
(2012) 09 DEL CK 0103

In the Delhi High Court

Case No : Writ Petition (C) No. 2679 of 1997

M.M.T.C. Ltd., New Delhi

APPELLANT

Vs

Regional Provident Fund Commr., New Delhi

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(9), 2(f), 7A

Citation : (2012) 193 DLT 229 : (2012) 135 FLR 654 : (2013) 1 LLJ 192

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Rajinder Dhawan and Mr. B.S. Rana, for the Appellant; Rajesh Manchanda and Mr. Rajat Manchanda, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—In the present petition the Petitioner is aggrieved by the order dated 6th June, 1996 passed by the Regional Provident Fund Commissioner (In short RPFC) directing the Petitioner to report compliance in respect of the 36 employees u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act (in short the Act) and directing the Petitioner to produce the relevant records for determination of the dues payable by the establishment. Learned Counsel for the Petitioner contends that the Petitioner is a Government company incorporated under the Companies Act and covered under the Act. During the relevant period it was engaged in the business of importing and exporting of minerals and metals which were canalized items and imports could be made only through a canalizing agency which the Petitioner was. For the purpose of transportation of goods from railway station to the godown, the Petitioner used to engage transporters from time to time with whom the Petitioner entered into an agreement. An agreement in this regard was entered into with Shri Zaffar, the transporter on 1st April, 1979. On 10th July, 1987 the Respondent issued a notice to the Petitioner with regard to coverage of persons engaged by the transporter u/s 7A of the Act. Pursuant to the show cause notice, a reply was

sent resulting in passing of the impugned order. The contention of the learned Counsel for the Petitioner is that the transporter was carrying his own business and without the transporter being held a contractor, persons engaged by him will not fall within the definition of the employee. It was a business deal and an agreement which has been entered into between the Petitioner and Shri Zaffar followed by other persons from time to time and the workers of the third party cannot be held to be the workers of the Petitioner. No evidence was led by the workers in support of their claim and the transporters who were independent establishments were not impleaded as parties. Merely on the basis of the agreement executed between the Petitioner and the transporter the impugned order was passed. A perusal of the agreement would show that the same was fixed per metric tonne and not in terms of the manpower used. Further, the work of unloading from the wagon, loading in the trucks and unloading in the godown are incidental to the work of transportation and are required to be carried out by the transporter. Reliance is placed on *Springdales School and Ors. v. RPFC and Another*, 2006 (2) LLJ 321 to contend that the persons engaged by the transporter for the work of transportation of children from the residence to the school were not the employees within the meaning of 2(f) of the Act. Reliance is also placed on *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, ; *Ramala Sahkari Chini Mills Ltd. Vs. Employees' Provident Fund Appellate Tribunal and Others*, and *Karachi Bakery, Hyderabad v. Regional Provident Fund Commissioner*, 1991 (62) FLR 627 (DB) A.P. There is no evidence on record to show that these employees were working only for the Petitioner and for no other employer.

2. Learned Counsel for the Respondent contends that as per the definition of employee u/s 2(f) of the Act the Petitioner is the principal employer and the workers engaged even through the contractor are his employees for the purposes of payment of provident fund contributions and as such the Petitioner is liable to pay provident fund contributions of the workers engaged by it. During the period 1974 to 1981 the Petitioner entered into agreements with different contractors/handling agents for the purpose of loading, unloading and stacking of the material in the godowns, warehouses and for this purpose employed 36 employees. Though the contractors changed during this period, however these 36 workers did not change, meaning that these workers were directly employed by the Petitioner and the contractors were just a medium to pay salary to these employees. Thus, the employees were getting salary directly/indirectly for the work from the Petitioner. A perusal of the appointment letters of the 36 employees issued by Shri I.S. Hora, a handling agent would show that they were employed only for doing the work of the Petitioner and not for any other company or a private customer. During the proceedings before the Respondent the handling agents were summoned as witnesses and they deposed that these 36 workers were employed for the work of the Petitioner and they used to get the money from the Petitioner for paying them. Further, witnesses have also stated that these 36 employees were given to them by the Petitioner and they

did not engage them on their own. Further, the 36 workers also filed their affidavits stating that though they were employed by different handling agents since 1985 but they were doing the work of the Petitioner only and when the contractor/handling agent failed to make the payments, the Petitioner used to arrange the same. The Petitioner did not lead any evidence in support of its objection and despite repeated opportunities did not appear before the Respondent on 62 dates from 18th October, 1989 to 9th February, 1995. The workers union was also made a party and their affidavits were taken on record. Further, the handling agents/contractors appeared in the witness box and were cross-examined by the Petitioner and in their cross-examination they stated against the Petitioner. Reliance is placed on P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, to contend that the term "employee" includes not only persons employed directly by them but also employed through a contractor. Reliance is placed on Food Corporation of India Vs. Provident Fund Commissioner and Others, to contend that once a statutory authority exercises its power on the basis of relevant evidence, no interference should be caused. Further, the Act is a piece of social legislation where its main object is to uplift the poor employees and work for the benefit of the employees and hence a broad interpretation is required to be done. Hence the Petition be dismissed.

3. I have heard learned Counsel for the parties. On the basis of evidence adduced by the parties the Respondent came to the conclusion that the Act was applicable to the Petitioner being the principal employer and it was bound to deposit the provident fund contribution in respect of the workers of the contractors who qualify for membership under para 26(b) of the Act. It is clear that the contractors had changed but these 36 employees were attending the work of MMTC under the charge of different contractors. From the evidence it is clear that that the work of loading, unloading staffing, weighing, etc. was the work of expertise and only a trained worker could handle the same and thus the same set of workers were performing it. Though learned Counsel for the Petitioner has strenuously contended that there is no evidence to come to this conclusion, however I find that the finding of the Respondent is correctly based on the evidence on record. Having gone through the relevant portions of the file of the Respondent, it may be noted that the same set of 36 workmen were engaged by 4 different handling agents i.e. M/s. I.S. Hora from 1975 to 1978; M/s. Mohd. Zaffar from 1979 to 1981; M/s. R.K. Chawla from 1981 to 30th April, 1990 and M/s. Grood Transport from June 1991 onwards. Shri I.S. Hora who appeared in the witness box admitted that he did not work for any other company except MMTC and was doing the work from 1975 to 1978. He further admitted that there was no permanent employee with him. He admitted that out of the 36 persons, approximately 17 to 18 worked under the guidance and supervision of Shri Dhoot Nath who used to receive the money from him. Similarly, Shri Zaffar in his statement admitted that he had 36 employees who worked for the Petitioner from April 1979 to April 1981 and the nature of work was to load the material from railway station and unload at the godowns and

thereafter again load the same. He also admitted that he worked for MMTC only. In his cross-examination he admitted that these 36 workers were already working with Mr. Hora and they were transferred to him by Mr. Hora. Mr. R.K. Chawla, the third handling agent in his cross-examination admitted that all these 36 people were given to him by the MMTC and it was told to him by the MMTC that these 36 people were working for MMTC for the last three-four years. It was further stated that the MMTC itself told to him to keep these 36 people only and they would pay him double the rate which was given to Mr. Zaffar. Thus, from the evidence on record it is amply clear that it is the same set of 36 persons who were being employed through the different handling agents. Affidavits of all 36 workers were filed during the proceedings and they, inter alia, stated that since November 1974 they were engaged for loading material into trucks from the railway platform, unloading from wagon, stacking on platform, unloading from truck and stacking in the godowns and vice versa. It was further stated that they were wholetime employees under the contractor M/s. I.S. Hora, M/s. Mohd. Zaffar, M/s. Chawla and M/s. Grood Transport. They further stated that they did not perform any private work during the course of their employment.

4. A perusal of the impugned order shows that an earlier order was passed against the Petitioner by the Respondent u/s 7A of the Act on 25th September, 1988 against which a writ petition was filed before this Court and the matter was remanded back by this Court vide order dated 27th July, 1989 to reexamine the issue regarding the eligibility of these 36 employees afresh. As per the directions, the case was fixed for 23rd August, 1989 when the Counsel for the Petitioner attended the proceedings and the matter was adjourned to 13th September, 1989. Thereafter, on as many as 62 dates neither the Petitioner nor its representative appeared.

5. I do not find any merit in the contention of the learned Counsel for the Petitioner that the workmen do not fall within the ambit of expression "employee" as defined u/s 2(f) of the Act. Section 2(f) of the Act reads as under:

2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets, his wages directly or indirectly from the employer, [and includes any person,--

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]

6. A perusal of Section 2(f) of the Act would show that if a person is employed even in connection with the work of an establishment and gets his wages directly or indirectly from the employer he would fall within the ambit of the word "employee". In P.M. Patel & Sons (supra) Their Lordships observed:

The law took a major shift in *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, as to the criteria which determined the relationship of master and servant. Mathew, J., who spoke for the Court, reviewed the earlier decisions of this Court as well as some of the decisions rendered in England, and pointed out that the test of control as traditionally formulated was no longer treated as an exclusive test. He observed:

It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction.

7. In *Royal Talkies, Hyderabad & Ors.* (supra) Their Lordships while dealing with the expression in connection with the work of an establishment held:

14. Now here is a break-up of Section 2(9). The clause contains two substantive parts. Unless the person employed qualifies under both he is not an "employee". Firstly, he must be employed "in or in connection with" the work of an establishment. The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. "In connection with the work of an establishment" only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment. The question is not whether without that amenity or facility the establishment cannot be carried on but whether such amenity or facility, even peripheral may be, has not a link with the establishment. Illustrations may not be exhaustive but may be informative. Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a canteen service, a toilet service, a car park or cycle stand, a booth for sale of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture. On the other hand, a

bookstall where scientific works or tools are sold or a stall where religious propaganda is done, may not have anything to do with the cinema establishment and may, therefore, be excluded on the score that the employees do not do any work in connection with the establishment, that is, the theatre. In the case of a five-star hotel, for instance, a barber shop or an arcade, massage parlour, foreign exchange counter or tourist assistance counter may be run by some one other than the owner of the establishment but the employees so engaged do work in connection with the establishment or the hotel even though there is no obligation for a hotel to maintain such an ancillary attraction. By contrast, not a lawyer's chamber or architect's consultancy. Nor, indeed, is it a legal ingredient that such adjunct should be exclusively for the establishment if it is mainly its ancillary.

15. The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

8. Applying the test laid down by the Supreme Court, it is evident from the evidence on record that the 36 workers were employed in connection with the work of the Petitioner though in the disguise through a contractor. I also do not find any merit in the contention of the learned Counsel for the Petitioner that the handling agents were not contractors. The Petitioner entered into an agreement with them and pursuant thereto they performed the work as assigned to them. The decision in the case of Springdales School (*supra*) has no application to the facts of the present case wherein this Court held that in the said case it was abundantly clear that the payment of wages by the Petitioners therein to the Respondent were connected with the trips made by the bus. There was no casual connection with the employees who were employed by the transporter for running the bus i.e. driver, conductor or cleaner etc. It was for the transporter to provide staff at a particular bus at his discretion and the management has no say in the same nor has any such term provided in the agreement. There was no stipulation of wages in the agreement by the transporter with regard to his staff. Further, the transporter was supposed to provide bus services in the morning and afternoon where after he was free to make use of the bus for any other purposes during rest of the day. Further, the decision in Karachi Bakery (*supra*) also has no application to the facts of the present case wherein the Court came to the conclusion that the two bakeries were independent units and that the order of the Provident Fund Commissioner was based on no evidence, since no material was before the Provident Fund Commissioner to come to the conclusion as arrived at.

9. I also find no merit in the contention of learned Counsel for the Petitioner that without the transporter being held a contractor persons engaged by him will not fall in the definition of "employee". It was the admitted case of the Petitioner before the Respondent that for the job of transporting and unloading of material it had entered into contracts and it was under no obligation to apply for and get separate provident fund code number of the employees of the contractor. In view of this admission of the Petitioner and the fact that ample evidence was adduced to show that the same 36 employees continued with different handling agents/contractors the Respondent rightly held that the Petitioner was the principal employer and it was bound to deposit the provident fund contributions in respect of the workers of the contractors. In view of the aforesaid discussion, I find no merit in the present petition. Petition is accordingly dismissed.