(2012) 07 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (C) No. 31875 of 2011

Orissa State Co-operative Union Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 17, 7A

Citation : (2012) LLR 1274

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Goutam K. Acharya, Dr. S.C. Hota, Mr. KM Patra, Mr. P.K. Das, Mr. S.K. Behera, Mr. K. Ghadai, Mr. K. Behera and Mr. J.K. Mahapatra, for the Appellant; Sishir Sundar Mohanty, Sr. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mishra, J.—In this writ petition the petitioner, being the Orissa State Co-operative Union Ltd., has assailed the order dated 3.11.2011 passed by the Regional Provident Fund Commissioner-II (C & R), Bhubaneswar, Odisha, opposite party No. 1, u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952(hereinafter referred to as "the Act" for brevity) holding that the petitioner-union is covered under the Act w.e.f. 6.3.1982. The petitioner-union is a non-profit making organization. It is established in 1948 for the awareness of the Co-operative Management in Orissa. In the year 1976, the petitioner-union made a representation to opposite party No. 1 to exempt the Union from being covered under the Act. The main ground of exemption is that the Union is having its own CPF Scheme. In the said scheme deductions are made @ 8% of the basic pay and the employees are also allowed the employer''s contribution for equal amount every month and the amount so collected from the different employees along with Employer''s contribution is being deposited in the Orissa State Co-operative Bank in a fixed deposit for ultimate benefits of its employees. The representation of the petitioner remained pending before opposite party No. 1, despite several reminders. In the year 1997 without affording any opportunity of hearing to the petitioner, opposite party No. 1 issued Code No. OR-5228 thereby bringing the Union under the purview of the Act. This fact could be learnt by the petitioner in the year 2003. Thereafter the petitioner made several representations against inclusion of its establishment under the Act from 6.3.1982 though the code was issued in the year 1997. However, no action has been taken on the repeated representation filed by the petitioner-union.

2. Before filing of this writ petition, the petitioner had filed W.P. (C) No. 7185 of 2007, which was disposed of on 21.4.2008 giving direction to opposite party No. 1 to consider the representation made by the petitioner and dispose of the same as expeditiously as possible preferably within a period of two months from the date of receipt of certified copy of the order. In pursuant to such an order, opposite party No. 1 had passed order on 3.11.2011. While disposing of the representation, opposite party No. 1 has observed as follows:-

In obedience to the direction of the Hon''ble High Court, the above mentioned representations have been carefully considered by the undersigned and examined in light of the provisions of the EPC and MP Act, 1952 and the undersigned comes to the conclusion, that the establishment has rightly been covered under the Act, since the establishment is not directly under the Govt. or Statutory Authority. Moreover, the Provident Fund rules of the establishment do not prevent the Act from implementation. Further the Provident Fund rules of the establishment do not provide for pensionary benefits and insurance benefits. So the provisions of the EPF and MP Act are very much applicable to the establishment and the CPF Rules of the establishments have become null and void consequent upon application of the Act to the establishment. Further, the establishment has never applied for exemption from EPF Scheme, 1952 and therefore, the provisions of section 17 of the Act are applicable to the establishment so far as the EPF Scheme is concerned.

It was further held by opposite party No. 1 that in consideration of the establishment he came to the conclusion that the provisions of the EPF Act are applicable to the establishment with effect from 6.3.1982. The dues of the establishment be determined u/s 7A of the Act from such date. No reason has been recorded as to why the establishment is covered from 6.3.1982 and not from 1997 when the code number was issued.

3. Learned counsel for opposite party No. 1 has tried to supplement the findings recorded by opposite party No. 1 and stating that on 6.3.1982 all cooperatives having the object of imparting education have been included in the Scheme of the Act and, therefore, the petitioner-union is liable to pay the dues as envisaged u/s 7A of the Act. However, the order of opposite party No. 1 does not reveal that such was the consideration in the mind of the said opposite party while issuing the order impugned, i.e., Annexure-1. No reasoning has been given therein.

4. It is further seen that opposite party No. 1 has held that the Provident Fund Rules of the establishment do not prevent the Act from implementation. It further held that the Provident Fund Rules of the establishment do not provide for pensionary benefits and insurance benefits. So the provisions of the Act are very much applicable to the establishment and the CPF rules of the establishment have become null and void consequent upon application of the Act to the establishment.

5. Sub-section (1) of Section 16 of the Act provides that this Act shall not apply to certain establishments. It reads as follows:

16(1) This Act shall not apply-

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of-contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

xxx xxx xxx

6. Thus, it is clear that the petitioner-union has a contributory provident fund. Clause (b) of Sub-section (1) of Section 16 of the Act provides that any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme 4 or rule framed by the Central Government or the State Government governing such benefits are not included within the gamut of the Act.

7. In this connection, it is appropriate to take note of the decision of this Court in Cuttack Development Authority, represented through its Cuttack Development Authority Vs. Regional Provident Fund Commissioner, This Court has held that the C.D.A. having been constituted/established under the O.D.A. Act and its employees having been made entitled to the benefit of old age pension in accordance with the resolution of the C.D.A, the said establishment of the C.D.A. is clearly exempted from the application of the provisions of the Act.

8. This Court is of the view that opposite party No. 1 should apply his mind again to the facts of the case and decide whether the Union is exempted under Clause

(b) of sub-section (1) of Section 16 of the Act and to give cogent reasons for making it liable for contribution under the Act from 6.3.1982. Accordingly, the writ petition is allowed. The order dated 3.11.2011 passed by opposite party No. 1 is hereby quashed and the mater is remanded back to the said opposite party for hearing afresh in the light of the observations made in this judgment. The petitioner-union is directed to appear before opposite party No. 1 by 14th of September, 2012.

