

(2010) 02 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) No. 2954 of 1999

Professional Assistance For Development Action

APPELLANT

Vs

Presiding Officer, Employees Provident Fund Appellate
Tribunal and Another

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 125 FLR 961 : (2011) 3 LLJ 119

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Saurabh Prakash, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This writ petition seeks quashing of the order dated 16th March, 1999 of the respondent No. 1, Employees' Provident Fund Appellate Tribunal dismissing the appeal preferred by the petitioner against the order of the respondent No. 2 Regional Provident Fund Commissioner, holding the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 applicable to the petitioner.

2. The petitioner is a society registered under the Societies Registration Act, 1860 and is a Non-Governmental Organization (NGO). The respondent No. 2/RPFC sought to make the provisions of the Act applicable to the petitioner and upon the petitioner disputing the same, an inquiry u/s 7A of the Act was initiated by the respondent No. 2/RPFC. The petitioner does not dispute that it is an establishment and/or that it has more than 20 employees. The only contention of the petitioner was/is that it is neither an establishment within the meaning of Section 1(3)(a) nor has the Central Government issued any notification u/s 1(3)(b) of the Act specifying the petitioner and hence the provisions of the Act are not applicable to the petitioner. The respondent No. 2/RPFC on the contrary, initially relied upon a notification u/s 1(3)(b) bringing "establishments rendering expert services such as supplying of personnel, advise on domestic or

departmental inquiries, special services in rectifying pilferage, theft and payroll irregularities to factories and establishments" and subsequently on a notification which made the provisions of the Act applicable to-

- (i) any University;
- (ii) any college, whether or not affiliated to a University;
- (iii) any school, whether or not recognized or aided by the Central or a State Government;
- (iv) any scientific institution;
- (v) any institution in which research in respect of any matter is carried on;
- (vi) any other institution in which the activity of imparting knowledge or training is systematically carried on." and contended that the petitioner was engaged in the activity of imparting knowledge or training.

3. The stand of the petitioner in the proceedings before the respondents and before this Court also is, that it has been formed for the purpose of providing assistance to the poor with a view to bring about their economic upliftment; that because of the very nature of the work involved, it is necessary for the petitioner to approach each situation in the context of its peculiar facts and circumstances and therefore, the nature of assistance that is provided by the petitioner to such people takes a variety of forms including organizing them into small informal groups for mutual help, linking such groups to banks for obtaining credit, licenses, concessions etc.; linking them to various markets, helping them to solve problems and channelizing to them funds donated by charitable and development institutions. The petitioner in its letter dated 9th September, 1997 to the respondent No. 2/RPFC had also stated that it is engaged in providing technical and management assistance to poor people in villages, to registered or unregistered groups of such poor people and to other societies or trusts engaged in similar works. The petitioner in its communication dated 8th January, 1998 during the 7A proceedings before the respondent No. 2/RPFC also stated that training is not a systematic activity of its organization and any skills imparted to poor people are contextual to specific problems that such people face in their occupational activities. It was further represented that there are no set schedules, syllabi or training methodologies followed and each staff member in his or her day to day work in villages would impart skills as and when necessary in a manner appropriate. It was thus contended that the activity of the petitioner was sporadic in nature and situation specific and it was the exact opposite of being systematic.

4. The respondent No. 2/RPFC vide its order dated 10th May, 1998 held that from the Memorandum of Association of the petitioner, the following are the objectives of the petitioners:

- a. In conformity with its name, the Society is established to provide professional,

technical and management assistance to various agencies engaged in rural developments and related action programmes.

b. To offer know-how, advice and technical guidance in the field of agriculture, animal husbandry, water resources, forestry, new and renewable energy sources, rural industries, formal and non- formal education, community health, habitat and environment, and any other fields considered useful for the purpose of promoting integrated human development.

c. To develop and promote appropriate prototypes, designs and technologies related to development, to test and popularize their application in the field, and to act as a clearing house of information on such matters, with or without the help of other agencies/institutions.

d. To assist developmental agencies to find appropriate professionals for their projects, and to assist persons interested in making a professional contribution to development to find suitable development agencies, where they may work on a short or long term basis.

e. To do planning and formulation of development projects independently or in association with other agencies, for implementation by itself or through other agencies engaged in development programmes.

f. To assist development agencies at the grass roots to effectively utilize physical assets acquired for the purpose of rural development and to evolve systems to ensure equity and justice in their utilization.

g. To monitor the progress of development projects, conduct evaluation, maintain information systems and report on its own development projects, or projects of other agencies at their request.

h. To do all such other lawful acts, deeds or things either alone or in conjunction with other organizations as are incidental or ancillary or conducive to the attainment of any of the above objectives.

It was further held that some activities of the petitioner may be systematic and some may not be systematic but as a whole the establishment objectives were to improve the skills of the people and the petitioner was imparting knowledge. It was held that the avowed object of the Act is to provide adequate social security to the employees and it is a welfare legislation and should be construed so as to give necessary effect to that object. The respondent No. 2/RPFC thus held the petitioner to be imparting knowledge and thus covered by the notification (*supra*).

5. Aggrieved from the order of the respondent No. 2/RPFC, the petitioner preferred an appeal to the respondent No. 1 Appellate Tribunal. The said appeal has been dismissed holding (i) that since the petitioner did not dispute that it is employing 20 or more persons in its establishment the Act is in any case applicable to the petitioner; (ii) that the petitioner is also providing expert services and rendering the activity of imparting knowledge and thus is covered

by the notifications aforesaid u/s 1(3)(b) of the Act; (iii) that the name itself of the petitioner suggested that the petitioner is providing assistance for development action and assistance is nothing but a service.

6. This Court, prima facie finding fault with the reasoning of the respondent No. 1 / Appellate Tribunal that if any establishment engages more than 20 employees it would be covered by the Act, issued notice of this petition and also stayed recovery from the petitioner pursuant to the order aforesaid u/s 7A of the Act. The said interim order was made absolute on 29th March, 2000 till the disposal of the petition.

7. The counsel for the petitioner at the outset contended that the Tribunal has erred in holding that merely because the establishment of the petitioner was employing more than 20 employees, it would be covered by the Act. It is contended that the petitioner is admittedly not a factory engaged in any industry specified in Schedule-I so as to be covered u/s 1(3)(a). It is further contended that if the interpretation of the respondent No. 1 is to be upheld, all establishments employing more than 20 persons would be covered by the Act and the words in Section 1(3)(b), "which the Central Government may, by notification in the official gazette, specify in this behalf", shall be rendered otiose. However need is not felt to deal with the said contention inasmuch as the counsel for the respondents has not sought to justify the orders impugned in this petition on this ground and has only sought to justify the same on the basis of the establishment of the petitioner falling within the purview of the notifications aforesaid i.e. qua establishments rendering expert services and imparting knowledge or training.

8. The counsel for the petitioner has vehemently urged that the Appellate Tribunal has, in holding the petitioner covered by the notification qua institutions in which the activity of imparting knowledge or training is systematically carried on has missed out the words "systematically carried on" and not even reproduced the same in the order. It is contended that even if the petitioner is to be held as carrying on activity of imparting knowledge or training, such imparting is not systematic. It is urged that since there is no curriculum and no classes are held, the imparting of knowledge cannot be said to be systematic and in fact no finding of any such systematic imparting of knowledge or training has been returned by the RPFC or by the Appellate Tribunal also. It is contended that the orders impugned cannot be sustained on this ground alone. It is also contended that even though the respondent No. 2/RPFC had not insisted upon the petitioner being covered by the notification qua establishments rendering expert services but the Appellate Tribunal wrongly held the petitioner to be covered by the same also. It is further contended that Clause vi of the notification aforesaid, qua any other institution in which the activity of imparting knowledge or training is systematically carried on, has to be read ejusdem generis to Clauses (i) to (v) the notification i.e. the institution should be akin to the University, College, School, Scientific Institution, Research Institution. Reliance is placed on Parakh

Foods Ltd. Vs. State of A.P. and Another, and Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another, on the principle of ejusdem generis.

9. I had enquired from the counsel for the petitioner as to why the petitioner, which claims to be a NGO and to be working on a no profit and no loss basis, is resisting applicability of the Act inasmuch as the petitioner further claims to have set up its own Provident Fund Trust. The counsel for the petitioner explains that the respondents may levy penalty on the petitioner and/or may prosecute the petitioner for non compliance of the provisions of the Act and that the PF deductions done by the petitioner till now may not be as per the Act. It is vaguely sought to be suggested that if the respondents were willing to make the statement that they will not penalize the petitioner and not prosecute the petitioner the petitioner is willing to be covered by the Act. Alternatively, it was suggested that this Court may save the petitioner from penalties and prosecution for past defaults. Even though, I am of the opinion that in view of the matter having remained subjudice including before this Court, the question of the petitioner being liable for penalty or prosecution may not arise but that is not to be the subject matter of the present decision.

10. At the outset, I may state that the question whether the establishment of the petitioner is covered by a particular notification or not is a mixed question of law and fact. The scope of the writ petition against the concurrent findings of the RPFC and the Appellate Authority is limited. This Court can only examine whether any material evidence has not been considered or whether any evidence which ought not to have been read has been considered. Re-appreciation of evidence is outside the domain of scrutiny in the writ jurisdiction.

11. The petitioner has neither raised any ground on which the writ ought to be entertained nor urged any such argument. The petitioner would want this Court to independently adjudicate whether it is covered by the notification or not. The same cannot be permitted.

12. I am also of the view that the best measure of the activities of the petitioner is its objectives as set out in its memorandum of association and as recorded above. A perusal thereof unequivocally leads to the conclusion that the petitioner is engaged in imparting knowledge and/or training. Upon the same being put to the counsel for the petitioner he contends that that what has to be seen is the activity in fact being carried on by the petitioner and not what is recorded in its memorandum. It is urged that the language of memorandum is always drafted very widely to prevent any restriction subsequently on activities to be carried on. Even if the said contentions were to be accepted, what stares one in the face in the present case is that the petitioner utterly failed to lead any evidence whatsoever in this regard before the respondent No. 2/RPFC. In conducting an inquiry u/s 7A of the Act the officer conducting the inquiry has the same powers as are vested in a court under the CPC in relation to enforcing the attendance of any person and/or examining him on oath or requiring the production of documents or receiving evidence on affidavit or issuing commissions for the

examination of witnesses. However, the petitioner neither gave any evidence or any particulars of its actual practice or transactions if different from that said out in the memorandum. No opportunity to lead any evidence was sought. Before this Court also the petitioner has not stated or filed anything which would show that the petitioner is not providing professional, technical and management assistance or not offering know-how, advice or technical guidance or assistance as it is to, in terms of its memorandum. The onus in this regard was squarely on the petitioner and which it has failed to discharge. In such situation, the authorities below had no option but to proceed to determine the applicability of the Act as per the objects of the petitioner set out in its own memorandum and as per which it is definitely engaged in imparting of knowledge and/or training.

13. The word systematic is defined in the Shorter Oxford Dictionary 6th Edition inter alia as arranged or conducted according to a system plan or organized method or as acting according to a system regular and methodical and/or as habitual, deliberate and premeditate. Similarly, the Supreme Court in the *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , though not in the context of the Provident Fund Act held "as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities....."

14. I had during the hearing enquired from the counsel for the petitioner whether the accounts of the petitioner were audited or not. The answer was in the affirmative. I had also enquired whether a social audit of the activities of the petitioner was carried on or not. The counsel though having no instructions in this regard fairly stated that in the ordinary course, for the petitioner to receive funding/donations for its activities, such fund/donor organizations must be insisting upon a social audit. If that be so then it is difficult to believe that the activities of the petitioner are being not systematically carried out. Systematic carrying on of activity cannot be confused merely with a curriculum or a course or a relationship of student and teacher. The language of the notification permits wide amplitude. The notification is for bringing establishments within the ambit of the Act which itself is social welfare legislation. The Supreme Court in *Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others*, has held that it has to be borne in mind that the Act is a beneficial piece of social welfare legislation aimed at promoting and securing the well being of

the employees and the court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. The notifications under the Act thus also have to be liberally construed so as to bring employees of maximum number of establishments within the ambit of the Act. The notifications u/s 1(3)(b) are not required to be establishment specific. There can be one notification with respect to a class of establishments. The notification in the present case is of the latter category. Such notifications necessarily have to be generic and a distinction here or a difference there cannot be used to contend that an establishment which generally would be covered by the notification, owing to such difference or distinction is exempt there from. In fact from the contention of the petitioner itself that some of its activities in imparting knowledge or training may be systematic and others not, the petitioner would be covered by the notification.

15. I also do not find favour with the contention of the counsel for the petitioner that clause vi (supra) of the notification has to be read ejusdem generis to clauses i to v. It cannot be said that clause vi can include only such institutions as of the categories of university, colleges, schools, scientific or research institutions. If that had been the intention, the legislature could have very well said "any other institution carrying on similar activity". The legislature and/or the delegatee has fixed the criteria of imparting knowledge or training in a systematic manner. As per the objects of the petitioner as set out in its memorandum, the petitioner is carrying out such systematic activity.

16. I find it hard to believe that in today's time and age and specially when the petitioner depends on funding including from sources outside India, the activities of the petitioner of imparting knowledge or training could be casual or sporadic. It is hard to believe that there would not be a module defining the steps to be taken qua each project/situation. The very fact that the petitioner has shied away from producing any material relating to its activity is indicative enough of the adverse inference to be drawn therefrom. The counsel for the petitioner himself has contended that the petitioner has more than 20 employees to carry on its objectives and it is unbelievable that such employees would not be guided by a specific course or mandate or that the manner of rendering assistance or training would not be formulated so to be economical and time efficient rather than being left to be decided as per the discretion of each employee.

17. I, therefore, do not find any merit in this petition. The rule issued on 29th March, 2000 is discharged and the interim order is vacated and the petition is dismissed.

No order as to costs.