

(2009) 11 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 11100 (W) of 2007

Maple Exports Private Limited and Another	APPELLANT
Vs	
Employees" Provident Fund Organization and Others	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Apprentices Act, 1961 — Section 2
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2009) 4 CALLT 692 : (2010) 124 FLR 634 : (2010) 2 LLJ 803

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Joydip Kar and Soumya Majumdar, for the Appellant; Mihir Kundu, for P.F. Authorities, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioners in this writ petition dated June 6, 2007 are aggrieved by the order of the Regional Provident Fund Commissioner-1, Regional Office, Kolkata dated April 9/May 10, 2007, Annexure P8 at p.43. The order was made u/s 7-A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952.

2. The Section 7-A proceedings were initiated by issuing the summons dated March 10, 2004, Annexure PI at p.26, alleging that during the period from August, 2002 to December, 2003 the establishment of the petitioners evaded membership. The establishment submitted an application dated May 12, 2004, Annexure P3 at p.30, disputing the case of the authority that it evaded membership to the trainees. According to the establishment, the trainees were not entitled to membership under the schemes.

3. A team of enforcement officers investigated and submitted a report dated March 20, 2007, Annexure P5 at p. 37, and with the report they submitted their written deposition stating that none of the persons in question should be considered trainee or apprentice. The team claimed that the establishment was liable to pay Rs. 8,02,392 for the period. After hearing the establishment the

authority made the impugned order determining the establishment's liability for the period from August, 2002 to March, 2006 at Rs. 2,35,51,851. The authority determined liability also for payments reportedly, made by the establishment to the persons engaged for fabrication, cutting and skiving.

4. In para. 21 of the writ petition the petitioners have stated as follows:

At all stages of the proceeding including the investigation conducted thereof, the respondent authorities had given the petitioners to understand that the respondents were proceeding to determine contributions in respect of the "trainees" inducted for imparting trainees in the establishment of your petitioner-company and as such an order u/s 7-A of the Act allegedly determining contributions towards fabrication, cutting and skiving charges suffers from a denial of reasonable opportunity of hearing to your petitioners as well as from the vice of non-transparency on the part of the statutory authorities.

5. In para. 12 of the opposition dated July 30, 2007 the respondents have dealt with the case of the petitioners stated in para 21 in the following manner:

That the statement made in paragraph 21 of the said application are denied and disputed. Ample opportunities have been provided to the writ petitioners in regard to determination of contribution in respect of the trainees including the contribution towards fabrication, cuttings and skiving charges, there was no separate identity regarding the contribution in respect of trainees and contribution towards fabrication, cuttings and skiving etc. at the time of imparting judgment u/s 7-A of the Act.

6. It is not the case of the respondents that at any point of time the establishment was informed in writing that the enquiry would cover the case of reported engagement of persons by the establishment for fabrication, cutting and skiving activities. I am, therefore, of the view that the petitioners are fully justified in making the grievance which they have made in para. 21 of the writ petition. They have been denied reasonable opportunity of dealing with the case of the provident fund organization that for the persons reportedly engaged by them for activities connected with fabrication, cutting and skiving they were liable to pay provident fund and other allied dues.

7. The last paragraph on the fifth page of the impugned order reads as follows:

As per the provisions of Section 2(f)(ii), employee includes any person engaged as an apprentice, not being an apprentice engaged under the Apprenticeship Act, 1961 or under the standing orders of the establishment. As per the Explanation of Para 2(f)(iv) of the Employees' Provident Fund Scheme, 1952 an "Apprentice" means a person who, according to the certified standing orders applicable to the factory or. After the last para, on the fifth page, a fresh para begins on the sixth page of the impugned order, and that fresh para, reads as follows: On further verification of records, it is observed that certain payments were made towards fabrication, cutting and skiving charges. These payments are barely Labour

Charges paid in the Leather Industry....

8. In para. 14 of the opposition the respondents have specifically claimed that the impugned order is the complete order of the authority. It is evident from the two quoted portions of the impugned order that the last para, on the fifth page, ending abruptly, does-not convey a complete sense. It is not the case of the respondents that the petitioners have not produced a complete copy of the order supplied to the establishment by the authority. It is not their case either that a complete copy of the order will show that with the writ petition the petitioners have produced an incomplete copy thereof. On these facts, I am compelled to hold that the impugned order is vitiated by non-application of mind.

9. For these reasons, I dispose of the writ petition ordering as follows. The impugned order is hereby set aside. All actions, if any, taken on the basis of the impugned order shall be deemed to be set aside. The authority shall give a fresh decision in the Section 7-A proceedings which were initiated by issuing the summons dated March 10,2004. If the scope of enquiry is expanded for including any category of person, then the authority shall indicate the position by issuing an appropriate notice to the establishment. After giving the establishment reasonable opportunity of hearing and recording evidence adduced by the parties, the authority shall give the final decision in the proceedings. The payment made by the establishment in compliance with an interim order made in this writ petition shall abide by the final order that the authority shall make in the Section 7-A proceedings. There shall be no order for costs.

10. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.