

(1999) 01 RAJ CK 0032
In the Rajasthan High Court
Case No : C.W.P. No. 273 of 1998

Om Prakash Agarwal and Others

APPELLANT

Vs

R.S.E.B. and Others

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Citation : (2000) 1 LLJ 1644 : (2000) 1 RLW 697 : (1999) WLC 364 : (1999) 1 WLN 63

Hon'ble Judges : D.C. Dalela, J

Bench : Single Bench

Advocate : Jagdeep Dhankhar and Hemant Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Dalela, J.—Petitioners claim to be contractors engaged for contract work with respondent No. 1, i.e. Rajasthan State Electricity Board (RSEB). Under the letter dated November 7, 1997, the respondent No. 2, Director of Accounts, RSEB, directed all the Chief Engineers, RSEB to furnish the copy of work order and salary sheet of the contractor paid to his employees. It was further given out that in Tender Enquiry, a clause be incorporated that only such contractors should apply who had already been registered with Provident Fund Commissioner. The respondents issued a circular dated November 24, 1997, whereby the contractors engaged for contract work with RSEB, have been directed to get registration with the Provident Fund Commissioner. The circular also stipulates that the bill of contractors will be entertained, and payment will be made only when it is supported with a copy of challan of the Provident Fund Contribution paid to the Provident Fund Commissioner. According to the petitioners, the aforesaid steps of RSEB, are founded on the erroneous premise that the establishment of the petitioners contractors attracts the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (for short "the Act of 1952") According to the petitioner, their establishment does not attract the applicability of the provisions of the Act of 1952. The petitioners have preferred this writ petition for

quashing the letter dated November 7, 1997 and the circular dated November 24, 1997, and for directing the RSEB to make the payment against the bills of the petitioners without insisting the payment of the Provident Fund contribution.

2. I have heard the argument of both the sides.

3. A perusal of the letter dated November 7, 1997 (Annexure 1) would show that it is in form of an advise to the Chief Engineers for taking future action. It has been advised that in future, in the Tender Enquiry, a clause may be incorporated that only such contractor should apply who had already been registered with the Provident Fund Commissioner. None of the petitioners can be said to be aggrieved by such advisory letter. The RSEB is free to restrain the tender to those contractors who are registered with the Provident Fund Commissioner. There is no (sic) arbitrariness or unreasonableness in it. No legal infirmity is visible in the letter dated November 7, 1997.

4. In the circular dated November 24, 1997, the contractors have been advised to get themselves registered with the Provident Fund Commissioner with the stipulation that their bill will be cleared when it is supported by the salary sheet paid to the engaged labour and a copy of challan of the Provident Fund Contribution paid to the Provident Fund Commissioner.

5. The petitioners have not given any material etc. to show that the Act of 1952, is not applicable to them or that the labourers are the employees of the RSEB. In the case of F.C.I v. UOI 1998 I LLJ 1154 Hon'ble the Supreme Court has held that without sufficient material, the contract labour cannot be treated to be the employee of Food Corporation of India (FCI). Similarly, in the present case in hand, no sufficient material is available for holding that the contract labourers engaged by the petitioners contractors are the employees of RSEB and not of the petitioners contractors.

6. Para 36-B of the Act enjoins every contractor to submit to the principal employer a statement showing the recoveries of contribution in respect of the employee engaged by or through him and also to furnish such information as principal employer is required to furnish to the Provident Fund Commissioner.

7. By the circular dated November 24, 1997, the RSEB has required contractors to furnish the salary sheet paid to the labour and the copy of challan of provident fund contribution, paid to the Provident Fund Commissioner before the bills of the contractor is entertained or the payment is arranged. There is nothing wrong in it.

8. It is true that the mention of notice u/s 7-A of the Act of 1952 in the caption of the circular dated November 24, 1997 is not correct. But the body of the circular dated November 24, 1997 does not have the tone of notice and the mere incorrect caption would not make it to be a notice u/s 7-A nor would it call for any interference in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India.

9. I do not find any merit or force in the petition, and, as such, it is dismissed.