(2014) 07 CAL CK 0102

In the Calcutta High Court

Case No : W.P. 15490(W)/2000

Milan Biri Factory APPELLANT

Vs

The Regional Provident Fund Commissioner,W.B. RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3), 1(3)(a), 16, 2A

Citation : (2014) 143 FLR 263 : (2014) 4 LLJ 347 : (2014) 4 LLN 100 : (2014) LLR 958

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Saptansu Basu, P.S. Deb Barman, Pinki Chandra Matilal and M. Nazar Chowdhury, Advocate for the Appellant; Anil Kumar Gupta, Advocate for the Respondent

Final Decision : Allowed

Judgement

Soumen Sen, J.

This writ application is directed against the order dated 27.11.1996.

1. The petitioners are engaged in manufacturing of beedi. The petitioners'' establishment is covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) by reason of the registered coverage letter issued by the Regional Provident Fund Commissioner on 26th November, 1986. The petitioners'' establishment includes various departments and branches spread all over the State. On the basis of the said coverage letter, the petitioners have been complying with the provisions of the said Act, 1952 and the scheme framed thereunder vis-?-vis all of their units and branches which are part of its establishment under the Provident Fund Code assigned to the establishment being P.F. Code No. WB/25008. The Provident Fund accounts of the establishment of the petitioners are maintained in the office of Beedi Cell of the office of R.P.F.C. West Bengal at Barrackpore. The Regional

Provident Fund Commissioner Sub-Regional Office by a registered coverage letter dated 31st January, 2000 for the second time extended the coverage of the said Act and the Scheme framed thereunder to the Tungidighi unit of the petitioners and allotted a new separate code being Code No. WB/SLG/30491 for the said manufacturing unit of the petitioner at Tungidighi.

2. The petitioners are aggrieved by reason of allotment of a new separate Code to the said Tungidhighi unit and thereafter initiating a proceeding u/s 7A of the said Act by the Regional Provident Fund Commissioner''s Sub-Regional office at Siliguri on the basis of notice dated 25th May, 2000 on the ground that the establishment of the petitioners has failed to remit the provident fund, employees pension funds and insurance funds dues under the newly allotted P.F. Code No. WB/30491 for the period 12/1999-4/2000.

3. The principal grievance of the petitioners is that in view of the coverage letter dated November 26, 1986, the establishment of the petitioners with all its branches and units spread over the State are not required to have a separate code except the code already assigned to it being P.F. Code No. WB/25008 as allotted by the Regional Provident Fund Commissioner, West Bengal.

4. The petitioner No. 1 duly objected to the extension of the provisions of the said Act separately to the Tungidighi unit of the petitioner No. 1. The petitioner made a representation on 8th June, 2000 in which it was contended that the establishment of the petitioner is already covered with effect from 1st October, 1985 by reason of coverage letter issued by the authorities concerned dated 26.11.1986 which specifically said that the Act would be applicable to the factory/ establishment including all departments/branches whether situated in the same place or in different places with effect from 1st October, 1985. The petitioner further contended that all dues in respect of the said establishment together with Tungidighi branch for the period from 12/1999 to 04/2000 have been deposited centrally and no amount was due and payable for the aforesaid period in respect of the said unit. Notwithstanding the aforesaid representation and objection raised with regard to the application of the said Act to the said unit separately, the authorities concerned proceeded to realize dues for the aforesaid period under the new Code without deciding the objection raised with regard to the applicability of the said Act to be the said unit of the petitioner.

5. Mr. Saptansu Basu, learned Advocate appearing on behalf of the petitioners submits that the establishment of the petitioners is covered u/s 1(3) read with Section 2A of the EP & MP Act, 1952 taking into account head office of the branches/units. In terms of Section 2A of the said Act, all the branches and/or units whether situated in the same place or in different places would be treated as part of the same establishment. As such, Tungidighi unit in the District of Uttar Dinajpur is a part of the same establishment of the petitioner No. 1 (Milan Biri Factory) having already covered under the coverage letter issued by the Regional Provident Fund Commissioner and accordingly the said authorities could not have issued a new code for the factory situated at Tungidighi. Mr. Basu

submits that no separate code can be allotted to the unit of the petitioner No. 1 would be further amplified by Section 36A and 38 of the Employees Provident Fund Scheme, 1952. Mr. Basu has relied upon a decision, Belal Biri Factory Private Limited and Another Vs. Regional Provident Fund Commissioner and Another, to show that it has been recognized by this Court that in terms of Section 2A of the said Act for the purpose of applicability of the said Act as well as for determination of the total dues of an establishment having different branches and/or departments in different places, all the departments and/or branches would be treated as a part of the principal establishment.

6. Mr. Anil Gupta, the learned Advocate appearing on behalf of the Regional Provident Fund Authorities submits that the petitioner No. 1 establishment has been covered with effect from 18.12.1989 under the schedule "Biri" and allotted a Code No. W.B./30491. With a view to bring the establishment under the purview of the Act, the office covered the establishment with effect from 18th December, 1989 as the establishment falls under the jurisdiction of Sub-Regional office, Siliguri. It is submitted that Section 2A of the said Act has no manner of application while interpreting Section 1(3)(a) of the said Act. It is submitted that during the inspection by the Enforcement Officer it was found that the said establishment/factory situated at Tungidighi of M/s. Milan Biri is engaged in the manufacturing of biri employing about 280 persons as on 18th December, 1997. Mr. Gupta, the learned Advocate appearing on behalf of the Provident Fund Authorities submits that section 1(3)(a) of the said Act specifically referred to a factory and if the said factory is found to be engaged in any Industry specified in Schedule 1 and in which 20 or more persons were employed within the said factory comes within the purview of the said Act.

7. Section 1 of the Act deals with the application of the said Act and states that the said Act shall be applicable, inter alia, to every establishment which is a factory engaged in any industry specified in Schedule 1 and in 20 or more persons were employed. In order to extend the provisions of the said Act to an establishment, the said establishment has to be a factory engaged in any industry specified in Schedule 1 and must employ 20 or more persons. Section 2A is a removal of doubt clause by which it is clarified that where an establishment consists of different departments or different branches whether situated in the same place or in different places of such departments or branches shall be treated as part of the same establishment. A factory u/s 2A would form a part of the establishment is of wider connotation and brings a factory within its fold. An establishment may consist of factory and/or department and branches. The Regional Provident Fund Commissioner may have for administrative convenience establish different Sub-Regional offices for the purpose of finding out the compliance of the provisions of the statute. However, that does not mean that they could insist or allot new Code for each of the branches and/or factory that the establishment might have in the State. In Belal Biri Factory (supra) in paragraph 26, the learned Single Judge observed that although the principal issue was with regard to the jurisdiction of the High Court to decide an

application in view of the objection raised by the authorities that no cause of action arose within the State of West Bengal and accordingly this Court has no territorial jurisdiction to receive and try the writ petition, the learned Single Judge construed Section 2A of the said Act and stated:

"Section 2A of the said Act makes it clear that for the purpose of ascertainment of applicability of the act as well as for determination of the total dues of an establishment having different branches and/or departments in different places, all the departments and/or branches will be treated as a part of the principal establishment. This conclusion is arrived at by this Court by following the decisions of the Hon''ble Supreme Court which are as follows:

(i) Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others,

(ii) Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others,

8. The plain reading of Section 1(3)(a) and 2A of the said Act makes it clear that for the purpose of the said Act different branches and/or departments whether situated in the same place or in different paces of such departments and branches shall be treated as part of the same establishment. An establishment would be treated as factory for the purpose of Act if such establishment having a factory engaged in any industry specified in Schedule I and in which factory as manufacturers employed. The Act applies if the statutory conditions are satisfied. The true test to determine applicability of the Act u/s 1(3)(a) as held in Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, is whether there is an establishment which is a factory'' engaged in any of the scheduled industries employing 20 or more persons. If the answer is in the affirmative, the provisions of the Act are attracted even if the establishment is run by a larger organization carrying on other additional activities falling outside the Act. The Act, subject to the provisions of section 16, applies to every factory in which twenty or more persons are employed and which is engaged in any industry specified in Schedule I. The relevant consideration is the number of persons employed in the factory and not the industry. In Sri Varadaraj Aswani Transports(P) Ltd., v. R.P.F. Commissioner, reported in AIR 1966 Mad 466 an "establishment" was held to mean an organisation which employs persons between whom and the establishment, the relationship of employee and employer exist. Section 2A clarifies that the Act applies to composite factories (Union of India v. Ogale Glan Words, (1971) 5 SCC 678. In Eddy Current Controls (India) Ltd. Vs. R. Provident Fund Commission and Another, the Kerala High Court elaborated the implications of section 2A of the Act in holding that in order to determine the different parts, units branches and so forth are merely constituents of one establishment the important tests which are enumerated below must be satisfied. However, with a note of caution that no hard and fast rule can be laid down as to how many of the following shall have to be satisfied:

"(1) The unity of ownership, management and control unity of employment and conditions of service functional integrality and general unity of purpose.

(2) The connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer''s own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

(3) The real purpose of the tests is to find out the true relationship between the two parts, branches, units etc. If they constitute one integrated whole, the establishment is one. If it is to the contrary, then each unit is a separate one.

(4) In one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test, and in still another case the important test may be the unity of employment.

(5) Many enterprises may have functional integrality between factories, which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants, which are independently owned. In the midst of all these complexities, it may be difficult to discover the real thread of unity."

9. It was held that the factory situated in different places and having separate licences but same registered office, activities, Managing Director vis-?-vis Manager and Secretary empowered to operate Bank Account of both and Balance Sheet, Income and Expenditure Account common to both would be as treated as part of the same establishment. To decide whether different units are part of the same establishment, the Court has to assess the extent of functional integrity between them and also whether one unit can exist conveniently and reasonably without the other. Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others, An establishment would include all departments and branches and if the two units are put together as a single establishment, the Act would be applicable and otherwise not.

10. The authorities concerned did say that the said unit is a separate and independent of the principal establishment. It is also not being contended that there is no financial management and functional integrality between the factory and the main establishment. If there is financial, management and functional integrality between the different units and one cannot exist without the other they should be treated as one single unit.

11. It further appears that under paragraph 36A of the Employees Provident Fund Scheme, 1952 every employer in relation to a factory or establishment would be required to furnish to the Regional Provident Fund Commissioner in form No. 5A particulars of all the branches and department etc. In paragraph 38(2) of the said Scheme the employer would be required to forward to the Commissioner aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of

all such members which necessarily mean that all such amounts are being collected from the employees of different branches and departments.

12. In view of the aforesaid, the allotment of a new Code in respect of the said unit Tungidighi is unsustainable. However, it is made clear this order shall not prevent the Provident Fund Authorities from realizing the dues of the said unit in accordance with law, if it is found that the said unit has not complied with the statutory requirements. It is made clear that this Court has not gone into the merits of the order passed u/s 7A of the said Act in relation to the Tungidighi unit of the petitioner No. 1.

13. All consequential steps taken pursuant to allotment of such code number is accordingly set aside. This order, however, shall not prevent the authorities concerned to determine the liability, if any, of the Tungidighi unit of the petitioner No. 1 for the period 12/1999 to 04/2000 and in the event, it is found that there is an admitted'' default, the establishment shall be liable to pay penalty and damages to be computed under the provisions of the said Act. The writ application accordingly stands allowed to the aforesaid extent.

The writ application stands disposed of.

However, there will be no order as to costs.

