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(1982) 07 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2040/80

Sethi Marble and Stone Industries — APPELLANT

Vs

Regional Provident Fund Commissioner, Rajasthan Jaipur and Another — RESPONDENT

Date of Decision : 30-07-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 3, 7A, 8

Citation : (1982) WLN 214

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Judgement

S.C. Agrawal, J.—In this writ petition filed under Articles 226 and 226 of the Constitution of India, the petitioner has prayed that a writ of certiorari or any other writ or direction be issued to quash the order (Annexure H; dated 19th August, 1980 passed by the Regional Provident Fund Commissioner, Rajasthan, Jaipur (hereinafter referred to as ''the Provident Fund, Commissioner) in exercise of the powers conferred on him u/s 7(A) of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act''). By the order aforesaid, the Provident Fund Commissioner has determined that a sum of Rs. 8821.95 is payable as provident fund dues by the petitioner for the period from July 1966 to April, 1967 and December, 1967 to April, 1978. In the order aforesaid, it has also been directed that the above said dues should be paid within 10 days from the date of the receipt of the said order failing which the amount shall be recovered u/s 8 of the Act.

2. In the writ petition it is alleged that the petitioner, Smt. Jaswant Kaur Sethi, is the sole proprietor of Sethi Marble and Stone Industries and carrying on business of manufacturing and selling of lime stone chips within the Municipal limits of Municipal Board, Chittorgarh. The petitioner has been carrying on the said business since 1st July, 1956. The case of the petitioner is that for the purpose of

the aforesaid business, she purchases lime stone from the open market and that she does not hold any lime stone quarry. In the year 1965, the Provident Fund Inspector inspected the establishment of the petitioner and at that time, Shri G S. Sethi, the Manager of the petitioner, gave in writing a slip admitting the applicability of the Act to the petitioner''s establishment and the petitioner deposited the provident fund dues for the years 1965-66 and 1967-68. Thereafter, the petitioner did not deposit the provident fund dues as it was advised that the Act was not applicable to the establishment of the petitioner. On 25th March, 1976, the Provident Fund Inspector came to the establishment of the petitioner and called upon the petitioner to produce all the accounts books, attendance register, wages register, cash book, journal and ledger in his office at Udaipur on 3rd May, 1976 and thereupon, the petitioner addressed a letter dated 18th May, 1976 to the Provident Fund Commissioner wherein it was stated that after consultation with her legal adviser, the petitioner had learnt that the said industry is not listed in Schedule I and that it does not come under the Scheme and the petitioner requested that its establishment may be declared free from the provisions of the Act. By notice dated 27th July, 1976, the petitioner was called upon to deposit the provident fund and the family pension fund dues and to submit the returns for the period December, 1967 to June, 1976. On receipt of the said notice, the petitioner served a notice dated August 9, 1976, u/s 80 C.P.C, on the Union of India, the Provident Fund Commissioner and the State of Rajasthan stating that the petitioner''s establishment is not covered by any of the provisions of the Act, in as much as under the notification GSR No. 1779 dated November 27, 1965, the provisions of the Act had been made applicable only to the stone quarries where chips were manufactured and that the petitioner does not own any stone quarry and further that the petitioner had never employed in her establishment 20 or more than 20 persons at any time during the period from December, 1967 to June, 1976. With reference to the aforesaid notice dated 9th August, 1976 issued by the petitioner u/s 80 C.P.C, the Provident Fund Commissioner, by his letter dated 16th November, 1976, informed the petitioner that from the office records and the declaration dated 20th December, 1965 given by the Manager of the petitioner it appeared that the establishment of the petitioner was engaged in lime stone quarries and chips manufacturing and had employed more then 19 persons as on 30th June, 1961 and as such all the requisite conditions of the coverage were applicable to the establishment of the petitioner and trial if the petitioner had any doubt or grievance, she may produce the documentary evidence to represent its case before the Provident Fund Commissioner in the second week of December 1976 In response to the aforesaid letter of the Provident Fund Commissioner, the petitioner submitted an affidavit of Shri Gurudutt Singh Sethi, the Manager of the petitioner, dated 9th December, 1976, wherein it was stated that the proprietor of Sethi Marble and Stone Industries hid never obtained any lease or licence for lime stone quarry or any other quarry from the State of Rajasthan and that the factory of the petitioner is located on agricultural land near the station and is not located near a lime stone quarry. In the said affidavit, it was further staled that in the

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establishment of the petitioner not more than five employees had worked for more than 240 days in a year and that the other employees were casual labourers who had not worked continuously for 2-40 days in a year and that since the year 1968, the total number of employees, including casual labourers, had ranged from 15 to 18. After the submission of tire aforesaid affidavit, the petitioner was served with various notices from time to time by the Provident Fund Commissioner requiring the petitioner to appear before him either in person or through any representative along with all the relevant record and the case was adjourned from time to time. On 24th July, I960, Shri P.S. Sethi appeared on behalf of the petitioner and prayed that some time may be granted to comply with the provisions of the Act and the matter was adjourned to 19th August, 1980. It appears that on 19th August, 1980, no body appeared on behalf of the petitioner and the Provident Fund Commissioner passed the impugned order.

3. In the writ petition the petitioner has submitted that the order dated 19th August, 1980 passed by the Provident Fund Commissioner is void and without jurisdiction for the reason that the establishment of the petitioner if not covered by the provisions of the Act. The case of the petitioner is that the petitioner''s establishment is not engaged in any industry, which can be said to be covered by any of the provisions of Schedule I to the Act and that the petitioner''s establishment is also not covered by the non-factory industries to which the Act has been made applicable u/s 3(b) of the Act, in as much as the petitioner neither carries on any mining operations for lime stone nor the petitioner is holding any mining lease or licence for a stone quarry. In the writ petition, the petitioner has further submitted that the provisions of the Act are not applicable to the petitioner''s establishment, also for the reason that petitioner does not employ 20 or more persons and that even though it had beed positively asserted by the petitioner in the affidavit filed before the Provident Fund Commissioner, that the petitioner was not engaged in any of the activities which could be covered by any of the entries in Schedule I or Appendix II and that the petitioner had not employed 20 or more persons the Provident Fund Commissioner, while passing the impugned order, had failed to decide the said questions after considering the material on record.

4. A notice was issued to the respondents, vis., the Provident Fund Commissioner and Union of India requiring them to show cause as to why the writ petition should not be admitted and in response to the said notice, a reply has been filed on behalf of the respondents. In the said reply, it has been asserted that the establishment of the petitioner is covered by the provisions of the Act in as much as the petitioner has been carrying on business of lime stone quarry and manufacturing of lime stone chips in the said establishment and that the establishment of the petitioner had employed more than 20 employees in June, 1961. In this connection, the respondents have placed reliance in the statement dated 20th December, 1965 signed by Shri G.S. Sethi, the Manager of the petitioner''s establishment, wherein he had stated that the establishment of the petitioner is engaged in the business of lime stone quarrying besides

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manufacturing of chips and that the establishment and employed more than 20 employees in June, 1961. The respondents have also placed reliance on the order dated 24th July, 1980, passed in the proceedings that were pending before the Provident Fund Commissioner, wherein it is recorded that Shri P.S. Sethi, had appeared on behalf of the petitioner''s establishment, and had agreed that the report dated 20th December. 1965 is duly signed by the Manager or the establishment and had further agreed to comply with the provisions of the Act and had requested for grant of sometime for the same. In the reply aforesaid, the respondents have also stated that the Assistant Mines Engineer, Chittorgarh, by his letter dated Ist August, 1979 had informed that ''Bhed Niker'' mines near Gangrer village measuring 50 x 50 meters are leased to Shri G.S. Sethi son of Jeevan Singh Sethi.

5. A rejoinder to the aforesaid reply has been filed on behalf of the petitioner. In the aforesaid rejoinder, it has been asserted that toe statement made by the Manager of the petitioner on 20th December, 1965 is not correct and is not binding on the petitioner and it is asserted that the petitioner does not hold any lease or licence for any stone quarry. In the said rejoinder, it is further stated that the lease referred to in the letter of the Assistant Mines Engineer dated 1st August, 1979 was granted to Shri G. S. Sethi in his individual capacity and was effective only from 18th January, 1979. With regard to the order dated 24th, July 1980, recording the submission made by Shri P.S. Sethi on that date, it has been stated that the said order does not correctly record the statement that was made by Shri P.S. Sethi on that date.

6. I have heard Mr. D. S. Shisodia for the petitioner and Mr. R.R. Vyas for the respondents. Both the learned Counsel submitted that the writ petition may finally be disposed of at the admission stage and the arguments were, therefore, heard on that basis.

7. Shri Shisodia has submitted that the question as to whether the establishment of the petitioner is an industry falling within Schedule I or is a non-factory industry to which the provisions of the Act are made applicable is a jurisdictional fact and that similarly the question as to whether the total number of employees in the petitioner''s establishment was 20 or more at the relevant time is also a jurisdictional fact and since both the facts were disputed by the petitioner, it was incumbent upon the Provident Fund Commissioner to have made a determination with regard to the existence of the said jurisdictional facts before passing an order requiring the petitioner to make payment of any dues under the Act and that the impugned order passed by the Provident Fund Commissioner does not contain any such determination of the aforesaid jurisdictional facts, In this connection, Shri Shisodia has placed strong reliance on the affidavit of Shri G. S. Sethi dated 9th December, 1976, which was submitted before the Provident Fund Commissioner and has submitted that the order dated 24th July, 1980, does not correctly record the submission made by Shri P. S. Sethi and on the basis of the said order it cannot be said that the petitioner had abandoned the plea raised in

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the affidavit dated 9th December, 1976.

8. Shri Vyas, on the other hand, has placed reliance on the statement dated 20th December, 1965 made by the Manager of the petitioner concern wherein he has admitted that the petitioner was engaged in the business of lime stone quarrying besides manufacturing of chips and has further stated that it had employed more than 20 employees in June 1961 and that the establishment of the petitioner had been rightly covered under the Act from July 1961. Shri Vyas has submitted that once the establishment of the petitioner is held to be rightly covered under the Act from July, 1961, a subsequent reduction in the strength of the employees would not affect the applicability of the Act to the establishment. Shri Vyas had also placed reliance on the order dated 24th July, 1980, recording the submission of Shri P. S. Sethi, the authorised represamative of the petitioner, wherein he had agreed that the report dated 20th December, 1965, was duly signed by the Manager of the establishment and had agreed to comply with the provisions of the Act and had requested that some time may be given for that purpose. Shri Vyas has submitted that the petitioner cannot be permitted to challenge the correctness of the aforesaid order dated 24th July, 1980 and that in view of the aforesaid order, it must be held that the petitioner had absconded the case put forward in the affidavit of Shri G.S. Sethi dated 9th December, 1976.

9. Without giving into the merits of the aforesaid submissions made by Shri Shisodia and Shri Vyas, I am of the opinion that in the facts and circumstances of the case, it would be just and proper that one opportunity may be given to the petitioner by the Provident Fund Commissioner to produce all the materials she wants to produce before him to satisfy him that the establishment of the petitioner is not covered by the industries mentioned in Schedule I to the Act or the non factory establishment to which the Act has been made applicable u/s 3(b) of the Act and that the provisions of the Act were not applicable to the establishment of the petitioner during the period from April 1966 to April 1978 and if on a consideration of the said material, the Provident Fund Commissioner is satisfied that the provisions of the Act were not applicable to the establishment of the petitioner during the period aforesaid, he may pass an order revoking or modifying his order dated 19th August, 1980. I would, therefore, without setting aside the order dated 19th August, 1980 passed by the Provident Fund Commissioner, direct as under:

(1) The Provident Fund Commissioner will permit the petitioner to produce the material she wants to produce in order to show that the establishment of the petitioner is covered by the industries mentioned in Schedule I of the Act or the non factory establishments to which the Act has been made applicable u/s 3(b) of the Act and that the provisions if the Act were not applicable to the establishment of the petitioner during the period from April 1966 to April 1978;

(2) After considering the said material, the Provident Fund Commissioner shall decide the objections of the petitioner;

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(3) The petitioner shall submit the said material before the Provident Fund Commissioner within a period of month from today;

(4) The Provident Fund Commissioner may take a decision on the basis of the said material within one month thereafter affording to the petitioner an opportunity to personally explain the material produced by her as well as the material on which reliance is placed by the Department;

(5) In case the Provident Fund Commissioner accepts the objections raised by the petitioner, he may revoke of modifiy the order dated 19th August, 1980 passed by him and if he rejects the said objections, the order dated 19th August, 1980 will stand; and

(6) The Provident Fund Commissioner will not proceed to make recovery of the dues mentioned in the order dated 19th August, 1980 for a period of two months from today provided the petitioner furnishes a bank guarantee of a scheduled bank for the amount of the said demand before the Provident Fund Commissioner within a period of 20 days from today.

10. The writ petition shall stand disposed of accordingly. In the facts and circumstances, the parties are left to bear their own costs of this writ petition.

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