

(2006) 08 AHC CK 0309
In the Allahabad High Court

Kesarwani and Company

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7Q

Citation : (2006) 7 ADJ 226 : (2006) 6 AWC 5532 : (2007) 1 LLJ 174

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—Heard Sri Ravi Kant, learned senior counsel assisted by Sri Umesh Chandra Kesarwani, learned Counsel appearing for the petitioner and Sri Satish Chaturvedi, learned Counsel appearing for the respondents No. 1 and 2 as well as Sri Tarun Verma, learned Counsel appearing for the respondent No. 3. With the consent of the learned Counsel for the parties, this writ petition is being disposed of at this stage without calling for a counter affidavit.

2. By the impugned order dated August 4, 2006 passed u/s 7A read with Section 7Q of the Employees Provident Funds and Miscellaneous Provisions Act, a liability of payment of over Rs. 19 lacs has been imposed on the petitioner. The submission of the learned Counsel for the petitioner is that the said order has been passed without considering as to whether the petitioner is a manufacturer of tobacco or not, and as such, whether the provisions of the Act would be applicable to the petitioner firm. It has further been submitted that the objection of the petitioner filed on July 25, 2006, in response to the show cause notice dated July 7, 2006, has also not been considered. It has been urged that since the petitioner had less than 20 employees, their establishment would not be covered under the provisions of the aforesaid Act and the entire proceedings and notice were thus baseless and misconceived.

3. Although by the impugned order, the respondent No. 2 has arrived at a finding

that the petitioner had employed more than 20 persons, which included the staff, labourer and contract workers, but Sri Chaturvedi, learned Counsel for the respondents No. 1 and 2 could not show from the impugned order as to on what basis such a finding has been arrived at. The impugned order is completely silent regarding the basis of arriving at such finding and all that has been said is that since the petitioner-Company has an office in Mumbai also, the record of which has not been produced, hence it can be determined that they had employed more than 20 employees. In my view, the same cannot be the basis of arriving at such a finding.

4. Further, after observing that the provisions of the Act would be applicable to the case of the petitioner, the respondent No. 2 has straightway determined the amount of liability which is alleged to be due from the petitioner. The basis of arriving at such an amount has also not been stated or discussed in the impugned order. Sri Chaturvedi also could not satisfy this Court as to how the respondent No. 2 had arrived at the amount of liability found to be payable by the petitioner u/s 7A and 7Q of the Act. An order imposing liability on a party cannot be passed in a whimsical and cursory manner as has been done by the respondent No. 2.

5. In such view of the matter, it appears that the respondent No. 2 has decided the case with a predetermined mind to impose liability on the petitioner, without actually examining the objections of the petitioner and also without there being any basis of the findings arrived at. Such action of the respondent No. 2 is deprecated and cannot thus be upheld by this Court.

6. For the foregoing reasons, it is clear that the order impugned in this writ petition has been passed without application of mind and without even giving adequate opportunity to the petitioner to defend his case and to adduce evidence to support his objections. Denial of such opportunity would amount to denial of principles of natural justice and the impugned order would thus liable to be set aside.

7. Accordingly, this writ petition stands allowed. The order dated August 4, 2006 passed by respondent No. 2 is hereby quashed. However, it shall be open to the respondent No. 2 to pass appropriate orders afresh, in accordance with law, after giving opportunity of hearing, as well as adducing evidence, to the petitioner.

8. Let a copy of this order be supplied to the learned Counsel for the parties within 24 hours on payment of usual charges.