
(1986) 07 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. 3751 of 1977

Jai Krishna Agarwal

APPELLANT

Vs

Regional P.F. Commissioner and Others

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 2

Citation : (1994) 3 LLJ 8

Hon'ble Judges : B.N. Misra, J;A.N. Verma, J

Bench : Division Bench

Advocate : Prakash Krishna, for the Appellant; J.N. Tewari and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Varma, J.—The petitioners are assailing the legality of certain orders passed by the Regional Provident Fund Commissioner, Kanpur, purporting to determine moneys stated to be due from the petitioners u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The amounts which have been determined payable by the petitioners are claimed to be due for the period August 1975 onwards.

2. Shortly stated, the petitioners' case is that they were carrying on the business of manufacturing glass bottles of different shapes and sizes at their factory situate at Naini, district Allahabad. A number of workmen were employed in that establishment which was governed by the Industrial Disputes Act, the Employees' Insurance Act and the Employees' Provident Funds and Miscellaneous Provisions Act. For reasons beyond their control the petitioners were compelled to close down their factory in March, 1975. Thereafter the petitioners gave a notice of closure under S.25-FFA of the Industrial Disputes Act on 17th May 1975 to the Secretary, Department of Labour, Government of Uttar Pradesh. Copies thereof were also forwarded to the Labour Commissioner, Uttar Pradesh and the Regional Conciliation Officer, Allahabad. In this notice the

petitioners stated that they have decided to close down their factory namely, M/s. Tribeni Glass Works, with effect from 21st July, 1975, for reasons explained in an annexure to that notice and consequently the services of their workmen numbering 169 would have to be terminated. Pursuant to that notice an agreement was reached before the Regional Conciliation Officer between the petitioners and their workmen for the settlement of the claims of compensation of the workmen affected by the closure. In pursuance of that agreement compensation amounting to Rs. 32,47,093 was paid to the workmen. A registered notice of closure was also sent to the Regional Provident Fund Commissioner, informing the latter that the petitioners' establishment had been closed down with effect from 21st July, 1975. However, notwithstanding this closure the Regional Provident Fund Commissioner sent a notice dt. 1st Nov. 1976 to the petitioners stating that he intended to hold an enquiry for the determination of dues outstanding against the petitioners for the period August 1975 to September 1976. The petitioners immediately sent a reply bringing to the notice of the Regional Provident Fund Commissioner the fact that the petitioners' establishment was lying closed since March 1975 and that the petitioners had also obtained the requisite permission of the concerned authorities required for the closure of an undertaking under the Industrial Disputes Act. It was further stated that production in the petitioners' factory had totally stopped since March 4, 1975 due to general power cut. A request for postponement of the hearing of the case was also made on behalf of the petitioners on the ground that their proprietor was unwell and hence would not be able to attend to the case on the date fixed.

3. The Regional Provident Fund Commissioner, however, did not accede to this request and by an ex pane order dt. 14th Dec. 1976 held that the petitioners were liable to pay provident fund and family pension fund dues amounting to Rs. 2,076/- as well as Rs. 47.95 as administrative charges for the period August, 1975 to Sept. 1976. The Regional Provident Fund Commissioner was of the opinion that inasmuch as the petitioners were retaining the security staff consisting of 4 workmen notwithstanding the closure of the establishment its liability under the Employees' Provident Funds and Miscellaneous Provisions Act had not ceased with effect from 21st July 1975. Similar orders were passed by the Regional Provident Fund Commissioner for the subsequent periods also. After determining the dues the Regional Provident Fund Commissioner appears to have issued recovery certificates to the Collector, Allahabad, for the realization of the same as arrears of land revenue.

4. For the petitioners, learned counsel submitted that the establishment having been validly closed in accordance with the provisions of the Industrial Disputes Act and the Rules framed thereunder and further manufacturing activities having completely stopped as from March 1975, the petitioners could not be held liable under the Employees' Provident Funds and Miscellaneous Provisions Act as the said Act had ceased to apply to the petitioners' establishment as a consequence of the closure thereof. In support of this submission learned counsel invited our

attention to Sections 1(3) and 2(g) of the Employees' Provident Funds and Miscellaneous Provisions Act.

5. Having heard the learned counsel for the petitioners, we find considerable substance in the petitioners' submission. In the counter-affidavit which has been filed on behalf of the respondents the factum of the closure of the petitioners' establishment is not disputed. Indeed even in his report submitted by the Provident Fund Inspector, Uttar Pradesh, Allahabad, a true copy whereof is Annexure 5 to petition, the fact that the factory has been closed down and no production is taking place from August 1975 onwards has been admitted in so many words.

6. The contention raised both in the counter- affidavit as well as in the said report and the impugned orders, however, is that inasmuch as four of the erstwhile employees working in the petitioners' establishment had still been retained in the service, the petitioners' liability under the aforesaid Act continued in law. We find no merit in this contention. The petitioners' case in this connection is that the services of these workmen had been retained only for security purposes for keeping a watch over the building and other assets of the factory. We are clearly of the opinion that the mere fact that the petitioners have continued to retain four of their erstwhile employees for purposes of keeping a watch over their properties and assets cannot derogate from the fact that the factory had been closed down after a valid notice of closure given by the petitioners under the Industrial Disputes Act as well as Rule 76 of the Industrial Disputes (Central) Rules.

7. In order that an establishment may attract the application of the Employees' Provident Funds and Miscellaneous Provisions Act it is essential that the factory must be engaged in any manufacturing activity at the relevant time. It is not disputed that in accordance with the notice of closure given by the petitioners the establishment had been formally closed down. Section 1(3) of the aforesaid Act provides that Section 16 of the Act shall apply to every establishment which is a factory engaged in any industry specified under Schedule I. Section 2(g) of the same statute defines "factory" as a premises in any part of which a manufacturing process is being carried on or is ordinarily so carried. It is thus apparent that where, as here, manufacturing process is permanently stopped and the factory has been closed down for good it cannot be validly contended that the statute will continue to be applicable to the establishment. Temporary suspension of manufacturing activities apart, where the employers bring about the closure of the factory in a lawful manner as contemplated by the relevant statutes, the Employees' Provident Funds and Miscellaneous Provisions Act cannot apply to such an establishment after the same has been closed down for good. Even after the closure of the factory the employers might like to engage some employees to look after the assets and properties of the establishment. But thereby the statute cannot become applicable to the establishment. The Regional Provident Fund Commissioner was hence clearly in error in holding that the

aforesaid statute continued to apply to the petitioners" establishment even after July 21, 1975. On the facts established on the record it is apparent that the petitioners" liability under the aforesaid statute had ceased as from 21st July 1975. The impugned orders purporting to fasten liabilities on the petitioners for the period August, 1975 onwards must, therefore, be held to be manifestly unsustainable in law.

8. In the result, the petition succeeds and is allowed. The impugned orders dt. Dec. 14, 1976, April 11, 1977 and June 14, 1977, respectively, Annexures 3, 6 and 7 passed by the Regional Provident Fund Commissioner, Kanpur, are quashed. The amounts deposited by the petitioners in pursuance of the interim orders passed by this Court on Jan. 19, 1978 shall be refunded to the petitioners within one month from the date on which a certified copy of this order is presented to the concerned authorities.

Petition allowed.