

(2013) 07 PAT CK 0091
In the Patna High Court
Case No : CWJC No. 4061 of 2011

Raj Kumar Gupta

APPELLANT

Vs

The Assistant Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

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

Citation : (2013) 139 FLR 207 : (2013) LLR 1254 : (2013) 3 PLJR 464

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Krishna Kant Singh, for the Appellant; Binay Kumar Pandey, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—The core issue, which has been raised by the petitioner in the present writ application, is whether the Assessing Authority as well as the Appellate Tribunal have passed the respective orders within the ambit of the law or in breach of certain pronouncements made even by the Hon'ble Apex Court on this issue. Stand of the petitioner is that the Assessing Authority is not only mixed up about the name of the establishment while liability was sought to be fastened upon the petitioner but was also done without actually verifying the correct position on the ground merely because of similarity of the names of establishments. It is also urged that even procedure laid down u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has not been followed.

2. Years ago, in the case of Food Corporation of India Vs. Provident Fund Commissioner and Others, , the Hon'ble Supreme Court laid down the mechanism, which was required to be followed while making assessment or determination u/s 7A of the Act. The Court's observation especially in paragraphs 6, 7, 8 and 9, lays down the core issue, which is required in determination of the liability of an establishment. If there is failure to adhere to

any aspect of what the Hon''ble Apex Court has laid down, which are any way in terms of the provisions of the Act and the Rules. Obviously any assessment or determination contrary to the same would be required to be interfered with.

3. This Court had an occasion to deal with a similar matter which was the case of M/s. Roxy Cinema Vs. State of Bihar and Another, , disposed of on 20th of July, 2012. The ambit and the parameters under which such assessment is required to be made has also been discussed by the Court and the Court has thus observed:--

When assessment order was being passed on 29.10.2004, all these aspects were required to be looked into by the authorities of the Provident Fund, for the reason that the object of enforcement or compelling compliance is not to gather money from establishments or units to meet any pre-conceived target. The object behind the Act is to collect the fund, which is meant for welfare of the workmen, who are required to be taken care of, once they superannuate. In absence of the identified workmen or employees, who are entitled to such benefit, a liability cannot be saddled upon an establishment in the name of compliance of or enforcement of law. No collection can be made by the P.P. authorities for faceless, nameless or non-identifiable workmen on mere head-count or herd count. The Court is reinforced in this opinion by having a look at the statement of Objects and Reasons.

4. If this is the broad parameter under which determination is required to be made u/s 7A then the reading of Annexures-1, 2 and 3 would show that the respondent authorities have not carried out their legal obligation within the ambit and ratio of the decisions noticed above.

5. The Court also does not agree with the finding or the reason provided by the Presiding Officer placing reliance on a decision in the case of Saraswati Construction Company Ltd. vs. CBT, reported in 2010 LLR page 684, for the reason that such a decision of Delhi High Court seems to be in conflict with the decision of the Hon''ble Supreme Court and it has the implication of shifting the onus of proof upon an employee rather than the requirement of Provident Fund authorities to fix liability.

6. This Court had occasion to come across some sterling facts that anything between 22,000 to 25,000 crores are lying in the accounts of the Provident Fund authorities of which there are no claimants nor can the Provident Fund authorities identify the people on whose behalf these collections have been made, by using strong arm tactics, which many a persons have come to the Court making a grievance.

7. Since the Act is enacted with the object of providing benefits to the workers of unorganized sector, this Court fails to understand as to how such a corpus has been collected by the Provident Fund authorities and in whose name? If there are non-existent workmen or beneficiaries in whose name such collections have been made by the Provident Fund authorities, it is per se illegal and in clear breach of

the legislative intent and object.

8. These are matters which seriously require a re-look and remedial steps are required to be taken at the highest level so that the collections are not only with the object of achieving targets by various Provident Fund authorities but to collect actual contributions of the employers as well as the employees so that the funds so collected by the authorities can be made over to an identifiable workmen, on whose name the deductions have been made.

9. It is in this background that the Court had occasion to observe that the Provident Fund authorities cannot collect or compel contributions to be made by an employer with regard to faceless, nameless or non-identifiable workmen on mere head-count or herd count. Writ application is allowed. Annexures-1, 2 and 3 stand quashed. There will be an occasion for the petitioner to demand refund of the amount so collected in the illegal manner indicated as above and there is an obligation upon respondents to refund the same within a period of six weeks from the date of such a demand being made.