
(2003) 04 PAT CK 0103
In the Patna High Court
Case No : L.P.A. No. 592/1996

"Satsang"

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0103

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—This is an appeal by an organisation which calls itself "Satsang". It filed a C.W.J.C. No.3881 of 1982: Satsang v. Union of India and Ors. The order passed by the Ministry of Labour, Government of India dated August 16, 1982 was challenged in the writ petition. The order was passed on the representation of the petitioner. This representation was made on April 12, 1982 u/s 19A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The impugned order is appended as Annexure 1 to the writ petition. The representation of the petitioner dated April 12, 1982 is appended as Annexure 2 to the writ petition.

2. In the representation it was contended by the Satsang that "out of our sheer ignorance of the said Act we have allowed the Satsang Press to comply with the provisions of the same". The petitioner desired that in the matter relating to applicability of the Act the entire facts be reviewed in the light of the express provisions of Section 19A of the Act and "to spare Satsang Press from the purview of the said Act with effect from the date of coverage i.e. January 1, 1974 along with direction to refund of the amount already deposited with the R.P.F.C. Bihar since the date."

3. By the order which was passed by the Government of India (Annexure 1), impugned in the writ petition, the Regional Provident Fund Commissioner directed to have an inspection carried out of the Satsang Charitable Hospital and Dispensary with its Pathological Laboratoies, X-ray Plants, Surgical Units, Satsang Tapovan Vidyalyaya, Anardiyuti Mahavidyalaya, Satsang Rasaisana Mandir,

Satsang Engineering and Mechanical Workshop, Satsang Carpentry, Satsang Science Laboratory, Satsang Binapani Vidya Mandir, Satsang Dairy Farm and Satsang Sadhana Vesaj Udyan and if the employment strength of each of them exceeds 19, to cover them separately under the relevant head. The Act was found applicable to all these activities. The representation was dismissed.

4. The learned Judge hearing the petition was of the view, in effect, that if the inspection was yet to be carried out, then the representation should not have been rejected and the finality on the question whether the Act applied to the various establishments of Satsang will be dependent upon the result of the inspection. In the circumstances, the order of the Government of India dated August 16, 1982 (Annexure 1) was set aside. The learned Judge in the operative portion passed the following order:

"However, it will be open to the respondents to proceed in accordance with law and to come to a definite conclusion, after taking into note the details relating to the persons working in the press in question. It will be also open to the authorities as well as the petitioner to examine the persons, who are serving in the press in question, for the purpose of determination as to whether such persons come within the definition of employee as defined u/s 2(f) of the Act or not.

The writ petition is accordingly, allowed with the aforementioned observations. There will be no order as to costs."

5. The writ petition was allowed. The order which aggrieved the petitioner had been set aside. Any further order which may be passed in future will be dependent upon an inquiry and an inspection afresh. The Court fails to understand why the present Letters Patent Appeal was filed.

6. It has been submitted, in effect, that this Court should certify that the Act does not apply to the Satsang, the petitioner-appellant. It is further submitted that there is no need for any fresh inquiry or inspection for the purpose of examination whether the Act applies to the establishments of the Satsang or not.

7. One thing is clear that the High Court does not cease to be in its writ jurisdiction when hearing a Letters Patent Appeal. The High Court in its prerogative writ jurisdiction is not a Court of inquiry and, thus, cannot come to any assessment that the Act may not apply to the petitioner for all times to come. Whether the Act may apply or not, is clearly dependent upon the nature of the establishments discharging various functions, some of which have been enumerated in the representation of the petitioner as made to the Government of India (Annexure 2). It is the case of the petitioner that it was ignorant of the law and submitted to the jurisdiction of the Act. While the Court will consider the aspect that this may not be treated as an estoppel against the petitioner, yet it will be a stretched argument that there may not be an inquiry under the Act to reach a satisfaction that the various activities carried on within the establishment of the petitioner come within the purview of the Act.

8. Less facts and straight submissions on law were made that the Act does not apply to the establishment of the petitioner. This will depend upon the facts and circumstances of the case. The petitioner-appellant itself acknowledges that as Satsang it carries on a systematic activity which is not casual or temporary in nature and lasts throughout the year and these activities are carried out by the labour of several persons. The petitioner does participate in production and rendering services. May be the Satsang is an ecclesiastical order or carries on functions akin to an ecclesiastical order. But, if found in the affirmative, it may qualify for exemption, not immunity to inquire.

9. Certain citations were desired to be: seen by the Court on behalf of the petitioner. The first case cited was Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, This case does not apply. This was a case under the old Income Tax Act i.e. the Income Tax Act, 1922. The jurisdiction of the Income Tax Officer to issue notice for reopening an assessment was challenged. In this case the jurisdiction of the officer to make an assessment was not challenged. This case does not apply.

10. The next case cited was Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, This is a case when an establishment may partake the nature of an industry. The Supreme Court was examining the meaning of the expression "Industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. In reference to the context of the present case the discussion has been made by the Supreme Court. This case does not aid the petitioner at all. In this very paragraph the Supreme Court notices that regard being had to consequences of a systematic activity, organised co-operation between employer and employee and production and/or distribution of goods and services, prima facie, may constitute industry. The Supreme Court has taken into account that there may be charitable projects and even gurukulas and in a pious or altruistic mission many employ themselves, free or for small honoraria. The Supreme Court mentions that such activities may be exempt but the dominant nature of the services and the integrated nature of the departments will be the two tests, In effect, the Supreme Court observed that this will be a matter for examination. In the circumstances it is not the respondent's case that the petitioner may not be considered for exemption. The contention of the petitioner that there is no jurisdiction to issue a notice under the Act. The case cited does not apply.

11. The next case cited is The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara, Even in this case the Supreme Court held that while examining the matter, aspects which will need to be examined should a factory be engaged in two industrial activities, are circumstances whether how much is primary, principal, or dominant. Even by this decision an investigation has to be made before reaching a conclusion that the Act may not apply. In fact, the appeal of the Regional Provident Fund Commissioner was allowed by the Supreme Court. The appeal of the other Industrial unit which was heard along with the case was dismissed, this decision

in the circumstances was out of context.

12. The next case cited was The Associated Industries (P) Ltd. Vs. The Regional Provident Fund Commissioner, Kerala Trivandrum, Far from assisting the petitioner this case, in fact, is on the point that if an establishment is to be reckoned that it is a composite factory which runs more than one industry one of which may fall under schedule I to the Act, then, it is likely that the increased rate may be made applicable to the factory as a whole. This is in the context of contribution of provident fund by the employees. On this the Supreme Court observed " We do not propose to deal with this contention in the present appeal. That is a matter which may well have to be decided by the respondent, and it is not open to Mr. Pai to request this Court to decide such a hypothetical question in the present proceeding". In the present case also, the issue is open for consideration on the petitioner applying for exemption. This certificate cannot be granted by the High Court. The case cited was out of context.

13. In the circumstances, the petitioner has already succeeded in the writ petition by the Judgment dated April 5, 1996 on the writ petition. The learned Judge deciding the case has already observed that whether the persons working at the establishment of the petitioner, the Satsang, are within the meaning of Section 2(f) of the Act, will be the subject of an inquiry. Now it is entirely up to the petitioner to seek the exemption as the law so provides u/s 17. Any exemption considered will have to be the subject matter of an investigation and inspection of the activities of the petitioner in the various establishments. In this inquiry the petitioner will also be entitled to place such evidence as the learned Judge has already indicated. No further clarification is required to be added to the Judgment passed on the writ petition decided in the petitioner-appellant's favour. There is no error in the Judgment.

14. This appeal is misconceived.

15. Dismissed.

R.N. PRASAD, J.

16. I agree.