

(2003) 10 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 16042 of 2001 and W.M.P. No's. 23848 and 23849 of 2001

SDB CISCO India Ltd.

APPELLANT

Vs

Union of India (UOI) and The Regional Provident Fund
Commissioner Employees Provident Fund Organisation

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17(1)

Citation : (2003) 10 MAD CK 0064

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : Ravi, for Gupta and Ravi, for the Appellant; V. Vibhishanan, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—The petitioner filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records and the

letter bearing reference No. C4/TN/CNI/7919/Exem/Regl. Dated 24.08.2001 on the file of the third respondent communicating the decision of the

first respondent not to grant exemption to the petitioner establishment and to quash the same, and consequently direct the respondent to grant

exemption to the petitioner establishment u/s 17(1)(a) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2. The brief facts that are necessary for the disposal of the above writ petition is that the petitioner is running security agency throughout the

country. It is a very big organisation having branches all over the country. The provisions of the Employees Provident Fund Act is applicable to

them. As per Section 17(1)(a) of the Employees Provident Act, this organisation can apply for exemption from the Government. The petitioner by its letter dated 19.12.1991 applied to the third respondent for relaxation of the provisions of the scheme. Pending disposal of the said application, the third respondent in its reply dated 03.01.1992 granted relaxation from the provisions of the Employee Provident Fund Miscellaneous Provisions Act, 1952, subject to the condition stipulated in the order. Thereafter, all the employees of the petitioner have been covered only under the Provident Fund maintained by the petitioner which are in no way less favourable than what is provided in the scheme. The third respondent by letter dated 1.1.1996 addressed to the second respondent informed that the petitioner establishment has complied with the provisions of the relaxation satisfactorily and requested the second respondent to arrange for issuance of notification for granting exemption u/s 17(1)(a) of the Act. While so, suddenly, the petitioner received the impugned letter dated 24.08.2001 from the third respondent informing that the first respondent has decided not to grant exemption to the petitioner exemption. The claim of the petitioner was rejected and the order passed by the Government of India was not even communicated to the petitioner. Further, this order dated 24.08.2001 is a non-speaking order. The authorities have to exercise their powers conferred u/s 17(1)(a) of the Act in a judicious manner; the order is a quasi-judicial one since the order does not disclose any reason, it is invalid.

3. In the counter-affidavit filed by the third respondent it is stated to the effect that the request of the petitioner was communicated to the Head Office. Thereafter it was found that the petitioner company was called upon to explain the reasons for having not maintained the pattern of investment prescribed by the Government. The establishment in its letter dated 20.08.1996 accepted the facts of not maintaining the pattern, stating certain reasons for the default and assured of complying the same from the next year onwards. Subsequently it was noticed that the prescribed pattern of investment was not adhered to by the Trust during the year 1996-97 and 1997-98 and the facts had been reported to the Head Office by the Regional Office, Chennai by letter dated 12.10.1998. Thereafter, the Head Office, after considering all these aspects, by letter dated

24.02.1999 informed that the proposal for grant of exemption u/s 17(1)(a) of the Act in respect of the petitioner has been forwarded to the

Government of India. The Government of India had not granted exemption. Therefore, the Head Office directed the Regional Office at Chennai to

ensure that the establishment continues to comply with the provisions of the Employees' Provident Fund Scheme, 1952 as an un-exempted

establishment. In turn, the Regional Office instructed the establishment to comply as an un-exempted establishment with effect from 01.09.2001.

4. Even thereafter the petitioner has represented to the Government of India by letter dated 07.09.2001 requesting to review the decision of non-

grant of exemption to the petitioner to run their Provident Fund Trust. The matter was examined again in the Ministry and the request of the

petitioner has been turned down.

5. It is stated in the counter of the third respondent that the Government has got the power to reject the application by virtue of the powers

conferred u/s 17 of the Act read with the conditions governing grant of exemption. Exemption is not given automatically on application; when there

are deviations, the first respondent has every right to grant exemption.

6. Heard learned counsel appearing for the parties.

7. Mr. Ravi, learned counsel appearing for the petitioner submitted that inasmuch as the power of rejection of the request for exemption is quasi-

judicial act, and inasmuch as the order rejecting the request is a non-speaking order, the order has to be set aside on those grounds. Further, it is a

right conferred upon every organisation to get exemption under the Act provided they confer benefits to their own employees which are not less

favourable than those benefits conferred under the Act. Once the benefits conferred is not less favourable, the petitioner is entitled to get exemption

u/s 17(1)(a) of the Act. Therefore, the order of rejection is not valid and hence, liable to be set aside.

8. Mr. V. Vibheshanan, learned counsel appearing for the respondents submitted that the power u/s 17(1)(a) is a discretionary power and the

Government has got every right to decide whether to accept their requests and grant exemption from the obligation of the Act or to reject their

request and applying the provisions of the Act. Therefore, that discretion has been exercised by the Government properly. The Government has

been watching the performances of the petitioner through communications to respondents 2 and 3, and they were keeping constant watch on the performance of the petitioner and the periodical information were received. Further, it was found that the petitioner did not invest as prescribed by the Act and, therefore, it decided not to grant exemption to the petitioner. Therefore, there is no illegality in the refusal to grant exemption u/s 17(a) (i) of the Act. Further, it is not a quasi-judicial order. It is purely administrative in nature and, therefore, merely because reasons not stated in the order, the order itself does not get vitiated on that ground alone.

9. The learned counsel for the respondent further submitted that the reasons for which exemption has been refused, has been set out in the counter-affidavit filed in the writ petition and hence, this has to be taken along with that and the impugned order does not suffer from any illegality or infirmity. Therefore, the impugned order is legally valid and hence, the writ petition is liable to be dismissed.

10. Section 17(1)(a) of the Employees Provident Fund Act reads as follows:

17. Power to exempt: (1) The appropriate Government may by notification in the official gazette, and subjecting to such conditions as may be specified in the notification (exempt, whether prospectively or retrospectively, from the operation) of all or any of the provisions of any scheme.

(a) any (establishment) to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any scheme in relation to the employees in any other (establishment) of a similar character;

(b) ---

Provided, that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the scheme.

The very marginal note to Section 17 conveys that it is "power to exempt". The very power is a discretionary one; This can be granted only if the

Government is satisfied that it is a fit case sufficient to grant exemption from the

application of the Act. When the Government has taken into consideration the entire situation and it passed an order rejecting the claim, merely because no reason assigned therein, it cannot be said that the order is invalid. The reasons on which it was rejected has been explained in the counter-affidavit. Admittedly the petitioner has also accepted that there is some deviations in the investment of the amount. Therefore, the order as such cannot be said to be illegal.

11. The argument of the counsel for the petitioner that it is a matter of right to get exemption when once they complied with Section 17(a) of the Act, is not acceptable. Section 17(a) confers the right to apply for exemption, when the scheme framed by the employees is not less favourable than the benefits conferred under the Act. Therefore, this Section only confers the right to seek for exemption; and that does not confer any right to get exemption on proof that they give benefits which are not less favourable. It is purely a matter of discretion conferred on the Government of India whether to grant exemption or not. The Government of India cannot be said to have ignored the interest of the employees and it has to be presumed that the Government of India has taken a decision not to grant exemption from the provisions of this Act on the basis of its conclusion. In the circumstances, the impugned order does not suffer from any infirmities and the order is perfectly valid and this Court cannot grant the prayer as sought for in the writ petition.

In the result, the writ petition is dismissed. No costs. Consequently, connected W.M.P. Nos. 23848 and 23849 of 2001 are also dismissed.