(2016) 08 JH CK 0102

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 5221 of 2014

M/s B.K. Engineering Works APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7Q

Citation : (2017) 1 CLR 142 : (2016) 151 FLR 331 : (2016) LabLR 1273

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. A.K. Das, and Ms. Pooja Kumari, Advocates, for the Petitioners; Mrs. Banani Verma, Advocate, for the Respondents-EPFO

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J.—Heard counsel for the parties.

An order of assessment passed under Section 7A of the Employees'' Provident Fund and Miscellaneous Provision Act, 1952 by the Assistant Provident Fund Commissioner, Sub-Regional Office, Jamshedpur dated 8th March, 2010 directing the petitioner to make payment of Rs. 19,45,899/- and an interest of Rs. 7,77,392/- calculated under Section 7Q of the Act of 1952 is being assailed by the petitioner by way of the writ petition preferred in September, 2014. The determination undertaken by the impugned order is for the period from January 2005 to December 2007 (extended to March 2008) under Section 7A of the Act of 1952. The establishment was allotted a P.F. Code No.JH/14340 w.e.f. 5th January 2005. It was found that the establishment was not complying under the Act properly and therefore an enquiry under Section 7A of the Act was initiated. Summons were issued on 31st January 2008 asking the employer to produce the records either personally or through the authorised representative. One Naresh Kumar Rajak appeared to represent the establishment and department was represented through the Enforcement Officer. The establishment submitted receipted bank challan for the period from October 2006 to February 2008, balance sheet for the year 2004-05, 05-06 and 06-07 with corresponding Profit and Loss Accounts, provisional balance sheet and P & L Account for 2007-08. It also produced copies of SSI register and factory licence. The Enforcement Officer was directed to verify all the records and submit his report. As per the report, the establishment had not submitted F/6A (R) for the year 2004-05 to 2007-08. The Enforcement Officer was directed to visit the establishment and submit his report after verifying the relevant records which he submitted on 14th July, 2009. As per the report the establishment failed to produce desired records after giving several opportunities. Therefore, average of wages shown in balance sheet for 2004-05 was made the basis for calculation of the dues for the period January 2005 to June 2005. Copy of the report was given to the establishment to represent their case. Thereafter, the orders were reserved and findings have been recorded giving the details month-wise of the wages, employees share, EPF share, Account Nos. etc. from January 2005 till March 2008 and the interest which it has attracted under Section 7Q of the Act from January 2005 till the same date.

2. Based on the aforesaid assessment, the establishment has been saddled with the liability of payment of EPF contribution to the tune of Rs. 19,45,989/- and interest under Section 7Q of the Act to the tune of Rs. 7,77,392/-. The ground taken to assail the impugned order on behalf of the petitioner is that Mr. Naresh Kumar Rajak was not the person authorised to represent the establishment before the Assistant Provident Fund Commissioner. He has submitted unidentified and erroneous balance sheet of the establishment which has been made the basis for determination. The petitioner has, therefore, been denied the reasonable opportunity of being heard. It has contended that representation has been made on 26th May 2014 before the respondents on coming to their knowledge of passing of the impugned order. Another representation was made on 10th July 2014 under Section 7B of the Act for reviewing the order under Sections 7A and 7Q of the Act in the light of the fact that no reasonable opportunity was given to the petitioner. However, since no heed was being paid to the repeated representations of the petitioner, he has been compelled to approach this Court.

3. Learned counsel for the respondents-EPFO submits that there is an alternative statutory remedy which the petitioner has not invoked before approaching this Court under Article 226 of the Constitution of India. The establishment has not complied the provision of the said Act and not deposited the amount towards provident fund, pension, P.F. Linked insurance amount and other administrative charges of employee''s contribution and management contribution. Resultantly, the employees are denied protection of the Act. Petitioner has been allotted the P.F. Code earlier being JH/JAM/14340. In view of the deliberate noncompliance of the provisions of the Act, proceeding under Section 7A of the Act was initiated. The notice was sent through registered post with acknowledgement and the acknowledgement receipt shows that same was received by the establishment. Annexure-A has been enclosed in support thereto.

4. It is stated that establishment came to attend the proceeding on 18th February 2008 and the authority fixed the next date thereafter on 17th March 2008 and 1st April, 2008, but nobody appeared on behalf of the establishment. On 26th February 2008 the letter was received by establishment duly signed by Naresh Kumar Rajak praying for two months'' time to furnish the required documents and photo copies of the challans and monthly returns. Establishment did not produce the attendance and payment register at any point of time during the entire proceeding which protracted for long period despite opportunity given to it. The proprietor of the establishment Shri M.K. Goel was noticed and he appeared on 10th February 2009, 3rd March 2009 and 17th March 2009 along with Sri Naresh Kumar Rajak, Manager of the establishment, but he did not produce any payment register and other documents. He sought for further adjournment. Photo copy of the proceeding under Section 7A order sheet dated 10th February 2009 and 3rd March 2009 are enclosed as Annexure-B and C.

5. It is further stated that proceedings were adjourned for more than ten dates and when nobody appeared on behalf of the establishment, the assessing authority passed the final order on 26th February 2010 on the basis of the records and report submitted by the Establishment for the period in question fixing the aforesaid liability. The establishment was liable to make payment within fifteen days from the date of the order, where after the Recovery Officer has taken the attachment of bank account of the petitioner. In order to further delay the matter only the present writ petition has been filed. It is further stated that about 24 adjournments were allowed on the request of the petitioner. However, it failed to produce payment and attendance register before the assessing authority, who has therefore determined the liability of the petitioner in terms of the Act.

6. I have considered the relevant material facts and the submissions of the parties.

7. The only ground for the petitioner to assail the impugned order apparently is that one Naresh Kumar Thakur had unauthorisedly been representing the petitioner-establishment before the assessing authority and has not submitted the relevant documents and registers in support of the petitioner-establishment showing its bona fide. This contention of the petitioner is squarely refuted by the respondents through statements made in the counter affidavit. Copy of the assessment proceeding at Annexure-C also shows that the contention of the petitioner is unfounded. Mr. M.K. Goel, Proprietor had appeared along with Naresh Kumar Rajak before the assessment authority. The proceedings continued for over two years before passing of the impugned order on 8th March 2010 by the respondent no.2. Petitioner has, however, approached this Court in the year 2014 assailing the same on the aforesaid grounds.

8. Those grounds are found to be untenable on facts. Therefore, the writ petition is devoid of merit and is accordingly dismissed.

