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**(2016) 12 OHC CK 0027**  
**In the Orissa High Court**  
**Case No : O.J.C. NO. 2720 of 1999**

Sun Granites Exports Ltd.

APPELLANT

Vs

Commissioner

RESPONDENT

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**Date of Decision :** 02-12-2016

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(I)  
(d), Section 7(A)

**Citation :** (2017) 153 FLR 185 : (2017) 1 LLJ 401

**Hon'ble Judges :** Mr. D. Dash, J.

**Bench :** Single Bench

**Advocate :** Mr. Prasanna Ku. Parhi, Advocate, for the Opposite party; M/s. M. Kanungo, S. Das, D. Pradhan, L. Kanungo, S. Nanda and S. Satpathy, Advocates, for the Petitioner

**Final Decision :** Dismissed

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## Judgement

Mr. D. Dash, J. - This writ application has been filed for quashment of an order dated 18.02.1999 passed by the Commissioner, Regional Provident Fund-(II) E & R, Orissa in the matter of a proceeding under section 7(A) of the Employees Provident Fund Act and Miscellaneous Provision Act 1952 (hereinafter in short is referred to as the "EPF Act").

2. The order as above is said to be wholly illegal in bringing into application, the provisions of the EPF Act to the establishment of the Petitioner-Company during the period, when it was enjoying the benefit of exemption from the application of the provisions of said Act in view of the statutory provision as it was existing at the time of commencement of the business of manufacturing of polished granites by the Petitioner-Company by engagement of employees and going for commercial production on 18.05.1996.

It is stated that as per provision under section 16 of the EPF Act, the Petitioner-Company was to enjoy the exemption for a period of three years and it was so enjoying in view of section 16(1)(d) of the EPF Act. On 05.12.1997, the

petitioner received a notice that the provisions of the ESI Act have become applicable in view of the omission of the provision contained under clause-(d) of sub-section 1 of section -16 of the EPF Act by way of amendment by the Ordinance duly published in the Gazette of India on 22.09.1997 coming into force at once on receiving the assent of the Hon"ble President of India.

Thus, challenge to the Regional Provident Fund Commissioner. That has been turned down.

The question is as to whether by such amendment by way of promulgation of the Employees Provident Fund Amendment Ordinance, 1997 (No. 17 of 1997) published in the Gazette of India on 22.09.1997, omitting Clause-d at sub-section -1 of section 16 in specific in so far as the exemption of any establishment from the provisions of EPF Act is concerned would operate against the Petitioner's Company or not. In other words, the claim is that since the Petitioner-Company when was so set up and went for commercial production as was enjoying the exemption under section 16(1)(d) of the EPF Act, the same would continue to be enjoyed till expiry of three years as stated therein notwithstanding such omission / deletion of said section 16(1)(d) of the EPF Act.

3. Learned counsel for the petitioner submits that the amendment has to be made applicable prospectively since no contrary intention either has been expressly stated in the said amending act or it can be so implied. According to him, the Petitioner-Company is to enjoy the exemption for a period of three years i.e., till 17.05.1999 in view of the fact that when it went for commercial production said provision of exemption was very much there in the statute. Therefore, its omission by way of amendment at a later point of time cannot take away the right of the Petitioner-Company in so far as the conferment of grant of exemption to the Petitioner-Company from the application of the provisions of the ESI Act is concerned. It is submitted that as per section-6 of the General Clauses Act, that would continue in so far as the Petitioner-Company is concerned in holding the field keeping the Petitioner-Company beyond the purview of the ESI Act notwithstanding its subsequent omission / repeal. The right already availed of under the said repealed provision of the ESI Act is not liable to be tinkered with or taken away by the amendment which has to be applicable to the establishments coming into existence subsequent thereto.

4. Learned counsel appearing on behalf of the, Regional Provident Fund Commissioner, Orissa first of all contends that this writ is not maintainable in view of the specific provision as contained in section 7-(I) of the EPF Act. When such efficacious and alternative remedy is available, the writ application is not entertain able. Coming to the merit, he contends that here it is not a case that the period for which the Petitioner-Company already enjoyed the exemption is also included in asking the contribution or any other dues under the ESI Act on the basis of omission of the provision under section 16(1)(d) of the ESI Act. The provision of the ESI Act have been made applicable to all the establishments at once from the date of amendment by omission of section -16(1)(d) with the

explanation thereto. So, no establishment can further continue to enjoy the exemption under the omitted provision whether old or new. Therefore, he supports the order passed by the Regional Provident Fund Commissioner as not liable to interference.

5. Law is well settled that existence of alternative remedy is not a bar for filing of a writ application under Article ? 226 of the Constitution. It is true that where adequate alternative and efficacious remedy is available the Constitutional Courts are slow in exercising their power under Article-226 of the Constitution but the same is a self-imposed restriction.

6. Though the impugned order is appealable and no appeal has been filed yet its very much clear that no disputed question of fact is involved herein. The Petitioner-Company's case is concerned with regard to the enjoyment of exemption from the applicability of the provisions of the EPF Act notwithstanding the amendment of the relevant provision by way of its omission subsequent to the date of setting up of the establishment and commencement of commercial production. It purely depends upon the interpretation of the statute and the effect of amendment by way of omission of said provisions as it was under section 16(1)(d) with explanation thereto by way of its omission in the subsequent amendment. Therefore, in view of admitted position that no disputed question of fact is involved herein and the fate of the case hinges on the interpretation of law, since the matter has remained pending before this Court by now for a period of more than 17 and half years, I do not think it appropriate to close the doors of this Court on the ground of availability of alternative remedy by driving the Petitioner-Company to approach that authority. The submission of learned counsel for the Regional Provident Fund Commissioner, thus stands repelled.

7. Coming to the merit, it may be stated here that admittedly the Petitioner-Company was set up on 18.05.1996 when it went for commercial production, which clearly revels from Annexure- 1. At this stage, the provision of clause-(d) of subsection (1) of section 16 of the ESI Act need be glanced at which reads as under:-

"Section 16(1)(d) xxxx xxxx

xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx

(d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been set up. Explanation:-For removal of doubt, it is hereby declared that an establishment deemed to be newly set merely by reason of a change not its location."

According to the above provision, the Petitioner-Company enjoyed the exemption

with effect from the date when it came to be set up and it was so continuing to enjoy.

The Employees Provident Fund and Miscellaneous Provision (Amendment) Ordinance, 1997 (No. 17 of 1997) was promulgated on 22.09.1997 and was so published in the Extraordinary Gazette of India coming into force at once. The provision of Clause (d) of sub-section 1 of section 16 with the explanation thereto stood omitted in entirety. The Ordinance stood replaced by the Amendment Act-10 of 1998.

In view of such omission of the provision as above, w.e.f. 22.09.1997 thus, there remains no such establishment fulfilling other criteria's and conditions stipulated in the ESI Act to enjoy the exemption from the applicability of the provisions of EPF Act; the relaxation no more remained available to any establishment. It comes to apply to all the establishments already in place by the time as also the establishments coming up thereafter. The Petitioner-Company cannot therefore claim the exemption from the applicability of the provisions of the ESI Act stating that the earlier existing provision under section 16(1)(d) of the ESI Act, has created a vested right for non-application of the provisions of the Act prior to the date of such coming into force of said Ordinance of Amendment of the said provision by way of its total deletion / omission. The ESI Act is a socio welfare legislation. The interpretation therefore cannot go to the extent that despite such amendment by way of omission of section 16(1)(d) with explanation thereto in the EPF Act, the establishment already enjoying the exemption would continue to enjoy the same till expiry of the period earlier prescribed although it has not been so expressed in the Amendment Ordinance and the Amendment Act coming to replace the Ordinance. It is automatic and eo instante Moreover the provision relating to exemption of this nature is not treated as the provision creating any vested right in favour of the establishment and by such amendment by way of omission/ deletion of the provision which means the same, it is not permissible to say that the vested right thereby as was available has been taken away.

The recipient of the exemption has no legally enforceable right against the State for the said grant of exemption and there is no indefeasible right for the continuance of such exemption that it cannot be withdrawn by amendment of the statutory provision till the end of the period as it was in the earlier provision undergoing amendment by total omission. There may be an exception in those cases where it is shown that the State is precluded in doing so on the ground of promissory estoppel. Said principle however has no application in the case in hand where we are faced with a case of amendment of provision of a socio welfare legislation of the particular nature where the contributions vest in the trust fund.

In that view of the matter, this Court finds that the provisions of the EPF Act has been rightly applied to the Petitioner - Company w.e.f. 22.09.1997 holding it as no more entitled to enjoy the infancy protection as it was so available prior to the amendment and thus the order of Regional Provident Fund Commissioner,

bringing the Petitioner-Company's establishment within the purview of the provision of the EPF Act is legally sustainable and is not amenable to be interfered with in exercise of the writ jurisdiction of this Court.

8. The writ application is accordingly dismissed.

No order as to cost.