(2008) 09 DEL CK 0303

In the Delhi High Court

Case No : Writ Petition (Civil) 2549 of 2006

Shishu Sansar Public School (Primary) APPELLANT

Vs

The Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7B

Citation : (2008) 09 DEL CK 0303

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : R.M. Sinha, for the Appellant; Reema Khorana, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—By way of present petition under Article 226 of the Constitution of India the petitioner prays for quashing of the orders dated 31st January, 2002, 8th June, 2005 and 4th February, 2006 passed by the Regional Provident Fund Commissioner, respondent No. 1 herein, and further for a mandamus directing the respondent No. 1 to pass a fresh order u/s 7A of the Employees Provident Fund & Miscellaneous Provision Act, 1952 (in short ''EPF Act'').

2. The present petition is a species of proceedings that can only be categorized in terms of the Latin maxim ''suppressio veri suggestio falsi'' and an abuse of the process of Court. The facts necessary for the adjudication of the present petition, briefly adumbrated, are as follows:

(a) The petitioner-school received provisional and temporary recognition in the year 1991 and is stated to have been granted permanent recognition on 14th August, 1992. The date of setup of the petitioner-school is 12th January, 1988 as per the Certificate of Registration issued under the Societies Act, XXI of 1860. The petitioner was registered with the Registrar of Societies vide Registration No.

S/18553.

(b) On completion of the infancy period of three years on 11th January, 1991, the petitioner-school became liable to make contributions under EPF Act.

(c) The Enforcement Officers under the EPF Act conducted visit of the petitioner-school on 5th October, 1991 and found that a total of 20 employees were employed by the petitioner.

(d) The Manager of the petitioner-school, vide his letter No. SSPS/91-92 dated 5th October, 1991, furnished to the respondent a list giving the names of the 20 employees employed by the petitioner-school as on 5th October, 1991.

(e) As a result, the petitioner school was covered under the provisions of EPF Act w.e.f. 1st November, 1991 under Code No. DL/13746. However, the petitioner school failed to remit the provident fund, pension fund, deposit linked insurance fund for the period commencing from the date of liability.

(f) Consequently, proceedings u/s 7A of the EPF Act for determining the dues of the petitioner-school for the period from October, 1991 to March 1994 were initiated by respondent No. 1.

(g) The petitioner-school was summoned vide summons dated 30th March, 1994 for non-deposit of PF dues for the aforesaid period. After numerous opportunities in this behalf, the petitioner-school finally filed the reply on 17th January, 1995 stating therein that as the number of employees in their school was below the prescribed number of 20, the provisions of the EPF Act were not applicable.

(h) After more than sixty adjournments in this behalf between the years 1994 to 2001, the respondent No. 1 after taking into consideration the documents placed on record, including but not limited to, the report of the Enforcement Officer, vide order dated 27th February, 2001 ordered that the EPF Act applies to the petitioner-school w.e.f. 5th October, 1991 and further ordered that for purpose of determination of provident fund dues the petitioner should produce (i) attendance/wages registers, (ii) ledgers/cash books, vouchers/balance sheets and (iii) any other document for ascertaining the attendance, payment etc. before the respondent No. 1 on 27th March, 2001, with a further direction that in the event of failure to produce the required record for the purpose of assessment, the respondent would be at liberty to determine the dues on the basis of material available on record.

(i) At this juncture it would be relevant to state that the petitioner did not assail this order at any stage.

(j) The petitioner admitted that he filed replies before the respondent No. 1, including a reply dated 29th January, 2002. However, the petitioner did not appear or produce the record in terms of the order dated 27th February, 2001 as directed, and, therefore, vide order dated 31st January, 2002, the provident fund dues of the petitioner were assessed by respondent No. 1, for the period from

1st November, 1991 to March, 1994, in an amount of Rs. 1,93,140/-.

(k) The petitioner dissatisfied and aggrieved by the order dated 31st January, 2002, challenged it by an application for review, inter alia, on the ground that it was incumbent upon the respondent No. 1 to determine the applicability of the EPF Act before determining the amount due and raising a demand in that behalf. Vide its order dated 8th June, 2005 the respondent No. 1 rejected the application for review of the order passed u/s 7A, inter alia, stating that "it was intimated to the establishment that the applicability of the Act had already been decided vide 7A order dated 27.02.2001 after considering all the facts and documents produced by the establishment and that order was not challenged by the establishment in accordance to the provision of the Act. Further the establishment did not produce any new and important matter or evidence in the case. A squad of Enforcement Officers were also deputed for purpose of determination of dues but the establishment refused to produce any record on the plea that applicability of Act should be decided first."

(l) Although, as a consequence the petitioner was once again apprised of the order dated 27th February, 2001 whereby the applicability of the EPF Act to the petitioner-school had been determined, the petitioner still did not impugn the order dated 27th February, 2001.

(m) Instead, the petitioner filed the present petition concealing material facts and assailing the orders dated 31st January, 2002 assessing the dues of the petitioner to Rs. 1,93,140/- for the period 1st November, 1991 to March 1994, the order dated 8th June, 2005 u/s 7B dismissing the review, as well as the order of recovery of provident fund dues passed by respondent on.1, on 4th February, 2006, but, significantly without impugning the order dated 27th February, 2001 passed by the respondent whereby it was held that the provisions of EPF Act were applicable to the petitioner-school and the petitioner was covered under the purview of the Act w.e.f. 5th October, 1991.

3. Even after a counter affidavit had been filed in the present petition on behalf of respondent No. 1 clearly pointing out that the petitioner had concealed and suppressed the order dated 27th February, 2001 in respect of the applicability of the Act to the petitioner-school, the petitioner did not amend the present petition to challenge the legality of the order dated 27th February, 2001. On the contrary the petitioner-school made an attempt to gloss over the suppression made in this behalf by asserting in the rejoinder affidavit that the order dated 27th February, 2001 had neither been passed in the presence of the petitioner nor was ever served on the petitioner. An attempt was made on behalf of the petitioner-school, however, in the rejoinder affidavit to, inter alia, question the legality of the order dated 27th February, 2001, on the ground that the list of 20 employees furnished to the Enforcement Officers of the respondent No. 1 on 5th October, 1991 was one that was "...prepared by the department itself and the petitioner only put a stamp of acknowledgement on the list and report against which the petitioner filed objection...and therefore annexure R-2 is a list prepared by the department

itself and cannot be said to be a list submitted by the petitioner".

4. What unravels the explanation given by the petitioner in the rejoinder affidavit and nails the lie is the fact that there was not even a whisper of the inspection conducted by the Enforcement Officers of respondent No. 1 on 5th October, 1991 and the list of 20 employees ''admittedly engaged by the petitioner'', in the writ petition except to say that "at the time of inspection the respondent was served certain papers signed by the Manager of the petitioner establishment and were filled later on and on the strength of those documents, the respondent is claiming the petitioner establishment to be covered under the Act for the period from 1991 to 1994. The petitioner submits that any document the contents of which if are contrary to the existing facts i.e. number of employees of the establishment, cannot be made basis of the applicability of the Act". The petitioner is obviously being too clever by half in withholding the material relevant from this Court.

5. From the above it is apparent that petitioner-school through its Manager furnished a list containing the names of 20 employees to respondent No. 1 on 5th October, 1991. The petitioner-school appeared before the respondent No. 1 and after numerous opportunities and adjournments in this behalf, the respondent No. 1 finally determined the applicability of the EPF Act to the petitioner-school. Further, vide the said order dated 27th February, 2001, the respondent No. 1 also directed the petitioner-school to produce relevant records in order to determine the amount due from the petitioner-school in relation to provident fund dues etc. The petitioner-school deliberately neglected and avoided to produce the relevant records. Finally, vide order dated 31st January, 2002 the respondent No. 1 assessed the dues in the amount of Rs. 1,93,140/- and directed the petitioner-school to deposit the dues so assessed within 15 days. Instead of challenging the order dated 27th February, 2001 whereby the applicability of Act to the petitioner-school was determined, the petitioner challenged the order of assessment dated 31st January, 2002 by way of a review u/s 7B of the Act. The respondent No. 1 after hearing the petitioner-school clearly pointed out that the applicability of the Act had been determined by an order dated 27th February, 2001 which had not been challenged by the petitioner-school, and that consequently the review must fail. Even then the petitioner-school did not challenge the order dated 27th February, 2001. When respondent No. 1 finally issued the impugned order dated 4th February, 2006 for recovery of provident fund dues, the petitioner filed the present petition without impugning or bringing to the notice of this Court the order dated 27th February, 2001, on the ground that the respondent No. 1 had assessed dues in relation to provident fund against the petitioner-school without deciding the applicability of this Act to the petitioner-school.

6. It is thus seen that the impugned orders have been rendered by a statutory quasi judicial authority within the limits of its power and jurisdiction. It is also observed that the impugned orders were rendered after due compliance with

both principles of natural justice and strictly in consonance with the requirements of law. The authority clearly acted in conformity with the provisions of the EPF Act and reached an unexceptionable and reasonable decision, in the facts and circumstances of the case. On the other hand the conduct of the petitioner is such that it does not deserve the discretionary remedy on account of deliberately suppressing material facts in his pleadings thereby attempting to mislead this Court by misrepresentation.

7. For the foregoing reasons, the writ petition is an abuse of the process of Court and deserves to be dismissed with costs. Therefore, the present petition is devoid of merit and is rejected with costs of Rs. 10,000/- (rupees ten thousand), to be deposited with the Delhi High Court Mediation and Conciliation Centre, within two weeks of the date of this order, under intimation to this Court. Writ petition is disposed of accordingly.