

(2010) 01 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 557 of 2009

Lakshmi Niwas Bangur

APPELLANT

Vs

Regional Provident Fund Commissioner, West Bengal and
others

RESPONDENT

Date of Decision : 14-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(e), 8, 8B, 8C

Citation : (2010) 125 FLR 606

Hon'ble Judges : J.K. Biswas, J

Bench : Single Bench

Advocate : Bimal Chatterjee, Ashok Banerjee, Bhaskar Banerjee and Shyam Sunder Manna, for the Appellant; S.C. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Jayanta K. Biswas, J.—The petitioner in this Article 226 petition dated June 22, 2009 is aggrieved by the order of the Recovery Officer, Employees provident Fund Organisation, dated May 28, 2009, Annexure P13 at p. 165, that Being the employer in relation to the establishment of Bowreah Cotton Mills Co. Ltd. he is liable to pay the provident fund dues for recovery of which the certificate proceedings were initiated.

Before the officer, who gave the decision in compliance with an order of this Court, the petitioner specifically raised the point that the establishment being a factory, he was not the employer in relation thereto. It is evident from the impugned order that the officer did not decide the question. Before him the department's representative submitted that the office of the organisation had no information about any person named as occupier of the establishment. The representative did not dispute that the establishment is a factory. The officer held that the petitioner being the managing director of the company "should

shoulder the responsibility of default made by his offices in implementing various" provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. In my view, the Recovery Officer has committed a jurisdictional error. He could call upon the petitioner to deposit the provident fund dues payable by the establishment, only if the petitioner was the employer in relation thereto. Though the question was raised, the officer did not decide it. He was required to decide it in the light of the provisions of Section 2(e) of the Act. Section 2(e) defines the word "employer." In view of the provisions of Sections 8, 8-B and 8-C of the Act, in execution of the certificate the officer was empowered to proceed against the establishment as well as the employer in relation thereto. Hence for proceeding against the petitioner it was necessary to decide whether he was the employer in relation to the establishment. But as I have already pointed out, the question, though was specifically raised, was not decided by the officer. In my view, the matter should be remitted to the officer for decision according to law.

3. For these reasons, I allow the petition, set aside the impugned order and order as follows. The recovery officer shall give decision specifically dealing with all points raised by the petitioner who will be free to submit a detailed written submission. The officer shall give the petitioner reasonable opportunity of hearing. If the department wants to rely on any document, then authenticated copy thereof shall be supplied to the petitioner. The decision shall be communicated to all concerned at once. No costs. Certified xerox according to law.