
(2012) 07 PAT CK 0100

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11499 of 2006

M/s. Roxy Cinema

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2013) LabIC 346 : (2013) LLR 282 : (2013) 2 PLJR 931

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Vinod Kanth, Mukul Sinha and Rajesh Kumar, for the Appellant; Rajiv Kumar Verma and Mrs. Meeta Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—There can never be meeting of minds between the Assessing Authority and the assessed. The Assessing Authorities feel they have a task to enforce the law, as provided for in the statute, i.e. Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The resistance put up by the assessee however is in the manner in which the assessment has been made and the liability, fixed devoid of established and recognized procedure. Petitioner was an establishment, engaged in the business of running a cinema hall in the name of M/s. Roxy Cinema, located at Motihari in the district of East Champaran. They have been brought under the ambit of the Provident Fund Act, as the establishment was covered with PF Code No. BR 783 allotted to them. Some complaints with regard to non-compliance, non-deposit of the contributions made by the employees as well as the contribution of the employer became the bone of contention. Several proceedings were initiated earlier and may be under certain threat or coercion, compliance was also done, details of which are not required to be noted in this part of the order.

2. The issue now is the assessment, which has been made in the purported exercise of power vested u/s 7-A to the Provident Fund Commissioner and the

order passed by him on 29-10-2004, contained in Annexure-1.

3. Contention of learned senior counsel, representing the petitioner, is that any liability which is decided or fixed upon an establishment must be based on adequate evidence of, who are the beneficiaries or who the employees are, who are entitled to the benefit of such deductions or deposit, to be made by the establishment. A wishy-washy kind of enquiry merely because the assessee was trying to stone-wall or resist the enquiry may not absolve the Assessing Authority to do what is required to be done by him under law. Very wide powers have been vested in the said authority to do the job or enforce the law in case of alleged evasiveness or default on the part of an establishment.

4. Submission of learned senior counsel for the petitioner, is that the finding given with regard to the number of employees in the order is not corroborated or based on any evidence. A finding without evidence is no finding in the eye of law. A bald statement made by one Ganesh Chandra Ghosh, a so called ex-employee of the establishment that he was a permanent employee, from which period to which period he was not very sure of and his assertion that at a point of time there were 19 employees working in the establishment could not form the basis for the assessment. Curiously the statement made by the said person that when he retired on 13th of April, 2001 there was only 6 employees was not taken into consideration when the order was passed in 2004. If one part of the statement of the ex-employee was taken to reflect the actual state of affairs with regard to the number of employees at a point of time, he fails to understand as to why rest of the statement that there were only 6 employees left on the date of his retirement, i.e. 13th of April, 2001, was not taken into consideration. Obviously, some of the assertions made in the writ and submission that the establishment had seen good days, followed by bad days and long closure is evident from the fact that the cinema hall cannot be run by only 6 employees at any given point of time. Obviously, there was a skeleton staff, only taking care of the establishment when it was closed. The decree is a pointer to how the P.F. authority has adopted dual standards in adjudication.

5. When assessment order was being passed on 29.10.2004, all these aspects were required to be looked into by the authorities of the Provident Fund, for the reason that the object of enforcement or compelling compliance is not to gather money from establishments or units to meet any preconceived target. The object behind the Act is to collect the fund, which is meant for welfare of the workmen, who are required to be taken care of, once they superannuate. In absence of the identified workmen or employees, who are entitled to such benefit, a liability cannot be saddled upon an establishment in the name of compliance or enforcement of law. No collection can be made by the P.F. authorities for faceless, nameless or non-identifiable workmen on mere head-count or herd count. The Court is reinforced in this opinion by having a look at the statement of Objects and Reasons.

6. A decision which has been cited on behalf of the petitioner rendered in the

case of Food Corporation of India Vs. Provident Fund Commissioner and Others, , does have a bearing or reflection on the question, which has been raised at the bar with regard to validity of the assessment order, contained in Annexure-1.

7. In this regard the observation of the Apex Court rendered in the said decision, especially in paragraph Nos. 6 to 9 are reproduced here-in-below for the reason that the Hon''ble Apex Court has laid down the ambit and the ingredients, which emerges from the provisions of the Employees'' Provident Funds Act, especially Section 7-A in determination of the so called money due from an establishment:

6. We have carefully perused the Commissioner''s order and also the order of the High Court. The total amount ordered to be payable comes to about Rs. 22,48,000/- in respect of the employees of depots namely: Udaipur, Jaipur, Ajmer, Badmer and Sawai Madhopur. The Commissioner has also directed the Divisional Officer, Jaipur to deposit the provident fund contribution i.e. Rs. 18,72,194/- to the Fund being maintained by the trustees of the establishment. It is indeed a large amount for the determination of which the Commissioner has only depended upon the lists furnished by the Workers'' Union. It is no doubt true that the employer and contractors are both liable to maintain registers in respect of the workers employed. But the Corporation seems to have some problems in collating the lists of all workers engaged in depots scattered at different places. It has requested the Commissioner to summon the contractors to produce the respective lists of workers engaged by them. The Commissioner did not summon the contractors nor the lists maintained by them. He has stated that the Corporation has failed to produce the evidence.

7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

(Emphasis mine)

8. It is of importance to remember that the Commissioner while conducting an inquiry u/s 7-A has the same powers as are vested in a Court under the CPC for trying a suit. The section reads as follows:--

7 - A Determination of moneys due from employer.-- (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose 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, 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 Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

9. It will be seen from the above provisions that the Commissioner is authorized to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

(Emphasis mine)

8. Learned senior counsel representing the Provident Fund Commissioner contends that they have their hands tied and they have to after all proceed in the matter dependant on the kind of evidence and co-operation, which is rendered by an establishment in a proceeding initiated against them. For after all if they choose to be evasive, if not illusive, the authorities cannot sit idle, waiting for production of records and for making assessment at a time-frame convenient to the establishment. Obviously, dilatory tactics are used to frustrate, passing of any decision or order fixing liability upon the establishment.

9. No doubt, such tactics at times are adopted by establishments, may be even in the present case, as alleged and supported by certain materials brought on record in supplementary counter-affidavit, but then the Court has only to remind the learned senior advocate, representing the Provident Fund Commissioner, the responsibility which the Apex Court has laid at the doors of the Provident Fund Commissioner while making such orders of assessment. Non-cooperation cannot be a justification for non-compliance of the process or procedure prescribed under law.

10. In the totality, therefore, there are many a gaping-holes in the rational and reasoning, which has been applied in coming to the conclusion while fixing the liability upon the petitioner by virtue of the order, contained in Annexure-1. The order further suffers from the vice of breach of the parameters laid down in Section 7-A of the Act. The Writ Application, therefore, deserves to be allowed. Annexure-1, dated 29.10.2004 is quashed, as no proper order in terms of the

requirement of the law, as laid down by the Apex Court has been followed in the present case. The matter, however, is remanded back for the authorities to decide the matter afresh. It is made clear that any consequential proceeding, which may have been initiated on the basis of Annexure-1 will also stand quashed.