(2003) 02 DEL CK 0108

In the Delhi High Court

Case No : CW 510 of 1983

Harish Chander Narula and Others APPELLANT

Vs

Regional Povident Fund Commissioner and Another RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : (2003) 4 AD 49 : (2003) 104 DLT 574 : (2003) 68 DRJ 344 : (2003) 2 LLJ 1131

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : S.N. Chaudhary and Deepak Acharya, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1.This petition is filed by the petitioners challenging the legality of the order dated 30.12.1982 passed by the respondent under the provisions of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter in short called ''the Act''). By the aforesaid order, the Regional Provident Fund Commissioner, Delhi upheld the coverage of the petitioners'' establishment under the aforesaid Act with effect from 30.11.1966 and then ordering for the inquiry to be continued for determination of the dues payable by the petitioners.

2.On the allegation that M/s Indian Art Fabrics of which the petitioners were partners failed to deposit the provident fund dues for the period during December 1966 to December 1969, the Regional Provident Fund Commissioner initiated a proceeding u/s 7A of the Act for determination of the dues payable by the establishment for the aforesaid period under the Act. Pursuant to the said notice issued, the petitioners appeared before the Regional Provident Fund Commissioner and took up a plea that their establishment would not come within the purview of the aforesaid Act as they were having less then 20 persons in their establishment. It was stated that at no stage, the petitioners had employed 20 or more persons in their establishment and that they used to engage weavers and winders for whom there was no fixed timing of work and that they were free to come and go at their free will and that they could also work in any other establishment if they so desired and that they had also no right to claim any service benefit nor they were entitled to any leave etc. It was, Therefore, pleaded that such weavers and winders, who were engaged intermittently by the petitioners'' establishment, were contractors by themselves and were not the employees of the establishment directly or through any contractor. It was also submitted that from the list prepared by the Provident Fund Inspector itself it would be clear that there were much less than 20 persons who had put in a year''s or more service and that there were only eight employees and the remaining were the weavers and winders. It was also submitted that their factory caught fire on 16.6.1975 and the said fire destroyed everything including stock machinery, accounts books and that the management did not have any intention to start the factory again. It was also stated that as none of the erstwhile alleged workers had approached the Regional Provident Fund Commissioner for payment, it would be futile exercise collecting any dues if the scheme is applied to the establishment as collection would not be possible for the establishment. The aforesaid contentions taken up by the petitioners'' were considered by the Regional Provident Fund Commissioner in the light of the records and upon appreciation thereof, it was held by the Commissioner by the order dated 30.12.1982 that the said contentions had no merit and that the petitioners'' establishment was rightly held to be covered under the provisions of the Act. Being aggrieved by the said order, the present writ petition was filed in this Court challenging the legality of the aforesaid order.

3.Counsel appearing for the petitioners raised before me similar pleas to contend that the petitioners'' establishment could not have been brought within the purview of the aforesaid Act under any circumstances.

4.While coming to the aforesaid conclusions, the Regional Provident Fund Commissioner referred to and also relied on the statement of Shri Sohan Lal, which was submitted on behalf of the establishment on 21.1.1970. Relying on the aforesaid statement, it was held by the Regional Provident Fund Commissioner that as on 21.1.1970 the persons found working in the factory premises were 38 excluding Shri K.L. Grover, the Manager. It was also found that in addition to this there were lady workers (winders), who were found working. The Regional Provident Fund Commissioner had also observed that the period of service of those 38 employees was ranging between 1 month to 5 years. He had also referred to the further verification made on a subsequent visit by the Provident Fund Inspector on 24.7.1970 when also it was found that more than 20 persons were working in the establishment on different dates. In the context of the aforesaid facts derived from the records, it was held by the Regional Provident Fund Commissioner that the contention of the establishment that they employed only eight employees was without any merit. A clear finding of fact was recorded by the Regional Provident Fund Commissioner that they were employing 38 employees whose period of service was ranging between one month to five years as indicated in the list against each of their names and, Therefore, it was held that the petitioners'' unit is covered under the provisions of the Act. It was also held by the Commissioner that the petitioners'' establishment employed winders and weavers as part of regular course of employment and, Therefore, those employees cannot be construed and termed as casual employees. All the pleas raised by the petitioners before the Regional Provident Fund Commissioner were discussed by the Commissioner in his order dated 30.12.1982 and on such discussion all such pleas were found to be without any merit.

5.During the course of arguments, my attention was drawn to the contents of annexures B and C of the writ petition, which are documents filed by the petitioners themselves. Annexure B is the statement of workers given by Shri Sohan Lal on behalf of the petitioners showing the names of the workers working with the petitioners'' establishment on 21.1.1970, which also discloses the period for which each of such employees was working for. The said statement is signed by Shri Sohan Lal on behalf of the petitioners'' unit. The said list contains the names of 39 workers including the Manager. It also contains further names of the lady workers, who were shown as winders, who were found to be 19 in number. Reference can also be made to the report of Shri Raj Kumar, the Inspector, who has submitted the same on 24.7.1970. The said letter also indicates that even in the year 1966, the establishment was engaging more than 20 workers in the said establishment. The petitioners were given all the reasonable opportunities to show that the report of the Inspector was not correct. The petitioners, however, could not disprove the contents of the aforesaid report submitted by the Inspector but merely took up the plea that the said employees, who were found to be working, were the winders and weavers, who were themselves independent contractors and so they cannot be said to be employees within the meaning of the provisions of the Act. However, in view of the signed statement of Sh. Sohan Lal filed on behalf of the petitioners'', it is proved and established that the petitioners'' had more than the required number of persons and, Therefore, the said unit was rightly held to be covered under the provisions of the Act.

6.It was sought to be submitted by the counsel appearing for the petitioners at one stage that the provisions of Section 7A of the Act was held to be invalid by a decision of this Court in Wire Netting Stores Delhi and Another Vs. The Regional Provident Fund Commissioner and Others, . However, it is clear and apparent that the aforesaid decision of this Court is over ruled by a Full Bench decision of this Court in M/S JAY PRESSTRESSED PRODUCTS LTD. AND ANOTHER V. UNION OF INDIA AND OTHERS reported in 2001 LAB I.C. 1 wherein it was held by the Full Bench of this Court that Section 7A is not vocative of Article 14 merely because of absence of provision for appeal from order of Regional Provident Fund Commissioner. The said decision was rendered by this Court after noticing the

Constitution Bench decision of the Supreme Court in Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, . The aforesaid contention of the petitioners that the provisions of Section 7A is vocative of Article 14 is, Therefore, no longer rest integra and the said contention stands rejected.

7.Counsel appearing for the petitioners also sought to submit that the order u/s 7-A to be passed by the Regional Provident Fund Commissioner is a quasi judicial order and, Therefore, the same casts an onerous responsibility on the Commissioner and that the responsibility was not properly discharged in the present case. I, however, cannot agree with the aforesaid contention. The order passed by the Regional Provident Fund Commissioner clearly discloses that each piece of evidence available before the Regional Provident Fund Commissioner was taken notice of, analysed and the order is passed recording detailed reasons and, Therefore, the said contention also stands rejected. It was submitted by the counsel appearing for the petitioners that the establishment is lying locked and is non-functional since 1975 and that all documents, records have been lost in the said fire. In my considered opinion the said plea could also be raised before the Regional Provident Fund Commissioner as under the impugned order the inquiry was only adjourned for a future date when the petitioners approached this Court.

8.Therefore, I do not find any merit in this petition. The impugned order is upheld and the matter is directed to be proceeded with by the Regional Provident Fund Commissioner from the stage it was left. The parties shall appear before the Regional Provident Fund Commissioner on 10th March, 2003 for obtaining further orders in the proceedings.

