

(2012) 10 JH CK 0024
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3681 of 2007

Gurusharan Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7(A),
7(A)(4), 7(B), 7(I), 7A

Citation : (2012) 135 FLR 910 : (2012) 4 JLJR 575

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : D.K. Chakarvarti, for the Appellant; P.P.N. Roy, Sr. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. Petitioner is aggrieved by order dated 04.08.2004 passed by the respondent no. 2, Assistant Provident Fund Commissioner, Jharkhand, Ranchi whereby, in exercise of power u/s 7A of the Employees' Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as "Act"); the petitioner has been assessed to pay a sum of Rs. 5, 29,471.00/- and further to pay a sum of Rs. 1, 81,231.00/- as interest u/s 7Q of the Act.

2. Learned counsel for the petitioner submits that the petitioner had a business of fabrication of grill and gate etc. at Namkum in the year 1999. Thereafter, petitioner obtained a code number of employees provident fund for his employees, but the establishment of the petitioner was not coming under the purview of the aforesaid Act as because the establishment of the petitioner was having only 5 to 6 employees. The petitioner had worked for 3 to 4 months only whereafter establishment was closed and letter dated 17.11.1999 was sent

under certificate of post to the respondent no. 2, that the petitioner's establishment was no longer operational and work of the establishment had been fully closed. He also requested the respondent no. 2 to close his code no. JH10645. It is further submitted that the petitioner was asked to appear by notice dated 24.04.2004, issued by the respondent no. 2 asking him to file show cause as to why the action may not be taken against him for making default in deduction of EPF dues for the period from June, 1999 to July, 2003.

3. It is submitted that petitioner appeared before the respondent no. 2 and offered his explanation that the establishment in question was operational only for just 3 to 4 months and only 5 to 6 employees were employed during that period and an affidavit sworn before the Notary Public by these three persons claiming to be the employee of the said establishment was submitted in support of the petitioner's contention. Learned counsel for the petitioner also submitted that before bringing the establishment under the coverage of Act, an enquiry inspection ought to have been conducted by the Inspector to the organization, which has not been done and the petitioner was straightway assessed liable for the same. Petitioner, therefore, submitted that he was not required to make any deduction towards Employee Provident Fund and other dues in the aforesaid circumstances. However, the respondent no. 2 had proceeded to pass the impugned order assessing Rs. 5,29,471.00/- u/s 7A of the Act and further Rs. 1,81,231.00/- as dues u/s 7Q of the Act calculated up to 27.07.2004. Learned counsel for the petitioner further submits that pursuant to the interim order granted by this Court, he has deposited total of Rs. 3, 77, 000/- after some delay. It is further submitted that for the same dues, the certificate proceeding was also initiated on the behest of the respondent organization and distress warrant has been issued against the petitioner.

4. It is submitted by the parties that the said distress warrant was recalled after the deposit of the amount as indicated above.

5. Learned counsel for the respondents, on the other hand, submitted that petitioner's establishment was covered under the Act of 1952 since 1999 and notices were issued u/s 7(A) of the Act in the year 1999 itself, but the petitioner had failed to respond till 2004. Thereafter, the petitioner was again served notices after a number of attempts whereupon the petitioner appeared on 28th April, 2004. However, the petitioner failed to produce any documents in support of his contention that the establishment had been closed after 3 to 4 months only and there were not more than 20 employees in its rolls at any point of time. In these circumstances, the respondent no. 2, Assistant Provident Fund Commissioner, Jharkhand, Ranchi had proceeded to decide the issue ex-parte on failure of the establishment to substantiate its contention by any cogent documentary proof. Learned counsel for the respondents, however, submits that if the petitioner was aggrieved by ex-parte order, he had a remedy to seek recall to the same u/s 7(A)(4) of the Act or move for review u/s 7(B) of the Act before the same authority, even otherwise remedy of appeal is available u/s 7(I) of the

Act. Petitioner has straightway moved this Court in the writ jurisdiction where issue of question of facts cannot be adjudicated. Learned counsel for the respondents submits that the impugned order does not suffer from any infirmity and the petitioner has failed to make out any case that the establishment was not covered under the rigours of Act of 1952. I have heard learned counsel for the parties. It appears that the petitioner had himself obtained provident fund code on his own application as it had started work of fabrication of grill and gate at the premises in Namkum in the year 1999. However, according to the petitioner, he could not continue with the said work because of certain land dispute in question in which the establishment was situated as tenant. The petitioner had sent letter through under certificate of posting to the respondent no. 2, which is not accepted by the respondent organization that the establishment had been closed since 1999. After services of notice, the petitioner had appeared before the respondent authority, but failed to produce any documents in support of any of his contention that establishment has been closed after 1999 and not more than 20 employees had been employed at any point of time. Therefore, the respondent no. 2, in the absence of any cogent proof, has proceeded to assess the liability of the petitioner u/s 7(A) of the Act and interest u/s 7Q of the Act. So far as contention of the petitioner relating to inspection by the Inspector of the organization is concerned before bringing the establishment under coverage of the Act, the petitioner was issued preliminary notice for coverage u/s 7(A) of the Act in the year 1999 itself whereafter it was obliged to put his defence with all supporting documents in order to satisfy the Competent Authority that it is not covered under the provisions of the Act. However, he has failed to do so, therefore, the aforesaid contention is not tenable in law as well as fact. The petitioner had remedy of seeking relief u/s 7(A) (4) of the Act or to move for review u/s 7(B) of the Act or even in appeal u/s 7(I) of the Act, which he has failed to avail. The impugned order passed by the respondents does not suffer from any error of law or fact, which is apparent on the face of record and is neither arbitrary and irrational which requires interference by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. In these circumstances, I do not find any merit in this writ petition and it is, accordingly, dismissed.