(1998) 05 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18902 of 1998

Ghanshyam Cold Storage APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (1998) 3 UPLBEC 1853

Hon'ble Judges : S. Rafat Alam, J

Bench : Single Bench

Advocate : L.K. Dwivedi, for the Appellant; Satish Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam, J.—This petition under Article 226 of the Constitution is directed against the order of the Assistant Commissioner, Employees Provident Fund, Varanasi, dated 2.4.1998, passed u/s 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952, (for short the Act), determining the liability of the petitioner under the Act for the payment of provident fund to its employees.

2. Heard Sri L.K. Dwivedi, learned Counsel for the petitioner and Sri Satish Chaturvedi, learned Counsel for the respondents. With the consent of the parties, this case is being disposed of at this stage without calling for the counter affidavit.

3. It appears that Ghanshyam Cold Storage was established in the year 1980 and is mainly engaged in purchase, sale and storage of potatoes and other perishable commodities. It has been asserted that the petitioner has not engaged more than 20 persons at any point of time nor any manufacturing process is being carried on in the premises of the Cold Storage and, therefore, the provisions of the Act is not applicable to the petitioner.

4. It appears that a proceedings u/s 7A of the Act was initiated against the petitioner regarding the applicability of the Act and also to determine the amount due against the provident fund to its employees. Consequently, a notice was issued to the petitioner, in response to which he gave his show cause on 19.3.1998, wherein it has been asserted that at no point of time 20 or more persons were employee of the petitioner and, therefore, the provisions of the Act are not applicable to the establishment. Thereafter another notice was given to the petitioner on 27.3.1998 (Annexure-2 to the petition), directed him to attend the enquiry on 17.4.1998 along with the copies of challans, month-wise dues deposit statement and the records, such as, attendance register, payment register, books of accounts and copies of balance sheet. It was further indicated in the notice that no further extension will be allowed and in the event of failure on the part of the petitioner to attend the enquiry exparte assessment will be made. In pursuance thereof, the petitioner again filed his show cause on 17.4.1998 reiterating his earlier stand that the petitioner has never employed 20 or more persons in the Cold Storage. However, surprisingly, before the expiry of the date fixed for further enquiry to the matter, by the impugned order dated 2.4.1998, respondent No. 2 directed the petitioner to deposit the amount of provident fund payable to its employees for the period commencing from January, 1993 to May 1997, as during that period there were 28 employees working in the petitioner''s establishment and, therefore, it is covered under the provisions of the Act.

5. In this back-drop, learned Counsel for the petitioner contended that without affording full opportunity of hearing and producing the record, respondent No. 2 by a non-speaking order, fastened the liability of provident fund on the petitioner. It has also been contended that since at no point of time the petitioner engaged 20 or more employees, and as such the provisions of the Act cannot be enforced against him. Sri Satish Chaturvedi, learned Counsel appearing for the respondent, on the other hand, failed to explain as to under what circumstances the impugned order has been passed on 2.4.1998 when the matter was fixed for further hearing and production of records on 17.4.1998.

6. From a perusal of the impugned notice dated 27.3.1998, it is evident that the petitioner was called upon to show cause and to produce relevant records and, therefore, there is no justification to pass the impugned order prior to the date fixed in the proceedings and without giving full opportunity of hearing and without perusing the relevant records. In this view of the matter, the whole proceeding is vitiated and the impugned order cannot be sustained and deserves to be quashed on this ground alone.

7. In the result, the petition succeeds and is allowed. The impugned order dated 2.4.1998 is hereby quashed and the matter is remitted back to respondent No. 2 for passing a fresh order after affording full opportunity of hearing to the petitioner and after perusing the relevant records. It is needless to emphasize that respondent No. 2 after hearing the petitioner and after verifying the relevant

records, shall decide the liability of the petitioner by a reasoned order, Parties shall bear their on costs.

