(2010) 07 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) No. 2261 of 2010 and CM No. 4554 of 2010

Surya Charitable Welfare Society — APPELLANT

Vs

Central Board of Trustees and Another — RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

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

Citation : (2010) 171 DLT 283

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : S.P. Arora and Rajiv Arora, for the Appellant; R.C. Chawla and Ankit Kohli, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The present writ petition has been filed by the petitioner M/s. Surya Charitable & Welfare Society (Regd.) seeking direction for quashing of order dated 11.12.2009 passed by the Employees Provident Fund Appellate Tribunal in Appeal No. 630(4)2008 on the ground that the impugned order is non-speaking as many vital averments of the petitioner have not been dealt with and no findings have been given by the appellate authority and further directions are sought that the orders dated 15.1.2008/26.2.2008 passed u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and orders dated 1.7.2008/30.7.2008 passed u/s 7B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 are against the law and principles of natural justice.

2. The brief facts are that the petitioner is a Charitable and Welfare Society duly registered under the Societies Registration Act XXI of 1860 and is an association of social workers who have come together for the welfare of the down trodden and poor school children by implementing the Mid Day Meal Scheme in the primary school under the scheme of Ministry of HRD since 2005.

3. The petitioner entered into an agreement with the Municipal Corporation of Delhi to serve hot cooked mid-day meal to the school children numbering around 1 lac. This agreement was effective for five years starting from 1.1.2005. Later on its terms and conditions were revised and the agreement renewed on 1.7.2009 was valid upto 30.4.2011.

4. In response to letter dated 4.5.2007 issued by the respondent it was alleged by the petitioner that it is neither an industry nor a factory or an establishment to attract the provisions of the Act as mentioned in the letter dated 4.5.2007. A similar letter was sent on 6.12.2007 to the respondent. The office of the Regional Provident Fund Commissioner applied the Employees'' Provident Funds Act, 1952 to the petitioner vide letter dated 26.2.2008 with effect from 22.2.2007 under the schedule head Mess/Canteen. In the said letter the Assistant Provident Fund Commissioner, Delhi, forwarded an order dated 15.1.2008 which had been passed under an inquiry held u/s 7A of the Act. The said inquiry was held ex-parte and no opportunity of hearing was given to the petitioner and therefore, as per petitioner the said order was clearly in violation of principles of natural justice.

5. The petitioner thereafter in March 2008 filed the review u/s 7B of the Act pointing out the errors made by the respondent on the face of the record and requested the respondent to pass fresh orders u/s 7A of the Act. The office of the respondent did not allow the review petition filed by the petitioner and an order was passed on 1.7.2008/30.7.2008 dismissing the review petition filed by the petitioner by holding that the petitioner was a canteen and not a mess within the meaning of Employees Provident Fund Act.

6. An appeal was filed by the petitioner u/s 7I of the Act which was finally heard on 23.11.2009 and the order was reserved. Vide the impugned order dated 11.12.2009 the appeal of the petitioner was dismissed by the Assistant Provident Fund Commissioner who held that the petitioner was a canteen within the meaning of the Act.

7. The main discussion and finding given by the presiding officer is mentioned in paras 6 and 7 of the order which read as under:

6. The order of the authority revealed that appellant employed 56 employees to prepared the food. This fact is not at all challenged by the appellant. The only question to be determined whether the appellant was running a canteen or not. The word ''Canteen'' is not defined in the Act, but generally canteen means where food was supplied for a price. It is the case of the appellant that as per agreement he was preparing food for about 1 lakh students and selling the same. This job of the appellant satisfy the conditions of Canteen as appellant was supplying food for a price.

7. It is also not disputed that the appellant employed 56 persons and running same automatic cooking centre. Since the appellant was selling food for whatever price may be. The establishment will come under the Head of the

Canteen and as such appellant is liable to pay the contribution.

8. Challenging the said order, the present writ petition has been filed by the petitioner praying for setting aside/quashing the impugned order dated 11.12.2009 passed by the Appellate Tribunal and in consequence thereto further direction is also sought for setting aside the orders dated 15.1.2008/26.2.2008 and 1.7.2008/30.7.2008 passed by the respondent No. 2 under Sections 7A and 7B respectively.

9. None of the parties had disputed the fact that u/s 7A of the Act it has been determined by various Courts that the power conferred u/s 7A should be exercised carefully and not arbitrarily and in case the order passed u/s 7 of the Act is not a speaking one then the said order is invalid as the said order must determine the jurisdiction and relevant facts necessarily involved in the matter and the same cannot be passed without proper inquiry and without affording an opportunity to the employer.

10. I have considered the submission of learned Counsel for the parties. Let me first discuss the scheme of the provision. ''The Employees Provident Funds Act, 1952 Section 3(a) makes it applicable (subject to what may be termed the infancy protection outlined in Section 16 of the Act) ''to every establishment which is a factory engaged in any industry specified Schedule-I and in which 20 or more persons are employed.'' Schedule-I contains a list of industries. Section 4 of the Act empowers the Central Government to add any other industry to Schedule-I. Sub-section (3)(b) of the Act makes the Act applicable ''to any other establishment employing 20 or more persons, or class of such establishments, which the Central Government may, by notification in the Official Gazette, specify in this behalf''.

11. The term ''establishment'' is not defined in the Act and must to my mind, take its meaning from the context in which it appears, that is to say, the purpose underlying the Act. The Act itself was made for the purpose of providing for the institution of provident fund for employees in factories and other establishments. The main purpose would thus appear to be that it is enacted in the interests of employees in establishments. The question is whether as contended by the petitioner, the Act cannot be made applicable to the Charitable and Welfare Society in the present case.

12. The main grounds in the writ petition are that:

i) The petitioner establishment is not a canteen, as it does not conform to the requirements of a canteen as contemplated under the Act and/or in general meaning of the term, therefore, the petitioner is not liable for coverage under the Act as it is not amenable to the provisions of the Act.

ii) The legislatures while incorporating ''Canteens'' as Schedule Head in the Act vide notification dated 31/08/1963 could not have contemplated/visualized that such a scheme as mid-day meal would qualify to be treated as canteen and the provisions of the Act would be applied.

iii) There has been no written counter-submission from the Provident Fund Department against the 7B review application of the petitioner as there is no outlet nor there is any general public or otherwise to whom the canteen catering/ service is rendered.

13. Apart from the above mentioned grounds in the petition, the petitioner in its appeal filed before the Appellate Tribunal u/s 7I of the Act had also stated specifically that a team of enforcement officers visited the petitioner establishment for the purpose of applying the provisions of the Act to the petitioner establishment and the petitioner had filed an exhaustive reply to the visit dated 2.5.2007 and further made a detailed submission on 6.12.2007 which was attached to the appeal as Annexure A-7.

14. The contention of the petitioner before me is that office of the respondent without considering the aforesaid consideration applied the provisions of the Act to the society with effect from 22.2.2007. The petitioner''s contention before the Appellate Tribunal was that the respondent held the ex-parte inquiry u/s 7A against the petitioner establishment without the service of summons or notice u/ s 7A.

15. Besides the abovementioned as well as other legal points, it was denied by the petitioner establishment that it was a mess or a canteen conforming to the description given in the Act. Therefore, the said Act is not applicable to the case of the petitioner. In ground E of the review petition, the petitioner had taken the following ground:

Because the coverage letter dated 26/02/2008 issued by the office of the Regional Provident Funds Commissioner Delhi shows that the Act is made applicable to the society of the Applicant under the head of classes of establishments as Canteen/Messes. There''s a complete non-application of mind as there are two separate and independent schedule heads under the classes of the establishment applicable to non-factory establishments and only one head can be applied and not the two heads simultaneously. However, the society of the Applicant is neither a Canteen nor a Mess to be amenable to the provisions of the Act. It is not a Canteen because there is no outlet nor there is any general public or otherwise to whom the canteen catering/service is rendered. The Applicant establishment is also not a mess as per the ingredients/qualifications of a Mess. The notification says in pursuance of powers conferred u/s 1(3)(b) of the Act, the Central Government published a Notification dated March 15, 1963 in Government Gazette and specified that every Mess, not being a military mess, employing 20 or more persons as a class of establishments to which the said Act shall apply with effect from 31st March 1973. The explanation provides that mess means a place where food is served on payment made or promised to be made. In terms of the aforesaid notification the Applicant establishment is also not a mess.

16. The other ground taken in the appeal was that the order dated 30.7.2008, wherein it was held that the petitioner establishment was coverable under the Schedule head ''Canteens'' and the provisions of the Act were applicable for the reasons that ''the establishment supplies food at the location of the clientele rather than the clientele coming to the location of the establishment'', was perverse, illegal, bad in law and suffered from non-application of mind as the only controversy in the present dispute was whether the activities of the petitioner establishment fall under the schedule head of notified establishments or not.

17. After considering the order of the Appellate Tribunal dated 11.12.2009 it appears that no reason and grounds have been given for making the final observation in paras 6 and 7 of the impugned order. It is settled law that the findings of any quasi-judicial authority must be based upon reasons and grounds. Similarly, the finding arrived at must be supported by cogent logical examination of facts and the provisions of law after taking note of the contentions raised by the parties and dealing with them. I find that the findings recorded in paras 6 and 7 of the impugned order are unsupported by reasons and that a conclusion has been reached without dealing with the grounds stated in the appeal u/s 7I of the Act. It appears that while coming to the conclusion by the tribunal, the grounds and contentions raised by the petitioner have not been dealt with. The Appellate Tribunal ought to have appreciated the fact that the order passed u/s 7A was ex-parte order, no opportunity was given to the petitioner of being heard. Secondly, various serious issues were raised by the petitioner which ought have been decided by the Appellate Tribunal in its order. Some of the points have not been mentioned in the impugned order. Thus, the impugned order is not sustainable. The matter is required to be determined afresh by the Tribunal after discussing the issues raised by the petitioner.

18. In these circumstances, this Court has no option but to set aside the order passed by the Appellate Tribunal dated 11.12.2009 and remand back the matter to the Appellate Tribunal to consider the entire dispute and questions raised by the petitioner.

19. Parties are directed to appear before the Appellate Tribunal on 11th August, 2010. The Appellate Tribunal shall proceed to hear the matter at an early date preferably within four months as the agreement between the petitioner and MCD is expiring on 30.4.2011. In terms of the aforesaid directions, the petition stands disposed of. No orders as to cost.

