
(2012) 09 JH CK 0154

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6047 of 2002

M/s. Ranchi Goushala Trust registered under the Bihar
Goushala Act, 1950, Ranchi

APPELLANT

Vs

The Regional Provident Fund Commissioner-II, Jharkhand
Ranchi and Another

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2013) 1 JLJR 65 : (2013) 1 LLJ 177

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Satish Bakshi, for the Appellant; P.P.N. Roy, Sr. Advocate, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the letter dated 08.04.2002 (Annexure-9) passed by the Regional Provident Fund Commissioner-II, Jharkhand, Ranchi as according to the petitioner, petitioner has been brought under the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 without deciding the applicability of the Act as required u/s 7A of the Act in question. Although, on previous occasion such an order dated 5th February 1994 was issued by the Assistant Provident Fund Commissioner, Ranchi u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the same was quashed by this Court vide judgment dated 21.07.2003 in C.W.J.C. No. 559 of 1994(R) reported in 2003 Vol. 3 JLJR 556 and the matter was remanded back to the respondents to proceed in accordance with law. This Court, by remanding the matter, observed that this order shall not stand in the way of the respondents to proceed in accordance with law if there is any report to suggest that the petitioner is a manufacturer.

2. From the impugned order dated 08.04.2002 (Annexure-9), it appears that the order has been passed on the basis of instruction/guidance issued by the Head Office, Employees Provident Fund Organisation, New Delhi on reference vide letter No. C.I./3(46)01/BR/1998 dated 26.03.2002 whereafter it has been held in the impugned letter that the establishment has been rightly covered under the schedule head "Milk and Milk Product". The petitioner has, therefore, been asked to comply with the requirement with effect from 01.04.1991 in respect of Code No. BR/6791. Although, a counter affidavit has been filed on behalf of the respondents-EPFO, but it appears that the impugned letter has been issued without following the procedure as required u/s 7A of the Act, which is quoted hereinbelow:-

17A. Determination of moneys due from employers.-[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908(5 of 1908), for trying a suit in respect of the following matters, namely.-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order [***] shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case. [(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting, the inquiry may decide the

applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.- Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]]

3. In order to come to a finding regarding the applicability of the Act, the Statutory Authority under the Act 1952 is required to hear the parties after issuance of notice and show cause and after considering the contention of the parties has to come to a finding whether the employee concerned falls within the definition of the establishment or factory and the provision of the Act, 1952 are applicable to the present concern.

4. In that view of the matter, the impugned order suffers from failure to follow the mandate of law as quoted hereinabove and has straightway adjudged the applicability of the Act of the petitioner holding it to be an establishment covered under the schedule under the head of "Milk and Milk Product" although the contention has been advanced on behalf of the learned counsel for the petitioner on merit that the petitioner has only a Goushala where no manufacturing activity in the nature of factory or manufacture process is being undertaken giving rise to new product.

5. This Court refrain from expressing any opinion on the merit of the case. In that view of the matter, the issue is remanded back to the Competent Authority under the Employment Provident Fund Organisation for taking a decision afresh after hearing the parties in accordance with law in terms of Section 7A of the Act, 1952. The petitioner shall co-operate in the said proceeding and it is expected that the same shall be decided as expeditiously as possible within a period of

four months from the receipt/production of a copy of this order. With the aforesaid observations and directions, this writ petition is disposed of.