(2012) 08 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12643 of 2012

Regional Provident Fund Commissioner APPELLANT

Vs

M/s. Miraj Minerals RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7A, 7A(2), 7I

Citation : (2012) LLR 1097

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : J.K. Pillai, for the Appellant;

Final Decision : Dismissed

Judgement

1. Order dated 09-11-2009 is being assailed vide this petition; whereby, the Employees Provident Fund Appellate Tribunal set aside the order dated 31-03-2008 passed by the Assistant Regional Provident Fund Commissioner u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short ''Act''). That in pursuance to enquiry report dated 18-02-2003, the respondent establishment was proceeded against u/s 7A of the Act for assessment of dues for the period from April, 2003 to July, 2004 and by order dated 31-03-2008 was found liable for an amount of Rs. 1,95,475 and for damages u/s 14-B. The liability was arrived at on a finding that on a physical verification by the Suqad on 18-2-2003, 32 employees were found to be working on the day of inspection.

2. The inspecting team taking note of 18 employees working and the statement of Mines Manager Shri K.V. Malik that he and a Chowkidar are also employed, recorded the following findings: "on physical verification of employee done on 18-2-2003, 18 (eighteen) employees were found working including Chowkidar and. Shri Malik. In addition to this 12 (twelve) employees were also found working in the premises of this establishment for loading of material of the

establishment for crushing from Puja Minerals."

3. Assistant Provident Fund Commissioner, Jabalpur, relying on this report and observing that 32 employees were found to be working on the day of inspection, held the respondent establishment liable for the dues from April, 2003 to July, 2004.

4. In an Appeal u/s 7-I of the Act, the said order has been reversed by the Tribunal for the reasons that the two establishments i.e. the respondent M/s. Miraj -Minerals and M/s Pooja Minerals were wrongly clubbed for ascertaining the strength of employees, without establishing the financial, managerial and functional integrity. The Tribunal observed:

In the case at hand nothing is on record or in the report of the authority that the appellant and M/s Pooja Minerals were managed by IOC per-son or there was functional relationship. So there is no material to hold that M/s Pooja Minerals and the present appellant is a single unit. As per the report i.e. Annexure 1, the appellant engaged only 18 employees and the other 12 employees belonged to M/s Pooja Minerals. Since, the appellant has not engaged 20 persons, the PF Act is not applicable to it. Hence ordered, the appeal is allowed.

5. Though the order is assailed on many a ground, the main contention, however, is that as per inspection report dated 18-2-2003, 20 persons including the Mine Manager and the Chowkidar were engaged which is being ignored by the Tribunal. However, when attention of learned counsel is drawn to the inspection report and the findings by the Assistant Provident Fund Commissioner, there is no explanation as to why when 20 persons are employed, the inspection team records, on physical verification; 18 persons and further in a proceeding u/s 7A, 32 persons are recorded to be employed. No material is brought on record to show that an enquiry as contemplated u/s 7A(2) of the Act has been taken recourse to as would substantiate the findings recorded by the Assistant Provident Fund Commissioner.

6. In view whereof we are not inclined to interfere with the order impugned. In the result petition fails and is hereby dismissed.