(2008) 07 BOM CK 0139

In the Bombay High Court

Case No : Writ Petition No. 2500 of 2005

Tata Power Company Limited — APPELLANT

Vs

Regional Provident Fund Commissioner and Others — RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 6, 7A
Minimum Wages Act, 1948 — Section 3, 4, 4(1)

Citation : (2008) 119 FLR 143 : (2008) 3 LLJ 992 : (2008) 6 MhLj 258

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : K.M. Naik and S.P. Salkar, for the Appellant; Sureshkumar and A.D. Shetty and Rita Joshi, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—By this writ petition the petitioner company has questioned the legality and propriety of the order passed by the Regional Provident Fund Commissioner in an enquiry u/s 7A of The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act" for short) confirmed by the Employees Provident Fund Appellate Tribunal at New Delhi.

2. The only question is whether the Food Allowance agreed to be paid by the petitioner to its employees under a settlement is "cash value of any food concession" allowed to the employee and therefore liable to be included for the purpose of calculating the employers contribution to the provident fund.

3. In the course of a settlement, the petitioner and the respondent No.2 Union agreed to as follows:

Food Allowance:

It is agreed between the parties that with effect from 1st June, 1995 the food allowance will be as under :

A) In divisions where canteen exists, employees would be paid a food allowance of Rs.900/- per month (through Salary). In addition, Coupons worth Rs.310/- would be issued every month for which a deduction of monthly contribution of Rs.10/- will be made from the salary of each employee. Such coupons would be non-encashable and non-refundable. Such canteens henceforth would be run by the Contractor purely on a Cafeteria Basis.

A canteen committee comprising representatives of the management, and the union will be constituted to monitor the running of the respective canteens as cafeterias.

B) In divisions where there are no canteen facilities, employees would be paid food allowance of Rs.1200/- (through Salary).

4. The respondent Union claimed before the Provident Fund Commissioner that the food allowance should be included for the purpose of employees contribution to the provident fund u/s 6 of the Act, the relevant part of which reads as follows:

6. Contributions and matters which may be provided for in Schemes. - The contribution which shall be paid by the employer to the Fund shall be (ten per cent) of the basic wages [dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees [(whether employed by him directly or by or through a contractor)], and the employees'' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding [ten per cent] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section.

[Provided that....]

Provided that....

[Explanation 1]. For the purpose of this [section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

5. The Provident Fund Commissioner initiated an enquiry under the Act. The Commissioner held that the food allowance is merely a compensation to meet the expenses of food and said payments are cash value of the food allowance and form part of the dearness allowance. He therefore directed the inclusion of the amount of the food allowance as part of the dearness allowance under Explanation 1.

6. The petitioner preferred an Appeal before the Provident Fund Appellate Tribunal at New Delhi. That Tribunal dismissed the Appeal holding that the term "cash value of food concession" used in Explanation 1 would even include cash paid to the workers in lieu of such food concession i.e. even if food is not provided by the employer at all. Against this order, the petitioner has preferred

this writ petition.

7. Before one adverts to the contentions, it is necessary to briefly note the nature of the allowance. The petitioner admittedly does not provide any food to its employees. In any case the parties are not at issue in this matter in regard to any subsidised food allegedly provided by the petitioner. In fact it appears that the petitioner discontinued some canteen facilities and therefore the parties entered into some negotiations and arrived at the settlement above. Thus, the food allowance payable under the settlement though intended for purchase of food, is like any other allowance payable by an employer to its employees. It is not relating to any rise in cost of food.

8. Mr. Naik, the learned Counsel for the petitioner submitted that the employer is liable to contribute to the fund 10% of the basic wages and dearness allowance and retaining allowance, if any, for the time being payable to each of the employees. He further submitted that under Explanation 1 to Section 6, only the cash value of any food concession allowed to the employee is liable to be included as part of the dearness allowance. According to the learned Counsel however there is no food concession offered by the petitioner to the employees and therefore there is correspondingly no cash value of any food concession, which can be calculated in accordance with the Explanation 1. It was also contended on behalf of the petitioner that the food allowance in question does not involve any concession since the amount is paid as an allowance to the employees to purchase food according to their wishes.

9. Mr. Shetty, learned Counsel for the respondent submitted that under the Explanation 1, the cash value of any food concession is liable to be included in the dearness allowance and therefore even if there is no food provided by the employer, the food allowance is liable to be treated as the cash value of any food concession.

10. It is therefore necessary to examine in brief the Scheme of the Act in this regard. As stated earlier, the employer is liable to contribute 10% of the basic wages, dearness allowance and retaining allowance payable to each of the employee to the fund. Basic wage is defined u/s 2(b) as follows:

2(b) "basic wages" means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer; Thus, in the definition, the cash value of any food concession is excluded from the basic wages. This cash value of food concession is included as part of dearness allowance by Explanation 1, reproduced earlier, for the calculation of the employers contribution. A question however arises as regards the meaning of the term "cash value of any food concession".

11. At first blush, it appears that if any concession is capable of being computed in cash, such value must be included as dearness allowance. According to the respondents any amount paid for food is a good concession. Therefore, even if an employer does not provide any food at all the amount paid by the employer for purchasing such food is in this case under the food allowance must be treated as the "cash value of any food concession".

12. Now one thing is clear, that the term must be interpreted as a whole having regard to the object of the legislation. In the first place, the term points to the cash value of any food concession allowed to the employee i.e. the value of the concession in regard to food i.e. the value by which the price of food is reduced. This presupposes that food is provided to the employees as part of the terms and conditions of employment as seems to be the practice in some employments. It is only where food is supplied at a concession that that the cash value of the concession can be computed. The Dictionary "The Concise Oxford" Ninth Edition describes the meaning of ''concession'' as follows:

concession, 1a the act or an instance of conceding something asked or required (made the concession that we were right) b a thing conceded. 2 a reduction in price for a certain category of person. 3a the right to use land or other property, granted esp. by a government or local authority, esp. for a specific use. b the right, given by a company, to sell goods, esp. in a particular territory, c the land or property used or given. concessional adj. concessionary adj. [French concession from Latin concessio (as CONCEDE).

In the present case we are concerned with the meaning at 2 i.e. a reduction in price. Though in the broadest sense concession can be used to describe any benefit conceded to another. Accordingly, a food concession is value to be construed as offering food at a concession. And the cash value of a food concession is liable to be construed as the value by which the price of food is reduced.

13. A term similar to the term "the cash value of any food concession" occurs in Section 4(1)(ii) of The Minimum Wages Act, 1948, passed by the same legislature reads as follows:

4. Minimum rates of wages. - (1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments u/s 3 may consist of-

(i) ....

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) ....

In this Section the meaning is clear i.e. minimum rate of wage may consist of the cash value of the concessions in respect of supplies of essential commodities (such as food). In Section 6 of the Act instead of the words "cash value of the concession in respect of supplies of essential commodities" the words used are simply "the cash value of any food concession." This is a pointer to the meaning of the term in the Act i.e. to say that it means the cash value of any food concession in respect of supply of any food at a concessional rate to the employee. It appears that this term has been understood and used by the Supreme Court in the same sense in Bridge & Roof Co. (India) Ltd. and Ors. v. Union of India and Ors. 1962 (II) LLJ 494, though the issue was different.

14. Mr. Naik, learned Counsel for the petitioner also relied on a decision of the Supreme Court in Manganese Ore (India) Ltd. v. Chandi Lal Sadu and Ors. 1990 (77) FJR 420, in which the employer purported to deduct the cash value of various benefits and amenities such as attendance bonus and concessional supply of food grains out of the wages payable to the employees. The Supreme Court held that there was no Notification u/s 4 of the Minimum Wages Act permitting a wage in kind. Therefore, in the absence of such a notification the cash value of such concessions cannot be treated as a wage in kind.

15. One thing that is clear from the decision is that there has been a practice in industrial employment in this country where the cash value of various benefits concessional supply of food grains is computed while reckoning the charges payable. Under the Minimum Wages Act the cash value of a concession always means the amount by which the value of an essential supply is reduced when supplied. Therefore the term "cash value of any food concession" allowed to the employee means such value of the component by which the price of the item is reduced. This necessarily postulates the provision of the supply of an amenity such as food grain for, without such supply, it would not be possible to calculate the value of any food concession allowed to the employee. There being no supply of any food by the petitioner, the payment of food allowance cannot be treated as the cash value of food concession allowed to the employee.

16. Indeed if the Parliament intended to include food allowance which is not related to the supply of any food as dearness allowance it could have simply said so by adding that any food allowance would be treated as part of the dearness allowance.

17. At this juncture, the learned Counsel for the respondent submitted that the petitioner supply some food at a concessional rate and the cash value of the concession would be liable to be included. There is no material produced by the respondents and the petitioner vehemently denies this fact.

18. In this view of the matter, the petition succeeds. The impugned orders dated 28-7-2000 and 6-7-2005 are hereby set aside. The petitioner is not liable to contribute on the basis of the food allowance under the Agreement dated 10-5-1995. There shall be no order as to costs, Petition disposed of.

Rule made absolute.

