

(2011) 09 GUJ CK 0098
In the Gujarat High Court

Case No : Special Civil Application No. 10739 of 2010

Junagadh Gymkhana

APPELLANT

Vs

Assistant Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 7(A), 7(B)

Citation : (2011) 09 GUJ CK 0098

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : B.T. Rao and S.M. Sojatwala, for the Appellant; E. Shailaja, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—Heard learned Advocate for the Petitioner.

The matter requires consideration.

2. Rule. Learned Advocate Ms. E.Shailaja waives service of Rule on behalf of the Respondent. At the request of learned Advocate for the Petitioner, the matter is taken up for final hearing, to which learned Advocate for the Respondent has no objection.

3. The matter is in a very narrow compass. The question is as to whether the Petitioner - M/S. Junagadh Gymkhana ever employed 20 persons so as to see that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as, "the said Act") becomes applicable. Clause-(b) of Sub-section (3) of Section-1 of the Act provides for applicability of the Act which reads as under:

to any other establishment employing (twenty) or more persons or class of such establishments which the Central Government may, by notification in the official gazette, specify in this behalf:.

4. Learned Advocate for the Petitioner invited attention of the Court to page No. 71. It is order dated 27.01.2004 passed by the Assistant Provident Fund Commissioner. It is specifically mentioned in para-5 (unnumbered) of the order that:

The documents available in the file are perused. On going through the records it is observed that the establishment was covered on the basis of AEO's report dated 20.03.2003.

(emphasis supplied)

4.1 Learned Advocate for the Petitioner submitted that this report was never made available to the Petitioner until a specific order was obtained from the appellate Tribunal.

4.2 Learned Advocate for the Petitioner submitted that though relevant documents were produced before the authority, the authority refused to look into the same on the ground that, "when opportunity was given to the Petitioner, the Petitioner did not avail that opportunity and therefore, authority closed its eyes to the documents produced by the Petitioner".

4.3 Earlier, a Review Application was filed, but that application was filed on plain paper and hence, it was returned by saying that, "Refused. To be filed only in a prescribed format". When the application was filed in a prescribed format, it was rejected by the following order:

In view of the said provision of the Act, I have examined the review application submitted by establishment and have gone through the order passed u/s 7A and observed that the establishment has not submitted any new matter or evidence which may cause consideration of the review of the said 7A order. The establishment was provided the opportunity to produce the documentary evidence for deciding the review application for hearing the matter u/s 7B. But the representative failed to produce any documentary evidence except affidavits from the employees and from the establishment which are not sufficient to review the case. Moreover, the review application in Form-9 was received after the stipulated time limit of forty five days from the date of making such order.

5. If the authority had taken a little pragmatic approach and had given an opportunity to the Petitioner- establishment, the matter would not have been required to be brought up to this Court.

6. On perusal of the documentary evidence, produced, i.e. "Wage Register", names of two persons, viz. Mr. J.H. Vaja and Mr. P.K. Makwana are appearing twice. Only if these names are counted twice, the number reaches to magic figure of 20 (twenty), otherwise the number of workers remains only 18 (eighteen).

6.1 This Court sees no reason for the authorities to have taken such an adamant stand in the matter and to refuse to look to the evidence, even when it is brought

to their notice. It is true that Provident Fund Act is meant for the benefits of the workers, but it cannot be applied to an establishment which is not fulfilling the required conditions prescribed under the Act.

7. On perusal of the papers - Wage Register and affidavit and the provisions of law, this Court is of the opinion that the authority as well as the appellate Tribunal have committed error in holding that the Act is applicable to the Petitioner-establishment.

8. In the result, the petition succeeds and the same is allowed. Orders dated 27.01.2004 and 03.05.2010 are quashed and set aside. Rule is made absolute. No costs.