(1990) 04 CAL CK 0010

In the Calcutta High Court

Case No : Civil Orders 12443-46 (W) of 1987

Sreekanta Saha APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 19-04-1990

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16, 2, 4(1), 7A

Citation : 95 CWN 162 : (1994) 1 ILR (Cal) 459

Hon'ble Judges : N.K. Mitra, J

Bench : Single Bench

Advocate : B.C. Dutta and Pinaki Chandra Motilal, for the Appellant; Jayanta Kumar Biswas, for the Respondent

Judgement

N.K. Mitra, J.—The short point involved in this case is, whether the workers, employed at their homes for manufacturing beedis by the contractor, with whom the Petitioner-company had entered into agreements for supply of rolled beedis, are employees of the Petitioner company and are entitled to the benefits of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, being employees of the Petitioner-company and the schemes framed thereunder and whether the inpugned assessment made by the Provident Fund authorities is valid or not.

2. The main contentions as raised by Mr. Dutta, the learned Senior Counsel, for the Petitioner-company in this Civil Order, inter alia, are that the Petitioner-company is engaged in the trade of manufacturing and sale of beedis and it is carrying on business of manufacturing beedis at different centres in the State of West Bengal. The Petitioner-company directly employs labourers in its factories situated in several districts in West Bengal, for the purpose of toasting, lebelling and packing beedis etc., but it does not engage any home worker for rolling beedis at its industrial premises or at any other place or places and for that purpose it merely engages independent contractors who have their own separate

business and those contractors employ labourers including home workers for such purpose and pay them wages. The Petitioner-company merely supplies raw materials, viz., tobacco, beedi leaves and thread to the independent contractors, who engage workers including home workers of their own choice to roll beedis and to supply such rolled beedis to the Petitioner-company, and after the said contractors supply the rolled beedis at the Petitioner-company''s industrial establishments, the Petitioner-company makes the beedis marketable by toasting, lebelling and packing the same. The Petitioner-company has no right of rejection in respect of the beedis rolled by the workers including home workers engaged by the independent contractors, and as such, the Petitioner-company has got no relation with the workers including home workers engaged by such independent contractors, and such workers or home workers are not the employees of the Petitioner-company under any circumstances, as there is no relationship of master and servant between the Petitioner-company and such workers and home workers, who are directly engaged by the independent contractors and who pay them their salaries, and hence, such workers or home workers are not entitled to get any provident fund benefits under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Schemes framed thereunder from the Petitioner-company. According to Mr. Dutta, therefore, the impugned determination by the Provident Fund authorities, holding the Petitioner-company liable to pay provident fund to the tune of Rs. 5,01,960 on account of arrear provident fund dues for the home workers employed by the independent conlractors as employees engaged by the Petitioner-company for supply of rolled beedis to the Petitioner-company, is wholly illegal, arbitrary, mala fide and made in colourable exercise of powers.

3. Mr. Biswas, learned Counsel appearing on behalf of the Respondents, however, opposes the said contentions of Mr. Dutta and submits that home workers employed by the contractors for rolling beedis, which such contractors supply to the Petitioner-company should be deemed to be employees of the Petitioner-company under the aforesaid Act and refers to the definition of ''employee'' as stated in Section 2(f) of the said Act and further contends that the impugned order and notice do not suffer from any illegality because the Provident Fund authorities had rightly passed the order and assessed the amount payble by the Petitioner-company as provident fund dues for the home workers employed by the contractors, who in term are engaged by the Petitioner-company for the supply of rolled beedis to the Petitioner-company, because of the inclusion of such home workers within the meaning of ''employee'' under the aforesaid Act, and also because of the fact that the Petitioner-company has got the right to reject the rolled beedis supplied to it by its contractors if the same are not to the specification or standard and these Tacts would be sufficient to conclude that some sort of control is being enjoyed by the Petitioner-company over the works of the home workers employed by the contractors engaged by the Petitioner-company for supply of rolled beedis to it and there is thus relationship of master and servant or employer and employee between the Petitioner-company and

such home workers. Several decisions have been cited at the Bar, viz., Chintaman Rao and Another Vs. The State of Madhya Pradesh, . Birdhichand v. First Civil Judge, Nagpur AI.R. 1961 S.C. 644. Orissa Cement Ltd. Vs. Union of India (UOI), , Shankar Balaji Waje Vs. State of Maharashtra, Management of D.C. Dewan v. Secretary, United Beedi Workers'' Union, Salem AI.R. 1966 S.C. 370 , Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., . The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, . Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, , P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, and Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,

4. In order to organise the conditions in which the beedi workers worked and to give them greater security of employment, Parliament enacted the Beedi and Cigar (Condition of Employment) Act, 1966, and the said Act applied to ''home workers'' also as would clearly appear from the definition of ''employee'' in Clause (f) of Section 2 of the said Act, which is reproduced below:

(f) ''employee'' means a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled, unskilled, manual. or clerical, and includes

(i) any labour who is given raw materials by an employer or a contractor for being made into beedi or cigar or both at home (hereinafter referred to in this Act as ''home worker''), and

(ii) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor:

5. The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''said Act'') provides for the introduction of provident funds for the employees in factories and other establishments. Originally, it did not extend to the beedi industry. For the first time, by the Notification No. GSR 660 dated May 17, 1977, issued by the Government of India under Sub-section (1) of Section 4 of the said Act, the beedi industry was added to sch. 1 of the said Act with effect from May 31, 1977. This was followed by the Notification No. GSR 677 dated May 23, 1977, issued by the Central Government, substituting the existing item No. (IXX Xiii) in Clause (b) of sub-para. (3) of para. 1 of the Employees'' Provident Funds Scheme, 1952 (hereinafter referred to as the ''said Scheme'') by a new one, so as to bring the beedi industry within the purview of the said Scheme with effect from May 31, 1977.

6. The word ''employee'' as has been defined in Section 2(f) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, is as follows:

2(f) ''employee'' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of (an establishment), and who gets his wages directly or indirectly from the employer (and includes any person

(i) employed by or through a contractor in or in connection with the work of the establishment ;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standard orders of the establishment).

7. Again, as per the provisions of Sub-section (3) of Section 1 of the said Act but subject to the provisions of Section 16 thereof, the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, applies to every establishment which is a factory engaged in any industry specified in sch. 1 and to other establishments as may be specified by the Central Government and it is not disputed that the factories of the Petitioner-company at different centres within the State of West Bengal do come within the purview of the said Act and the Scheme. It is also not disputed by the Petitioner-company that the workers employed within its factory premises would be covered by the said Act and the Scheme. The real question, however, is whether the home workers employed by independent contractors engaged by the Petitioner-company are entitled to get the benefits of the said Act and the Scheme as employees of the Petitioner-company.

8. The labourers employed in the manufacture of beedis consist of different categories. At the factory premises, which constitutes the formal establishment, there are administrative and clerical staff, accountants, packers, checkers and bhattimen. The work of rolling the beedis itself is done by one or the other of different categories of workers. The work may be entrusted by the manufacturers directly with the workers who prepae the beedis at home after obtaining a supply of raw materials consisting of tobacco, beedi leaves and thread from the manufacturers. The second category consists of workers, employed by the manufacturers through contractors, and the manufacturers pass on the raw materials to such workers for rolling the beedis in their dwelling houses, and there is, in a sense, a direct relationship of master and servant between the manufacturers and such workers. The third category of workers are those home workers to whom the work is entrusted by independent contractors who engage such workers and get the work done by them either at the premises of the contractors or in the dwelling houses of the workers in order to fulfil and complete contracts entered into by such contractors with the manufacturers for the supply of the finished products from the raw materials supplied by the manufacturers to sucl contractors. The first category of workers who are also home workers, attend at ''Mc factories within specified houses every day and collect the raw material for taking to their homes for rolling beedis. In the case of home workers, who hold a direct relationship with the manufacturers, the rolled beedis are brought by the home workers to the factory and the beedis which are up to the standards specified by the manufacturers, are accepted while those which fall below such standard, are rejected. The acceptance or rejection is

effected in the presence of such home workers. The staff at the factory maintains registers, in which regular entries are made of the raw materials supplied to such home workers, and of the rolled beedis which are delivered by them at the factory. The payment of wages to such home workers may be made directly by the manufacturers or distributed through the contractors engaged by the manufacturers for employing/engaging such home workers.

9. In the case of contracts between the manufacturers and the independent contractors regarding supply of rolled beedis, however, the manufactured products are collected by the contractors from the home workers employed/ engaged by them and such goods are delivered to the manufacturers by the contractors and the manufacturers are concerned only with payment to the contractors as per the contract and the payment of wages to such home workers is a matter between the contractors and the home workers.

10. When a person is termed as an ''employee'', it is obvious that there is a relationship of master and servant between him and his employer. The moot question involved in the present case is, whether such a relationship exists between a manufacturer of beedis and the home workers employed by an independent contractor for rolling beedis for supplying the same to the manufacturer not by the home workers, but by such contractor, and for that purpose, previously if used to be judged mainly from the fact as to whether the manufacturer had any supervision or control over the works done by such home workers. The said standard, however, was exploded by the Supreme Court in the case of Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishment (Supra) where Mathew J., who spoke for the Court, observed, inter alia, as follows:

It is exceedingly doubtful to-day whether the search for a formula in the nature of a single test to tell z contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded which factors should in any case be treated as determining ones. The plain fact is that, in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor, and in many cases it may still be the decisive factor. But it is wrong to say that in every case it, is decisive. It is now no more than a factor, although an important one.

11. Again, the degree of control and supervision would be different in different types of work. In the case where the home workers of a single manufactuer go about their work, including the receiving of raw materials, rolling the beedis at home, and delivering them to the manufacturer subject to the right of rejection,

there is sufficient evidence of the requisite degree of control and supervision for establishing the relationship of master and servant between the manufacturer and the home workers, as in such cases, it must be held that the manufacturer has direct control over the- works of such home workers. Nonetheless, it must be remembered that the work of rolling beedis is not of sophisticated nature, requiring control and supervision at the time when the work is done. It is a simple operation which, a practice has shown, has been performed satisfactorily by thousand of illiterate workers. Tt is a task which can be performed by young and old, men and women, with equal facility and it does not require a high order of skill. In the circumstances, the right of rejection can constitute in itself an effective degree of supervision and control.

12. At the same time, however, when the manufacturer enters into an agreement with the contractor for the purpose of supplying rolled beedis, and the contractor takes the raw materials from the manufacturer and gives the same to the home workers and collects rolled beedis from them and supplying the same to the manufacturer who has the right to reject such rolled beedis under the agreement, if the same are not up to the specification or standard, it can be said that the manufacturer has a remote supervision and control over the works done by such home workers. Lastly, even where there is no Such right of rejection being enjoyed by a manufacturer, it is to be seen by feting the veil, as to for whom, such home workers are actually working as is not undisputed that many of such home workers are regularly been employed by a particular contractor engaged by a particular manufacturer, and receive raw materials for rolling beedis from sach contractor, roll beedis at their houses and deliver the same to such contractor for supplying them to a particular manufacturer exclusively, for years together, and depend upon such work for their livelihood. Such home workers can also be called as working for such manufacturer judging from their aforesaid nature of work.

13. Judging from all aspects of the matter, in my opinion, the home workers who are employed/engaged by the contractors engaged by the Petitioner-company, for rolling beedis at their houses after receiving the raw materials from such contractors and who are paid by such contractors for their work, should also be deemed to be the workers of the Petitioner-company being employed in connection of the work of the Petitioner-company''s establishment considering their nature of work, for the reasons as aforesaid and they should also come within the definition of ''employee'' as contained in Clause (f) of Section 2 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, and the Schemes framed thereunder and, as such, the provisions of the said Act and Schemes would also apply to them, and for coming to such conclusion, I also rely upon the decision of the Supreme Court in the case of P. M. Patel & Sons v. Union of India (Supra) as cited by Mr. Biswas, the ratio of which, according to me, applies in full force to the facts of the present case. Since almost all the decisions cited at the Bar as referred to above, were referred to and discussed in P. M. Patel''s case, I find no necessity to discuss the said judgments over again.

14. Next question is, whether the impugned assessment as made by the Provident Fund Authorities for payment of provident fund dues for the home workers of the Petitioner-company in the present case, is valid or not. From Annex. ''B'' of the writ application, it appears that the Provident Funds Inspector, West Bengal, by his Memo, dated September 1, 1986, informed the Petitioner-company that he would inspect the Petitioner''s establishments and asked the Petitioner-company to maintain various registers in respect of all the persons engaged in the manufacture of beedis and to furnish necessary information about the home workers, viz., name, salary/wages, date of appointment etc. Subsequently, a proceeding u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, was started against the Petitioner-company alleging nonpayment of provident fund dues regarding the home workers and ultimately the Provident Funds Authorities, by the order dated July 31, 1987, determined Rs. 5,01,960 as arrear provident fund dues in respect of the workers of the said factory including home workers and, thereafter, demanded the said amount by the Demand Notice dated October 30, 1987. The said proceeding, order and notice of demand are also annexed to the writ application and marked as Exs. ''C and ''D'' (collectively) to the writ application. It is, however, the specific case of the Petitioner-company that it has not engaged any home worker in its factory and, as such, the.home workers should not have been determined as workers of the Petitioner-company, who are realy employed by the Petitioner-company''s contractors, and the contractors maintain accounts and/or registers regarding such home workers employed by them and the home workers never received any payment from the Petitioner-company, either directly or indirectly, and they are paid by the contractors and the contractors who supply rolled beedis at the factories of the Petitioner-coriipany, get only commission from the Petitioner-company and the Petitioner-company also produced the necessary accounts submitted by the contractors, before the Provident Fund Authorities, xerox copies of which have been produced in Court by the ''learned Counsel for the Provident Fund Authorities.

15. On a perusal of the papers produced before me and going through the writ application and the affidavits, it however does not appear to me that the impugned assessment by the Provident Fund Authorities regarding arrear provident fund dues in respect of the home workers, who were paid by the Petitioner-company''s contractors but held as workers of the Petitioner-factory, however, was properly done by the Provident Fund Department. No doubt, the Provident Fund Authorities in their afi''idavit-in-opposition denied and disputed the allegations of the petitoner-company that there was no provident fund dues so far as the employees employed by the Petitioners in their factory were concerned, and they tried to substantiate as to how the assessment of provident fund dues in respect of the home workers of the Petitioners was made and on what basis, but it appears from the report dated July 31, 1987, submitted by the Beedi Squard Inspectors, Murshidabad and Calcutta, before the 7-A Court of the Regional Provident Fund Commissioner, West Bengal, a xerox copy of which

forms part of the records produced by Mr. Biswas, learned Counsel for the Provident Fund Authorities, that in the absence of the actual names of the workers working under the contractors engaged by the Petitioner-company and also in the absence of the statutory return as mentioned in the joint report submitted by the Provident Fund Inspectors, the Provident Fund Authorities recommended for the determination of the Petitioner-company''s dues in the 7-A proceeding under the aforesaid Act as stated therein, which statement obviously raises a doubt as to the method or basis of calculation of provident fund dues of the Petitioner-company in respect of the home workers employed or engaged by the contractors who were in turn engaged by the Petitioner-company.

16. Accordingly, although I hold that the home workers employed or engaged by the contractors who, in term, were engaged by the Petitioner-company are entitled to get benefits under the aforesaid Act and Scheme and their provident fund dues are to be paid by the Petitioner-company as they should be deemed to be the employees of the Petitioner-company for the reasons as aforesaid, nonetheless, because of the pater* infirmities and/or anomalies in the matter of calculation or assessment of such dues as indicated above, the impugned proceeding and the order as well as the notice of demand as referred to Annexs. ''C, ''D'' (collecUvely) and ''F'' to the writ application cannot be sustained in law and are therefore quashed. Again, though I make no observation regarding the aHeged non-payment of provident fund dues so far as the packers/toasters/ labourers of the Petitioner-company are concerned, as the entire demand has been made in a consolidated manner including the home workers as aforesaid, the entire matter needs re-assessment and, hence, I remand the matter to the Provident Fund Authorities for re-assessing the dues in respect of the aforesaid employees in accordance with law after giving proper opportunity to the Petitioner-company to represent its case and after hearing the parties and by passing a reasoned order.

17. The writ application is thus disposed of without, however, any order as to costs.

18. This order will govern other Civil Orders also, namely, CO. Nos. 12444-46(W) of 1987.

