

(2024) 04 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3966 Of 2013

Pubali Housing Co-Operative Society Ltd.

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 18-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Employees' Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A,
16(1)(a)

Citation : (2024) 04 GAU CK 0029

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S K Ghosh

Final Decision : Dismissed

Judgement

1. None appears on call for the petitioner.
2. Heard S.S. Roy, learned CGC for respondent no.1, and Mr. P.K. Roy, learned senior counsel, assisted by Ms. A. Chakraborty, learned counsel for the respondent nos.2 to 5.
3. By filing this writ petition under Article 226 of the Constitution of India, initiation of a fresh proceedings of a fresh proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act" for short) vide communication no. NE/GHY/3310/2804-05, dated 30.05.2013 has been assailed.
4. The case projected by the petitioner is that the initiation of previous proceedings under Section 7A of the EPF Act vide Order No. AS/3310/ENF/2400 dated 05.10.1998 was quashed by this Court by order dated 23.02.2006, passed in WP(C) 4320/1999. Accordingly, it is projected that by initiating a fresh proceedings under Section 7A of the EPF Act, the respondent authorities are attempting to render the render the order of this Court dated 23.02.2006,

passed in WP(C) 4320/1999 as redundant. It is also projected that the provisions of EPF Act does not apply to the petitioner, which is a Housing Cooperative Society in view of the bar contained in Section 16(1)(a) of the EPF Act.

5. The learned senior counsel for the respondent nos.2 to 5 has submitted that the previous notice under Section 7A of the EPF Act was a result of ex parte proceedings and the petitioner did not participate in the said proceedings. It is submitted that the previous order of this Court dated 23.02.2006, passed in WP(C) 4320/1999 did not prohibit the respondent authorities to satisfy itself about their empowerment to collect PF dues found satisfaction that the cooperative society as in its employment either directing or contractors, workers exceeding 50 and working with the aid of power. It is submitted that from the order dated 23.02.2006, passed in WP(C) 4320/1999, it is not in dispute that the petitioner society undertakes construction of residential flat at different locations through different contractors. Accordingly, it is submitted that vide letter dated 28.03.2008, the Regional P.F. Commissioner (i/c) had merely sought for an advice from the Addl. Central P.F. Commissioner (East Zone), EPFO as to whether to refund the deposited and recovered amount to the establishment with interest and/or to codify the establishment as 103, by highlighting that the quashing of the previous order puts an end to the coverage of the establishment till 05.10.1998 and therefore, coverage beyond 05.10.1998 was not barred. It was further submitted that proceedings under Section 7A of the EPF Act vide orders under memo no. NE/GHY/3310/2804-05, dated 30.05.2013 is merely to determine the coverage of the establishment under the EPF Act and therefore, the petitioner has to cooperate with the adjudicatory process by setting satisfying the authorities that they are having less than 50 workers working without the aid of power. It is submitted that by the said impugned communication dated 30.05.2013, the petitioner was granted more time to appear with the relevant records by fixing the date of enquiry on 26.06.2013. Accordingly, it is submitted that the respondents be permitted to conclude their enquiry/ determination as envisaged under Section 7A of the EPF Act.

6. The provisions of Section 7A and Section 16(1)(a) of the EPF Act are quoted below:

"7A: Determination of moneys due from employers:

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy 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 3[Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes 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 (5 of 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 (45 of 1860).

(3) No order shall be made under sub-section (1), unless 5[the employer concerned] is given a reasonable opportunity of representing his case.

(3A) 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 inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite

party.

* * *

16(1)(a): Act not to apply to certain establishments:

(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.”

7. From the provisions of Section 7A of the EPF Act, it appears that the said provision envisages a determination by the EPF authorities where a dispute arises regarding the applicability of the Act to an establishment. Therefore, if the petitioner can satisfy the respondent authorities that the EPF Act does not apply to their Housing Cooperative Society under Section 16(1)(a) of the Act, such determination would exclude the applicability of the EPF Act on the petitioner organization.

8. Therefore, notwithstanding that the previous proceedings under Section 7A of the EPF Act was quashed by this Court by judgment and order dated 23.02.2006, passed in WP(C) 4320/1999, the determination of applicability of Section 7A of the EPF Act was still left open. Paragraph 5 of the said judgment is quoted below:

“5. It would appear from Clause (a) that an establishment registered under the Cooperative Societies Act, 1912 or under any law for the time being force is exempted from payment of provident fund in respect of employees if the number does not exceed 50 and they do not use power. In the instant case, at certain point of time the workers employed by the contractors exceeded 50 and, this situation, as it appears led the Assistant Provident Fund Commissioner to direct the petitioner Society to deposit the provident fund. The order passed by the Provident Fund Commissioner (Annexure-3) no-where reflects that the persons employed by the petitioner Society were working with the aid of power. Even the inspection report on the basis of which the impugned order was passed also does not reflect that the employees were, at any point of time, required to work with aid of power. The authority empowered to collect the provident fund dues will have to satisfy himself of this requirement while directing the Cooperative Society to deposit the provident fund dues that it has in its employment, either directly or through contractors, workers exceeding 50 and that they have been working with the aid of power. If it is found that the number of workers exceeds 50 and they are required to work with the aid of power, only in that case the Commissioner may invoke the provisions of the Act. In the instant case, the requirement of law as is required under the provisions of Section 16 are not complied with. Therefore, the impugned order dated 05.10.1998 is liable to be quashed.”

9. Accordingly, the Court is of the considered opinion that as the provisions of

Section 7A of the EPF Act requires determination of money due from the employer and further that if the petitioner can satisfy the respondent authorities that the EPF Act does not apply to its cooperative society in light of provision of Section 16(1)(a) of the EPF Act, such determination be allowed to proceed because in the previous judgment dated 23.02.2006, passed in WP(C) 4320/1999, such determination as to whether the petitioner cooperative society is exempted from applicability of EPF Act was not determined.

10. Accordingly, this writ petition fails and the same is dismissed.

11. Resultantly, it would be open to the competent authority under the EPF Act to proceed with the determination of whether the EPF Act would apply to the petitioner Cooperative Society under Section 16(1)(a) of the EPF Act.

12. As the petitioner was absent when this writ petition was heard, before proceeding with the adjudication of notice bearing no. AS/3310/ENF/147, dated 11.04.2013 and order bearing no. NE/GHY/3310/2804-05, dated 30.05.2013, the petitioner shall be served with a fresh notice fixing the date and time for hearing.

13. It is needless to say that the competent respondent authorities shall first determine the applicability of the EPF Act on the petitioner and thereafter, proceed to determine the dues, if at all found realizable from the petitioner.