(1990) 12 AHC CK 0022

In the Allahabad High Court

Case No : C.M.W.P. No. 2845 of 1981 & Civil Misc. Writ Petition No. 2845 of 1981

Goel Textile Industries and Another — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 17-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10(3), 16, 19A, 2, 2A

Citation : (1991) 1 AWC 205

Hon'ble Judges : S.K. Dhaon, J;D.S. Sinha, J

Bench : Division Bench

Advocate : A.K. Yog, for the Appellant; J.N. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J

1. M/s. Goel Textile Industries, Pilkhuwa, Ghaziabad, and its partner Sri Prahlad Saran, the Petitioners No. 1 and 2 respectively, have challenged the legality of the orders dated 5th January, 1979, 2nd July, 1979 and 17th November, 1980. The orders dated 5th January, 1979 and 2nd July, 1979 were passed by the Regional Provident Fund Commissioner, Uttar Pradesh, Kanpur, the Respondent No. 2, in exercise of his powers u/s 7-A of the Employee''s Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter called the "Act" while the order dated 17th November, 1980 was passed by the Central Government the Respondent No. 1 in exercise of powers u/s 19-A of the Act.

2. The case of the Petitioners is that they are carrying on business of manufacturing cotton at a very small scale at Pilkhuwa. The Petitioner No. 1 Is registered under the provisions of the Sales Tax Act, the shops and Commercial Establishments Act and the Small Scale Industries Act. On 20th September, 1976 the Provident Fund Inspector inspected the premises of the Petitioner No. 1. Before the Inspector it was submitted that only seven employees were employed

in the industry and that phirai work was being done through Pilkhuwa Soot Phirai Karyala. Pilkhuwa, whose sale proprietor was Sri Chandra Prakash. A statement was made by one Sri Gyan Prakash on behalf of Sri Chandra Prakash, proprietor of Pilkhuwa Soot Phirai Karyalaya and in the statement the names of fourteen workman and their pay was got recorded. The said Sri Gyan Prakash being partner of M/s. Prahlad Textiles Industries had no connection with or authority to give and sign statement on behalf of Pilkhuwa Soot Phirai Karyalaya. Inspite of a clear statement before him that only seven employees were employed by the Petitioner No. 1 the Provident Fund Inspector erroneously took a view that the firm was employing twenty one employees including the employees employed by Sri Chandra Prakash of Pitkbuwa Soot Pbirai Karyalaya. During the inquiry u/s 7-A of the Act before the Regional Provident Fund Commissioner it was clearly stated that only seven employees were employed by the Petitioner No. 1 and the employees of Pilkhuwa Soot Phirai Karyalaya were not the employees of the Petitioner No. 1. The case set up before the Respondent No. 1 was that the Petitioner No. 1 was only getting soot Phirai work done on contract basis from Pilkhuwa Soot Phirai Karyalaya, which is a sole proprietor, concern of Sri Chandra Prakash and with which the Petitioner No. 1 had got nothing to do. Further, the case of the Petitioners is that Pilkhuwa Soot Phirai Karyalaya was doing contract work of other concerns also on contract basis, In substance, the case set up by the Petitioners that employees of M/s. Pilkhuwa Soot Phirai Karyalaya Pilkhuwa cannot be deemed to be the employed of M/s. Goel Textiles Industries for the purposes of the application of the provisions of the Act.

3. On the other hand, the case set up on behalf of the department of the Regional Providen Fund Commissioner is that M/s. Goel Textile Industries is engaged in manufacture of textiles and is an establishment within the meaning of the provisions of the Act. The department asserts that Pilkhuwa Soot Phirai Karyalaya is merely a section of M/s. Gael Textile Industries, Pilkhuwa and M/s. Prahlad Industries, Pilkhuwa and renders soot Pbirai work without which both the concerns cannot function. According to the department, this is a clear case of subterfuge. To avoid the applicability of various laws the owners have sat up three different units. Sri Satya Prakash, Shri Chandra Prakash and Sri Prahlad Saran are ''the partners of M/s. Goel Textile Industries. Sri Gyan Prakash and Sri Chandra Prairash are the sons of Sri Prahlad Saran. Sri Chandra Prakash is the proprietor of Pilkhuwa Soot Phirai Karyalaya and Sri Gyan Pralfiash is a partner of M/s Prahlad Textile Industries. In the circumstances, all the three establishments have to be clubbed together, although only M/s. Goel Textile Industries and M/s. Pilkhuwa Soot Phirai Karyalaya, Pilkhuwa have been taken into account by the department, for the determination of the question of applicability of the Act.

4. Obviously, the fate of this petition turns on the question as to whether fourteen employees of Pilkhuwa Soot Phirai Karyalaya and the seven employees of M/s. Goel Textile Industries can be clubbed together for the purposes of application of the provisions of the Act. If the employees of the aforesaid establishment can be clubbed together then the provisions of the Act would be

attracted otherwise not.

5. For proper appreciation of the controversy involved herein it is apt to notice certain provisions of the Act. Clause (a) of Sub-section (3) of Section 10 of the Act contemplates that subject to the provisions contained in Section 16 of the Act, every establishment which is a factory engaged in any industry specified in schedule I and in which twenty or more persons are employed shall be covered by the Act. Clause (f) of Section 2 of the Act defines the expression "employees" as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment.

6. It has not been disputed that M/s. Goel Textile Industries is a factory engaged in an industry specified in Schedule I. What is in dispute is the number of persons employed by it. According to the Petitioners, the number of employees employed by M/s. Goel Textile Industries is seven and according to the department the number of employees employed by M/s. Goel Textile Industries for the purpose of the Act is twenty one.

7. Paragraph 2 of the order dated 5th January, 1979 passed by the Respondents No. 2 indicates that Sarvasri Prablad Saran and Satya Prakash of M/s. Goel Textile Industries, Pilkhuwa, Ghaziabad, appeared before the Respondent No. 2 on 5th January, 1979 and contended that the "contractor employees" who were fourteen in number, were not employed by them directly. They were the employees of Sri Chandra Prakash, Proprietor of Pilkhuwa Soot Phlrai Karyalaya. Therefore, they should not be counted as their employees. The partners accepted the report of the Provident Fund Inspector to be correct. They also agreed that while seven employees were employed by them directly fourteen employees were employed through contractor and that the contract was subsisting even at that time. The admission of the partners of M/s. Goel Textile Industries to the effect that seven employees were employed by them directly and fourteen employees were employed through contractor was never challenged either before the Respondent No. 2 or before the Respondent No. 1. Even before this Court the Petitioners have not challenged the accuracy of the factum of aforesaid admission recorded by the Respondent No. 2 in his order dated 5th January, 1979.

8. Clause (f) of Section 2 of the Act clearly provides that any person employeed by or though contractor in or in connection with the work of the establishment shall be deemed to be the employee of an establishment for the purposes of the Act There being clear cut admission of the partners of M/s. Goel Textile Industries to the effect that besides seven employees employed in the establishment fourteen employees were employed through contractor, the number of the employees of M/s. Goel Textile Industries shall, for the purposes of the Act, be twenty one bringing the establishment within the pale of the Act.

9. There is yet another aspect of the matter. Section 2-A of the Act declares that where as establishment consists of different departments or has branches, whether situate in the same place or in different place, all such departments or branches shall be treated an part of the same establishment. It has been found by the Respondent No. 1, as a matter of fact, that there is functional integrity between the two units of M/s. Goel Textile Industrtes and Pilkhuwa Soot Phirai Karyalaya, Pilkhuwa in relation to all the items of work done by them and Pilkhuwa Soot Phirai Karyalaya is a part of the establishment of Petitioner No. 1. This finding is based on relevant considerations, namely, the location of the two units, the work done by Pilkhuwa Soot Phlrai Koryalava, the work of M/s. Goel Textile Industries done by M/s. Pilkhuwa Soot Phirai Karyalaya and the ownership of the units by the members of one and the same family This finding of fact, being based on relevant considerations and having not been demonstrated to be perverse, is not open to challenge in proceedings under Article 226 of the Constitution. The text of ownership, functional integrity, general unity of or purpose and geographical proximity applied by the Respondents for the purposes of coming to conclusion that Pilkhuwa Soot Phirai Karyalaya, Pilkhuwa is a part of establishment of M/s. Goel Textile Industries is fully justified and does not suffer from any such vice as to attract interference by this Court.

10. The net result is that the fourteen employees of Pilkhuwa Soot Phirai Karyalaya, Pilkhuwa have got to be treated as employees of M/s. Goel Textile Industries for the purpose of the Act. Therefore, the total number of the employees of M/s. Goel Textile Industries will be deemed to comprise of its seven employees and the fourteen employees of Pilkhuwa Soot Phirai Karyalaya, Pilkhuwa Computed in this manner the total strength of the employees of the establishment of M/s. Goel Textile Industries shall be twenty one attracting the provisions of the Act. The impugned order are, therefore, upheld. The writ petition fails and is dismissed. The interim orders shall stand discharged. There will be no order as to costs.

