(1987) 08 PAT CK 0008

In the Patna High Court

Case No : C. W. J. C. No. 1880 of 1881 (R)

M/s Meghdoot Cinema APPELLANT

Vs

The Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

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

Citation : (1987) PLJR 1136

Hon'ble Judges : B. P. Singh, J

Bench : Single Bench

Advocate : P. K. Sinha and P. D. Agrawal, for the Appellant; Dilip Jerath, for the Respondent

Judgement

B. P. Singh, J.—In this writ application the petitioner has prayed for quashing of the order dated 27.8.1981 (Annexure-1) which is an order passed by the respondent no. 1 u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act 1952 (hereinafter referred to as "the Act"): By the impugned order (Annexure-1) Respondent no. 1, the Regional Provident Fund Commissioner, Bihar, Patna has assessed the Provident Fund dues payable by the Establishment, the petitioner herein, and a sum of Rs. 19602/has been assessed as the amount payable, being the amount due under the Act. This order was passed on 27th August, 1981. The case of the petitioner in the writ application is that the respondent employs only 19 persons and therefore, the provisions of the Act are not applicable to the establishment. It has further been submitted by the petitioner that the order passed by respondent no. 1 is an ex-parte order and the petitioner was not represented at the hearing of the matter on account of reasons beyond its control. The order has serious consequences and involves, a recurring liability. The sole basis on which the aforesaid order has been passed is the report of the Provident Fund Inspector dated 9th May, 1981. Reliance was placed upon two judgments reported in 1978 L. 1. C. 1160 and 1975 L. I. C. 954 in support of the contention that the assessment of liability under the Act made solely upon the report of the Inspector is not a proper exercise of power u/s 7A of the Act. Broadly stated the proposition is correct, but those two decisions have to be understood in the facts and circumstances of those cases. Where the authority u/s 7A of the Act bases its conclusion solely upon the report of the Provident Fund Inspector, ignoring all other material that may have been produced before it, or where no inquiry as contemplated u/s 7A of the Act is held, and an order of assessment of liability under the Act is passed on the sole basis of the report submitted by the Provident Fund Inspector, there will be justification for the charge that the power vested u/s 7A of the Act has not been exercised in accordance with the dictates of that section. In the instant case, however, I find that despite several opportunities having been given to the petitioner establishment to appear before the Regional Provident Fund Commissioner and to represent its case, the petitioner establishment failed to take advantage of the opportunities offered to it.

2. As the, impugned order discloses, large number of adjournments were granted and several notices were sent to the petitioner establishment. If it chose not to appear before the authority, it must squarely blame itself for the consequences. The question is as to whether in a case where the establishment concerned does not appear despite repeated notices, can it be said that in the exercise of its power u/s 7A of the Act. authority under the Act is required to make an inquiry by itself and come to its conclusion. In my view where the concerned establishment has been called upon to show cause against the order proposed and it chooses not to appear in the proceeding, it is open to the authority under the Act to proceed on the basis of such material as is available to it. Such material may include the report of the Inspector and the material produced in support thereof. In the instant case I find that the report of the Inspector is based on the material collected by him after visiting the establishment, and is countersigned by the General Manager of the petitioner establishment. Such material, in the absence of any rebuttal, can certainly be taken into account in coming to a conclusion as to the liability of the establishment, since it is material on record and is germane to the issue involved. It is stated that the signature of the General Manager was obtained by exerting pressure. There is no material on record to uphold this submission.

3. In the facts and circumstances of this case it was submitted by Mr. Sinha, Learned Counsel appearing on behalf of the petitioner, that though the petitioner may be said to be guilty of lapses on its part in not availing of the opportunities of representing its case before respondent no. 1, the consequences of the order are harsh and the liability that arises therefrom is a recurring liability. The order has been passed ex parte. In these circumstances the interest of justice requires that the petitioner may be given atleast one opportunity of representing its case before respondent no. 1. Having heard the submissions of Mr. Delip Jerath appearing on behalf of the respondents, and having given due consideration to the rival submissions, I have come to the conclusion that the interest of justice demands that the petitioner may be given one more opportunity to represent its case before the respondent no. 1. At the same time it is necessary to protect the

interest of the respondents. In these circumstances I make the following order:

The order of respondent No. 1 (Annexure -1) dated 27.8.1981 is quashed. The petitioner shall be given another notice for appearing before the respondent no. 1 and to produce such material which it has in support of its case for the period in question. If it chooses not to appear in response to such notice on the date fixed, the respondent no. 1 will be justified in passing the same order as has been passed under Annexure-1. However, if the petitioner appears and shows cause, the respondent no. 1 shall deal with the matter in accordance with law and pass appropriate order u/s 7A of the Act. In the event of respondent no. 1 finding that there is no liability on the petitioner for payment of the dues claimed for the period in question, the matter shall end there. In case it is found that the petitioner is liable to pay any amount under the order that may be passed by respondent no. 1 either exparte or after hearing the establishment, the petitioner shall pay that amount within''three months from the date of the order. The petitioner shall also pay on the amount so assessed interest at the rate of 12% per annum with effect from 27.8.1981 till the date of the actual payment. Mr. Sinha appearing on behalf of the petitioner has clearly understood the implications of this order and states that the petitioner shall comply with the directions contained in this order. The writ petition is disposed of accordingly, but in the facts and circumstances of the case the petitioner shall pay by way of cost a sum of Rs. 500/- within six weeks to the respondent.