

(1959) 03 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Jay Bharat Woolen and Silk Mills

APPELLANT

Vs

Regional Provident Funds Commissioner and Others

RESPONDENT

Date of Decision : 18-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16

Citation : (1960) 1 LLJ 489

Hon'ble Judges : Chopra, J

Bench : Single Bench

Judgement

Chopra, J.—This is a petition under Articles 226 and 227 of the Constitution and it arises out of the following facts:

2. A firm styled as "Jay Bharat Woollen and Silk Mills, Amritsar," the petitioner, is said to have been floated on 1 October 1954. Prior to that, a company known as "Bharat Udhar Cloth Manufacturing Company" was carrying on the same business of manufacturing cloth at the same premises. The new firm is stated to have been started with a part of the machinery that was being used by the previous company as a result of the award given by an arbitrator appointed to settle certain disputes between the sole proprietor of the company, Seth Bal Krishan Dasa and his brothers. According to the petitioner, part of the machinery which fell to the share of Seth Bal Krishan Dass was removed and the company continued its business as before at the new premises. The part of the machinery which fell to the share of Khial Das, brother of Seth Bal Krishan Das. was used by the newly constituted firm to carry on its business of manufacturing cloth at the old premises. The Regional Provident Funds Commissioner, Punjab, respondent 1, started proceedings for the recovery of contributions towards the provident funds from the petitioner, under the Employees' Provident Funds Act, No. 19 of 1952. The petitioner's case, however, was that the firm was exempt from the application of the provisions of the Act for the initial period of three years, as laid down by Section 16(b) of the Act. This claim was, for the first time, put forth by the petitioner in its letter dated 6 December 1954, addressed to the first

respondent. In reply, the petitioner was informed that the firm could not be exempted from the purview of the Employees' Provident Funds Act, 1952, and the scheme framed thereunder, as the firm had been taken over by the present management as a going concern without in anyway, affecting the rights of the workers so far as the Act and the scheme were concerned. This letter of respondent 1 is dated 17 December 1954. The factory closed its business on 31 May 1956.

3. In May 1958, proceedings for recovery of the contributions were actually taken up by the respondent 1. A certificate for recovery of the contributions for the period, 1 October 1954 to 31 May 1956, was issued. The petitioner, thereupon, approached the Central Government for settling the dispute, as provided by Section 19A of the Act:

If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether three years have elapsed from the establishment of an establishment the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal or the doubt or difficulty; and the order of the Central Government in such cases, shall be final.

4. On 16 July 1958, the Central Government informed the petitioner that " the matter is under consideration and a further communication will follow in due course." On a reminder sent by the petitioner, an identical reply was sent on 25 August 1958. Within a few months of it, the petitioner submitted the present petition on 1 December 1958. it is prayed that a writ of mandamus directing the respondents not to enforce the provisions of the Act against the petitioner be issued.

5. I do not think it is for this Court at this stage to go into and decide the actual dispute between the parties whether the petitioner-firm should be regarded as having started its business from 1 October 1954 or it was already a going concern. A special remedy in this connexion is provided for in the Act and all such disputes, on a reference made to the Central Government, have to be decided by the Central Government. The matter has actually been referred to the Central Government and they have to decide it. It may not be possible to say that the Central Government has already taken too long a time to arrive at any decision. The petitioner ought to have awaited the final decision of the Central Government before approaching this Court with this petition.

6. It is also equally clear that the Regional Provident Funds Commissioner ought not to have started the recovery proceedings till the matter was finally decided by the Central Government. The demands for contributions issued to the petitioner by the respondent 1 in my view, should not be enforced till the question, whether the petitioner was or was not exempt from the application of the provisions of the Act, is decided. That relief, I think, the petitioner is surely entitled to get on the short ground that there is a dispute and that dispute has

yet to be decided u/s 19A of the Act. I order accordingly. No order is made as to costs.