

**(1958) 07 PAT CK 0008**  
**In the Patna High Court**  
**Case No : Misc. Judl. Case No. 799 of 1956**

Lawly Sen and Co.

APPELLANT

Vs

Regional Provident Fund Commissioner Bihar and Another

RESPONDENT

**Date of Decision :** 10-07-1958

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1), 2

**Citation :** AIR 1959 Patna 271 : (1958) 6 BLJR 722 : (1959) 1 LLJ 272

**Hon'ble Judges :** V. Ramaswami, C.J.; R.K. Choudhary, J

**Bench :** Division Bench

**Advocate :** Bhabananda Mukherjee and M.N. Banerji, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. In this case the petitioner is a Company registered under the Indian Companies Act and deals in motor accessories, cars, trucks etc., and also maintains a workshop for carrying on repairs and servicing of cars. On 8-8-1955 the Regional Provident Fund Commissioner, Bihar, wrote a letter to the petitioner, informing him that the Employees provident fund scheme had been applied to the petitioner's case with effect from the 1st of April, 1954, and that the petitioners should deposit the Provident Fund contributions and administrative charges and submit returns with effect from that date. The relevant portion of the letter of the Regional Provident Fund Commissioner is as follows:

"4A. The Code number of your Factory is BR/134.

5. Under paragraph 30 of the Scheme, the employer shall in the first instance, pay both the contributions payable by himself and also on be-half of the member employed by him the contribution payable by the member. Necessary instructions regarding the banking arrangements for the Employees Provident Funds are enclosed.

6. Other necessary forms will be supplied to you immediately after the receipt of the returns in Form 9 in duplicate.

7. You are further informed that as Employees Provident Fund Scheme applied to your concern with effect from the 1st April, 1954, you are required to deposit provident Fund contributions and administrative charges and submit returns from that date. The employees have to pay contributions from the 1st June 1955 but have the option to contribute voluntarily from 1-4-1954. The Factory however has to deposit Provident Fund contributions and Administrative charges from 1-4-1954.

8. Past Provident Fund accumulations standing to the credit of the employees if any, should also be transferred to the Employees Provident Fund under paragraph 28 of the Scheme."

This order of the Regional Provident Fund Commissioner is challenged by the petitioner in this case on the ground that it is ultra vires and illegal. The petitioner prays for a writ under Article 226 of the Constitution to quash the order of the Regional Provident Fund Commissioner, Bihar set forth above.

2. The first ground taken on behalf of the petitioner is that the Employees' Provident Fund Act, 1952, namely, Act XIX of 1952, does not apply to this case and that the petitioners factory does not come within the meaning of Schedule I of the Act. We do not accept this argument as right. Schedule 1 mentions that the Act applies to "any industry engaged in the manufacture of any of the following, namely, ..... Electrical, mechanical or general engineering products." The explanation to the Schedule states as follows:

"Explanation: In this Schedule, without prejudice to the ordinary meaning of the expressions used therein,

(a) the expression "Electrical, mechanical or general engineering products" includes-

X X X X (12) automobiles and tractors,

X X X X X" The argument of the petitioner is that the petitioner does not manufacture automobiles and tractors and so the Act does not apply to its case. This argument must be rejected in view of the explanation of the expression "manufacture" in Section (ia) which defines the expression "manufacture" to mean "making, altering, ornamenting, finishing or otherwise treating or adopting any Articles or substance with a view to its use, sale, transport, delivery or disposal."

It is the admitted position in this case that the petitioners carries on the work of the repair and servicing of cars and deals also in motor accessories, cars, trucks, etc. It is not the case of the petitioner that it is exclusively engaged in maintaining a service station but it is admitted by the petitioner that the work of repairs of trucks and cars is carried on in its workshop. It follows, therefore that

the workshop of the petitioner comes within the definition of the expression "manufacture" in Section 2(ia) read with the explanation in Schedule 1 of Act XIX of 1952. The argument of the petitioner, on this point must, therefore, be rejected.

3. The next contention put forward on behalf of the petitioner is that in any event it is not liable to pay contributions from 1-4-1954, but it is liable only from 1-6-1955, when the decision of the Government not to exempt it from the operation of the Act, was communicated to the petitioner. Reference was made in this connection to annexure A letter of the Government of India, dated 3-4-1954, annexures A, B, C and C1 of the application. Learned Counsel also pointed out that u/s 17 of the statute the appropriate Government has the authority, by notification in the Official Gazette, to exempt from the operation of the provisions of the Act any factory to which the Act applies, subject to such condition as may be specified in the notification. Section 17(1) is to the following effect:

"17. "Power to exempt", (1) The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt from the operations of all or any of the provisions of any Scheme

(a) Any factory to which this Act applies if, in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Act or any scheme in relation to the employees in any other factory of a similar character or

(b) any factory if the employees of such factory are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits separately or jointly are on the whole not less favourable to such employees than the benefits provided under this Act, or any Scheme in relation to employees in any other factory of a similar character."

In the present case it is admitted that there is no order of exemption u/s 17 of the Act with regard to the petitioner and so the legal liability of the petitioner remains for payment of contributions with effect from 1-4-1954. The argument of the petitioner on this point has no substance and must be rejected. In our opinion the order of the learned Provident Fund Commissioner of Bihar which is challenged in this case is not vitiated by any error of law, nor is it ultra vires of any provision of the statute. In our opinion there is no ground made out for grant of a writ under Article 226 of the Constitution. We accordingly dismiss the application with costs. Hearing fee Rs. 100/-.