
(2002) 09 RAJ CK 0045
In the Rajasthan High Court
Case No : CW.P. No. 3712 of 1994

Prem Chand

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

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

Citation : (2003) 96 FLR 630 : (2003) 2 LLJ 119 : (2003) 1 WLC 282

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

Bench : Single Bench

Advocate : R.N. Mathur and Shruti Dixit, for the Appellant; N.K. Jain and N.C. Jain, for the Respondent

Judgement

K.S. Rathore, J.—The petitioner filed this writ petition stating that he is a registered A-Class Contractor and the work which he performed is not of much high value, hence he does not require more than 8-10 permanent employees in his Establishment and even these employees include his family members as well and requests that the notices dated April 12, 1991 and May 11, 1993 and the order dated June 8, 1994 which was passed in pursuance of these notices, may kindly be quashed and set aside. Brief facts of the case are that the respondent issued a notice to the petitioner dated April 12, 1991 whereby the petitioner was informed that he is required to deposit the amount in accordance with the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act of 1952) for the period between November, 1980 to February, 1991 and this amount is to be deposited within the period of ten days failing which the respondent would be free to initiate action u/s 14 of the Act of 1952.

2. The petitioner immediately submitted its reply through registered post to the respondent stating therein that the Establishment of the petitioner does not fall within the ambit of the Act of 1952 as the workers employed by the petitioner are not more than 8-10. The petitioner also submits that the nature of employment of the labour are purely casual in nature and they have been given

work on daily wage basis.

3. The petitioner received another notice dated May 11, 1993. The replies to the notice issued by the respondent were immediately given after receipt of such notice from time to time regularly.

4. Ultimately ex-parte proceedings were initiated and order dated June 8, 1994 bearing No. 1835 was passed by the respondent by which the petitioner was directed to deposit the amount of Rs. 3,35,935/-. By another order dated June 8, 1994 bearing No. 1836 the petitioner was again asked to deposit the amount of Rs. 76,188/- for the period from 1991 to 1994. The orders Annexures 5 and 6 are challenged by the petitioner mainly on the ground that the provisions of the Act 1952 are not applicable because the petitioner did not employ more than 10 persons in his establishment. For the applicability of the Act of 1952 the establishment must have at least 20 persons in its employment.

5. Learned counsel for the petitioner further submits that the respondent prior to passing the ex-parte order Annexures 5 and 6 has not even cared to examine the reply submitted by the petitioner.

6. The petitioner further challenged the orders Annexures 5 and 6 on the ground that after lapse of more than 11 years the petitioner was issued a false notice in the year 1991 and that too is not on the basis of the enquiry and same was issued on the inspection report made by the Inspector of the respondent.

7. The provision of Section 7-A make it necessary for the respondent first to decide whether Act of 1952 is applicable on the Establishment or not. Without giving any finding with regard to application of the Act of 1952, the respondent cannot pass any order whatsoever.

8. Learned counsel for the petitioner also referred Section 7-A of the Act of 1952 which reads as under:

"7-A. Determination of moneys due from employers. -(1). The Central Provident Fund Commissioner, any Additional Central 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."

9. Learned Additional Advocate General Mr. Mathur further referred Section 3-A which reads as under:

"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 enquiry and other documents available on record."

10. Since the petitioner has submitted detailed reply to the notice and also disputed this fact that the provision of the Act of 1952 are not applicable, it was mandatory for the respondents to conduct enquiry. Mr. Mathur referred Annexure R-1 and submits that this is not the inquiry report and is a report submitted by the Inspector.

11. Mr. Mathur, in support of his contentions placed reliance, on the judgment reported in *Indo Flex Pvt. Ltd., Jaipur v. Regional Provident Fund Commissioner, Rajasthan* and Ors. 1988 RLR 760, and given much emphasis on Paras 3, 5 and 7 wherein the Division Bench of this High Court has held that recovery order was passed without any order of enquiry u/s 7-A of the Act of 1952 and consequently such order cannot stand on this ground alone.

12. Mr. Maloo also placed reliance on the judgment reported wherein the High Court of Allahabad in the case of *Meekan Transmissions Ltd. Vs. Regional Provident Fund Commissioner and Others*, has held that the order not spelling out any valid reasons or does not deal with the objection cannot be allowed to be sustained and hence notice issued to the petitioner dated January 28, 1992 is found to be defective and same also cannot be allowed to stand.

13. Learned counsel for the petitioner also placed reliance on the judgment reported in *Valluvar Handloom Textiles, etc., etc. Vs. Government of India and Others, etc.*,

14. Learned counsel for the respondent Mr. N.K. Jain submits that this petition is not maintainable because the petitioner did not come with clean hands and concealed material facts as the petitioner has himself put his signature on the enquiry report Annexure R1 conducted under the provisions of the Act of 1952.

15. Mr. Jain further referred Sub-section (3)(a) of Section 1 of the Act of 1952 which provides that:

"where every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishment which the Central Government may, by notification in the Official Gazette, specify in this behalf, the Act of 1952 is applicable to such establishment."

16. Shri Jain states that as per enquiry report average attendance of workers is more than 50, therefore, the provisions of the Act of 1952 are applicable to the petitioner.

17. Mr. Jain further submits that it is wrong to say that the petitioner has not been given opportunity of being heard and he referred to Annexures-5 and 6 wherein it was specifically mentioned that proceedings which were postponed was for the reason that the petitioner was not able to attend the dates and the dates have been mentioned in the orders Annexures 5 and 6 and as many as 11 chances were given to the petitioner to represent his case. Since he failed to represent his case and produce any document whatsoever to establish this fact that his establishment is not covered under the provisions of the Act of 1952 no option is left with the respondents to pass the orders Annexures 5 and 6.

18. In support of the contentions the learned counsel for the respondents Mr. Jain placed, reliance on the judgment reported in 1988 (1) RLR 221 (supra) wherein the Bench of this Court has held that: "As regards coverage of the establishment, there is enough material to prove that the petitioner's establishment was employing more than 20 persons. There is an admission of the Accountant of the petitioner, when he put his signatures on November 20, 1975, on the list of employees working in the establishment of Oriental Agencies and further when Shri S. Kasliwal, learned counsel for the petitioner, made a declaration that the statutory dues to the Fund and Family Pension Fund were deducted from the salary of the employees for the months of October, 1976 to May, 1977. "And, as such the establishment was rightly covered under the Act of 1952.

19. Learned counsel for the respondent Mr. Jain submits that since the petitioner himself has signed the enquiry report, therefore, it is considered as admission and the Act of 1952 is applicable to the instant case also.

20. Mr. Jain placed reliance on the judgment reported in 1988 RLR 165 : 1990 RLR 335. He further submits that the petitioner should have represented before the Regional Commissioner prior to filing this petition. He also referred Paras 2 and 3 of the petition just to show that the petitioner not only concealed material fact but also is not able to establish that his establishment is not covered under the provisions of the Act of 1952.

21. Heard rival submissions of the learned counsel for the respective parties, carefully examined the provisions of the Act of 1952, as well as the judgment referred by the respective parties.

22. To resolve the present controversy it is necessary to examine the notice which was issued by the respondent dated April 12, 1991. That was the first notice which has been issued by the respondent in the year 1991. In the notice dated April 12, 1991 Annexure-1 it has been clearly indicated that since November 1980 to February, 1991 the Provident fund amount is due against the petitioner establishment, therefore, the petitioner was directed to deposit the said amount within the period of 10 days failing which the respondents are free to initiate action against the petitioner u/s 14 of the Act of 1952. This notice does not disclose that the notice is issued on the basis of the enquiry conducted by

the respondents as stipulated u/s 7-A of the Act of 1952.

23. A close look to the reply (Annexure-2) dated May 14, 1991 submitted in response to the notice dated May 14, 1991 shows that petitioner has categorically stated that he is not having permanent employees more than 10-11 and which includes the family members of the petitioner also and he only engaged casual Labour to perform the casual work at fixed rate and no record whatsoever has been maintained by the petitioner and as there are no permanent employees of the petitioner therefore, the petitioner by way of this petition disputed this fact that the provisions of the Act of 1952 are not applicable and in such eventuality it is the duty of the respondents to enquire into the matter in view of Section 7-A(a) and decide such dispute prior to application of the Act. And apparently it does not appear that this issue has been decided by the respondent. Again the respondent No. 2 issued notice and the petitioner vide its detailed reply dated May 11, 1993 reiterated the same facts and stated that the provisions of the Act of 1952 do not apply to the establishment of the petitioner.

24. A bare perusal of the Annexure-5 dated June 8, 1995 further reveals that after issuing show cause notice dated April 18, 1991 this order has been passed u/s 7-A which mentions that since no representative of the petitioner has attended the proceedings on various dates including the date March 29, 1991 fixed as mentioned in the order Annexure 5 and therefore, it was ordered to deposit Rs. 3,35,935/-.

25. I have also perused the Annexure-R1. Of course a perusal of the Annexure R1 reveals that it is a format under the head of "Applicability under E.P.F. and M.P. Act, 1952". "Enquiry Report" is written and in the column "Maximum Number of Employees" only remark has been given "Average attendance from January 1980 to June, 1985 more than 50, as per initial information and duly signed by proprietor on July 26, 1985. But, it is not specified that in which month the Inspector has found that more than 50 persons have attended the establishment of the petitioner.

26. If at all it is considered that the petitioner may have signed this document but the enquiry report which is submitted by the respondents, in my view, cannot be said to be the enquiry report as per Section 7-A(a).

27. The ratio decided in the judgments referred by the petitioner applies to the present case. In the facts and circumstances of the case, I deem it proper to set aside Annexure 5 and direct the respondent to initiate fresh action strictly in accordance with the provisions of Section 7-A after giving opportunity of being heard to the petitioner.

28. The respondents are free to initiate action against the petitioner establishment after giving fresh notice to the petitioner.