
(2004) 01 CAL CK 0034

In the Calcutta High Court

Case No : GA No. 4194 of 2003, APOT No. 682 of 2003 and WP No. 2100 of 2003

Regional Provident Fund Commissioner

APPELLANT

Vs

Lux Hosiery Industries Ltd.

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 13(1), 13(2), 13(3), 7A

Citation : (2004) 4 CHN 531 : (2005) 2 LLJ 797

Hon'ble Judges : R.N. Sinha, J;D.K. Seth, J

Bench : Division Bench

Advocate : A. Gupta, for the Appellant;A. Panja, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—In this appeal an ad interim order passed on November 6, 2003 in WP No. 2100 of 2003 has since been challenged. The ad interim order is couched in the order with the following expression, "There will be an ad interim order in terms of prayer (a) of the petition".

2. Mr. Panja took a preliminary objection that this appeal is not maintainable in view of the subsequent order passed on December 18, 2003. He drew our attention to the text of the order viz: "By consent of the parties, time to file the affidavit-in-opposition is extended till one week after the Christmas Vacation; reply, if any, two weeks thereafter. Let the matter appear as part heard on February 5, 2004. Interim order will continue until further order of this Court." and contended that the interim order was extended by consent and, therefore, it is no more open to the appellant to press this appeal.

3. We are unable to accede to this contention since the interim order was not a limited one, which required to be extended as it appears from the order appealed against as quoted above, Therefore, the extension recorded in the order dated December 18, 2003, is superfluous. Therefore, the question of consent would not

preclude the appellant from pressing this appeal.

4. The next contention of Mr. Panja was that it was the notice dated October 13, 2003, issued by the Enforcement Officer, Employees' Provident Fund, that was challenged. In the said notice, the said officer had contended that the Employees' Provident Fund Act and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the 1952 Act"), is applicable to the establishment of the writ petitioner/respondent and, therefore, the writ petitioner/respondent should submit the enclosed proforma for coverage duly filled in. According to Mr. Panja, Section 13 does not empower the Inspector to determine the cover-ability of an establishment. Section 7A is the provision under which the question of applicability could be decided and that too by officers mentioned therein, namely the Commissioner, not the Inspector. He has also drawn our attention to Section 1(3)(a) as well as to the report contained at page 70 of the application, namely, the notice dated October 13, 2002, and contended that his establishment is not an establishment which comes under the purview of Section 1(3) and that the number of employees is short of the minimum number of employees attracting the application of the Act. This being a dispute under Sub-section (3) of Section 7A, no order could be passed without giving an opportunity to the writ petitioner/respondent. This opportunity can be given only by the authority u/s 7A and as such the notice issued by the Inspector impugned in the writ petition is incompetent. No dispute could be raised on the basis of such notice. Therefore, this notice is liable to be quashed and as such the interim order was rightly passed and cannot be interfered with and the appeal should, therefore, be dismissed.

5. Mr. Gupta, on the other hand, in support of the appeal contended that Section 13 empowers the Inspector to require information within the scope of Sub-section (2) of Section 13 and the impugned notice dated October 13, 2003, is a notice within the meaning of Sub-section (2) of Section 13 and is competent. According to him, the writ petitioner itself, in its writ petition, has disclosed that there are 20 employees and as such the application of the Act is automatic. He also contends that the establishment is covered u/s 1(3). Therefore, the interim order should be vacated and the writ petition is premature. Section 7A is attracted only when the writ petitioner raises a dispute on the basis of the notice issued to him before the authority u/s 7A, and not before. The writ petitioner has not raised any such dispute and, therefore, the writ petition cannot be maintained and as such no interim order could be granted.

6. Learned Counsel for the respective parties have addressed the Court virtually on the merit of the appeal as well as that of the writ petition. We, therefore, propose to treat this appeal as on day's list and dispose of the same as hereafter.

7. The main question that has been raised by Mr. Panja is with regard to the competence of the Inspector appointed u/s 13 of the 1952 Act to issue the notice impugned (October 13, 2003). We may quote the contents of the said notice as hereafter:

"Sub : Applicability of the E.P.F. & M.P. Act, 52.

Sir,

Undersigned Enforcement Officer visited your office this day and on scrutiny of your Profession Tax return for the year 2002-03 it was observed that there were 23 employees (including one Director) in the month of April, 2002.

Thus, your establishment has become statutorily coverable u/s 1(3) of the E.P.F. & M.P. Act, 1952. You are therefore requested to submit the enclosed proforma for coverage duly filed in all respects along with necessary enclosure directly to the A.P.F.C. (Enf) on or before 27th October, 2003."

8. This notice indicates that the establishment of the writ petitioner is coverable under the 1952 Act and, therefore, the writ petitioner should submit the proforma of coverage. Section 13(2) provides that any Inspector appointed u/s 13(1) may, for the purpose of ascertaining whether the provisions of this Act or any scheme are applicable to any establishment to which this scheme has not been applied and also for the purpose of ascertaining whether any of the provisions of the Act or the scheme has been complied with in respect of an establishment to which the scheme applies. Therefore, it is open to an Inspector to exercise his power under Sub-section (2) in respect of an establishment in which the provisions of the Act have not been complied with where the Act applies or for ascertaining as to whether the Act applies to a particular establishment. Sub-section (2) empowers the Inspector for such purpose to do the acts contained in Clauses (a) to (e) of Sub-section (2). Clause (a) empowers the Inspector to require, the employer to furnish such information, as he may consider necessary. Clause (b) empowers the Inspector at any reasonable time to enter any such establishment or any premises connected therewith and require production of accounts, books, registers and other documents relating to the employment of persons or for payment of wages before him; (c) and examine any matter relevant to any of the purposes aforesaid in respect of an employer, (d) make copies or take extracts if he deems necessary in connection with any offence etc. and exercise such other power as the scheme may provide. Section 13 does not speak specifically that the Inspector can ask anything other than information from the employer in respect of any establishment or it can tell him that the establishment is covered under the any establishment or it can tell him that the establishment is covered under the scheme. The Act does not provide as to what the Inspector will do after the inspection. It only empowers the Inspector to do the things mentioned in the said section. Mr. Gupta has not been able to show us from the statute as to how the Inspectors will proceed on the basis of such inspection and what they will do with the result of such inspection. There is nothing to show that he has to place the report before the Commissioner or he has to issue any notice where he finds that any establishment is covered under the Act or to issue a notice only after being vetted by the Commissioner or that it is the Commissioner who is to issue such notice informing the employer that his establishment is covered under the Act or

the scheme.

9. The legislation is a social legislation. In the process of interpretation Court has to take care to avoid prejudice causing to the rights and welfare of the labours for whom the protective provisions are made. The labour legislation has been put by the legislature on the Statute Book primarily for the purpose of readdressing the balance between the employer and the employees. Unless compelled to do so, the Court is not supposed to put any construction upon the provisions of labour legislation affecting prejudicially the right of the employees, unless compelled to do so by reason of the clear language employed by the legislation. It was so held by Chagla, CJ. in *Mahadeo Dhondu Jadhav Vs. Labour Appellate Tribunal of India at Bombay*, . The interpretation must help the legislature to satisfy the social need for the purpose of which the social legislation was enacted *K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd.*, . The protection provided to a workman cannot be interpreted to introduce by implication words which would reduce the effect of the protection sought to be provided [*John Summers & Sons Ltd. vs. Frost* 1955(1) All. E. R. 870]. The Act being in the nature of beneficial, measure has to be interpreted in such a manner so as to carry out the main object which the legislature had in its view (*Gamini Krishnayya and Others Vs. Curza Seshachalam and Others*, .

10. When the legislation is enacted and certain powers are given, the powers are meant to be exercised. It cannot become redundant or rendered into oblivion because it does not provide any specific rules. The Act prescribes for framing of rules in Section 21. At the same time, the scheme also provides for framing of rules. We are told that no such rules have been framed. In the circumstances, we are to give a harmonious construction of the provisions of the Act in order to interpret Section 13 as to the power conferred by it on the officers mentioned therein u/s 13.

11. Sub-section (2) provides that the Inspector will be entitled to do the function conferred upon him under Sub-section (2) for the purpose of ascertaining as to whether the Act applies or for ascertaining whether the provisions of the Act are not complied with where the Act applied. For the purpose of application of the Act, no overt action is necessary. The scheme of the section is such that as soon the conditions are satisfied, an establishment falls within the coverage of the Act or the scheme. It is not for us to decide whether a person or establishment comes within the coverage or not, but if it is ascertained by the Inspector on inspection that the establishment is covered by the Act, in that event, there is nothing to preclude him from intimating the employer that his establishment is covered under the Act. The power conferred under Sub-section (2) has been given to do the same thing. It is not only for the purpose of the statute the provision has been incorporated, it has been incorporated in order to effectuate the application of the statute when it is necessary.

12. The contention raised by Mr. Panja that it can be done only by the authority u/s 7A, has to be interpreted on a combined reading of Section 7A with Section

13. Section 13 we have already dealt with, now let us see its impact on Section 7A. Section 7A does not provide that this power can be exercised only on the basis of a report of the Inspector. On the other hand, it prescribes that the officers mentioned in Section 7A can decide the dispute as contemplated under Sub-sections (1)(a) & (b) and if necessary after conducting such enquiry, as he may deem necessary. Clause (a) provides that in the case where the dispute arises regarding the applicability of the Act to any establishment, such dispute can be decided by the authority u/s 7A. Similarly, u/s 7A, the authority can determine the amount payable under the Act or the scheme by the employer. But by reason of Sub-section (3), no such order determining the dispute or the amount under Clause (a) or (b) of Sub-section (1) can be passed without giving the employer a reasonable opportunity of representing his case. Therefore, the power u/s 7A is exercised only in the case where the dispute is raised either with regard to the applicability of the Act on any ground whatsoever or with regard to the determination of the amount due. In this case, Mr. Panja has raised the question of applicability of the Act. Until this is decided, the question of determination of the amount does not arise. Therefore, Section 7A can be exercised when the dispute is raised. Therefore, as soon an employer is intimated about the result of the inspection, he has an opportunity to raise a dispute. When such dispute is raised, the Inspector has no power to proceed further excepting within the scope and ambit of Section 13(2). On the raising of such dispute, Section 7A is attracted and the authority u/s 7A can decide the same, but only after giving a reasonable opportunity of representing the case of the employer and that too after holding due enquiry. Section 7A does not postulate that the dispute is to be raised by the authority. On the other hand, as soon the provisions of the Act is sought to be applied then only there is a scope for raising any dispute. So long the Act is not applied, there is no scope for raising any dispute. It is the authority, which can apply the Act unless the employer himself submits to the Act. Therefore, whenever the Act is sought to be applied in an establishment, it is for the employer to raise dispute and as soon such a dispute is raised, the question travels the four corners of Section 7A.

13. The scheme of the Act is clear. Section 1 Sub-section (3) makes the provisions of the Act. applicable from the date of notification extending the Act to an establishment. Once an establishment comes under the purview of the Act by reason of the provisions contained in the Act, an employer is obliged to comply with the provisions of the Act in the teeth of various consequences even penal. The application of the Act is not dependent either on the issue of notice upon the employer by the authority or on the determination by such authority. As soon the conditions are satisfied, the Act becomes applicable to an establishment and the employer becomes liable to comply with the provisions thereof. It is only the question of liability under the Act when disputed by the employer is to be determined u/s 7A. After the amendment of Section 7A, it includes all kinds of disputes including those which were referable to the Central Government u/s 19A. It was so held in *De. Labochem (India) Pvt. Ltd. Vs. Regional Provident*

Fund Commissioner and Others, .

14. The application of the Act is not dependent on the notice issued by the Department for compliance of the Act. It was so held in K. Gopalan Vs. Union of India and Others, . In Radhakrishnan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, , it was held that it would be incorrect to say that the scheme becomes operative only on and from the point of time when the authorities hold "that a particular establishment is within the ambit of the Act and make a consequential demand in terms of the Act. The Act comes into operation by its own vigour, that it applies if the conditions stated in the Act are satisfied, and that its operation is not dependent on any decision being taken by the authorities under the Act". In Shapoorji Nuserwanji & Co. vs. Trustees E.P.F.S. 1968 (I) LLJ 739, it was held that there was nothing in the Act or the scheme to indicate that the scheme becomes applicable only when the discovery is made or an order is made in that respect. The Act becomes effective regarding an establishment immediately it is applied and the conditions are satisfied without an order u/s 7A of the Act.

15. In the circumstances, the notice dated October 13, 2003, has not created any liability on the employer except raising a dispute if it is his contention that the Act is not applicable on the establishment. The enclosing of the proforma does not mean that the employer has to fill up the proforma and submit to the jurisdiction. It is open to the employer to raise a dispute that the Act does not apply and, therefore, he is not liable to fill up the proforma. When such a dispute is raised, the Inspector has to place this matter before the authority u/s 7A together with his report and then Section 7A is invoked and the entire process u/s 7A is to be undergone. In case the dispute is raised before the Commissioner, he is supposed to call for the report and undertake exercise of his power u/s 7A.

16. In the circumstances, we find that the notice dated October 13, 2003, was competent and that the interim order ought not to have been granted. Therefore, we propose to set aside the interim order; and, accordingly, the interim order is hereby set aside.

17. Since we have dealt with the merit of the case, in fact, nothing remains to be decided in the writ petition. Since the matter is heard in part by the learned Single Judge, we do not propose to pass any order on the writ petition. It would be open to the appellant to contend before the learned Single Judge that by reason of the decision in the appeal nothing remains to be decided in the writ petition and the same appears to have become infructuous.

18. Be that as it may, we record that we have not entered into the question as to the liability of the employer or to the applicability of the Act or the scheme on the establishment and all the points are kept open. The employer shall raise his objection before the Commissioner, Provident Fund or the Assistant Commissioner, Provident Fund as the case may be without submitting the proforma on the basis of the notice dated October 13, 2003 and upon such

dispute being raised before the authority u/s 7A, the authority will determine the same in accordance with law without being influenced by any observation made in this order after giving reasonable opportunity to the writ petitioner. However, the writ petitioner/respondent shall and be bound to produce records or furnish necessary information as may be required in course of the enquiry contemplated u/s 7A or otherwise. The dispute may be raised within eight weeks from the date of receipt of the signed copy of the Dictated Order.

19. The appeal thus stands allowed and the stay application is accordingly disposed of.

20. Parties shall act on xeroxed signed copy of this Dictated Order on the usual undertakings.

R.N. Sinha, J.

21. I agree.