power to exempt-

(1) The appropriate Government may, by notification in the official Gazette, and subject to such conditions as may be specified in the notification, whether prospectively or retrospectively, from the operation of all or any of the provisions of any scheme-

(a) any establishment to which this Act applies, if in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any scheme in relation to the employees in any other establishment of a similar character, or

*** *** ***

(4) Any exemption granted under this section may be cancelled by the authority which granted, it by order in writing, if an employer fails to comply-

(a) in the case of an exemption granted under Sub-section (1) with any of the conditions imposed under that sub-section (or Sub-section 1A) or with any of the provisions of Sub-section (3);

(aa) in the case of an exemption granted under Sub-section (1C) with any of the conditions imposed under that sub-section; and

(b) in the case of an exemption granted under Sub-section (2), with any of the provisions of Sub-section (3);

(c) in the case of an exemption granted under Sub-section (2A), with any of the conditions imposed under that sub-section or with any of the provisions of Sub-section (3A);

(d) in the case of an exemption granted under Sub-section (2B), with any of the provisions of Sub-section (3A);"

16. From the aforesaid provisions of law, it is apparent that the authority which granted exemption to the establishment concerned, is the only authority which can cancel the exemption. In the present case, it appears from annexure A to the writ petition dated 17th October, 1957, that the exemption was granted u/s 17 by the notification under the signature of the Central Provident Fund

Commissioner. Therefore, the cancellation of such exemption could be only by the said authority namely. Central Provident Fund Commissioner. In the facts of the present case, I find the matter was considered by the Regional Provident Fund Commissioner and it made a recommendation which the said authority was entitled to make. But no final order for cancellation of such exemption nor any notification to the said effect could be published without the matter being decided by the Central Provident Fund Commissioner being the appropriate authority for the purpose. Apparently there is no decision filed by the Central Provident Fund Commissioner in respect of recommendation made by the Regional Provident Fund Commissioner and in such circumstances, there was no question of issuance of any notification cancelling the exemption earlier granted to the petitioners.

17. With regard to the recommendation made by the Regional Provident Fund Commissioner though he is appropriate authority for the said purpose, but in the present facts when the recommendation notice was issued proposing 29 revised conditions for the exemption and the petitioners filed their objection thereto, there was no reason issuing the impugned show cause notice by the Regional Provident Fund Commissioner proposing cancellation of exemption itself as even if the objection filed by the petitioners was rejected, at best the revised conditions could be imposed if those were otherwise permissible in law. Upon rejection of such objection by the petitioners to the said proposal for revised conditions, there could not be any show cause notice issued in respect of cancellation of exemption. Paragraph 4 of the affidavit-in-opposition filed by the respondents makes it clear that such action was taken by the authority concerned as the affidavit-in-opposition was also on behalf of the said authority. In such view of the matter I am also of the opinion that the show cause notice could not be issued under such circumstances proposing cancellation of exemption already granted.

18. In the short note of the argument on behalf of the Provident Fund authorities, filed through their learned counsel, it appears that the gazette notification dated November 4, 2000 has been referred to as an annexure to the said written notes, but in fact no such copy of the gazette has been annexed thereto. The written argument further shows that cancellation of exemption was under Sub-section 4 of Section 17 and in respect of the same findings have been recorded hereinabove already. In the said written notes, allegation has been made that cancellation of exemption was made on certain reasons; but as already I have been observed hereinabove that in the facts of the case the said cancellation cannot be given effect to and in fact no notification has been shown to have been issued and the statements made in paragraph 4 of the affidavit-in-opposition has been admitted as correct, no further consideration of the said aspect is felt required.

19. In view of the aforesaid findings and no other contention having been raised which was required to be considered in the present proceeding, the writ petition

is allowed and the decision taken by the authorities dated 13th July, 2000 (annexure G to the writ petition) issued by the Regional Provident Fund Commissioner is hereby quashed and the respondents are permanently restrained from issuing any notification cancelling exemption granted to the petitioners u/s 17 in the present facts as there was no decision by the Central Provident Fund Commissioner for such cancellation. But I make it clear that the respondents authorities are entitled to take appropriate action in accordance with law in respect of the petitioner company. All interim orders including the interim order dated 28th September, 2000 are hereby vacated and the respondent authorities will dispose of all applications already filed by the workmen in respect of their various claims from Provident Fund account in accordance with law.