
(1981) 08 DEL CK 0027

In the Delhi High Court

Case No : Letter Patent Appeal No. 81 of 1974

The Regional Provident Fund Commissioner, Employees"
Provident Fund and Another

APPELLANT

Vs

"Glamour", Proprietor Sethhassaram and Sons

RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Citation : (1981) 20 DLT 424 : (1982) LabIC 1787

Hon'ble Judges : Sultan Singh, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : R.M. Bagai and Veena Birbal, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This is an appeal against the order of the learned single Judge by which he quashed the demand made on the respondent-employer for payment of provident fund in respect of certain employees on the ground that no opportunity was given u/s 7A of the Employees Provident Fund and Misc. Act, 1952 (to be called "the Act), to the respondent No. I-employer before making the demand on it. Respondent No. I runs a shop in which he sells Sarees. One V.S. Kartar Chand, Tailor employing about six persons carries on his tailoring work at the premises of respondent No. 1. The establishment of respondent No. I is admittedly covered by the scheme under the Act. The dispute arose because the appellant asked the respondent No. I to enrol the workers employed by Kartar Ghand and pay the contribution to the fund thereof because according to the appellant they are his employees within the meaning of Section 2(f) of the Act which says that employee includes any person employed by or though a contractor is or in connection with the work of the establishment.

(2) The appellant asked the respondent to assess the eligibility of employees as per its letter dated 30th December, 1963. The respondent by its letter of 18th January, 1964 took the stand that V.S. Kartar Ghand was a contractor and was

independently working, that the appellant only got their tailoring orders executed by Kartar Ghand and got a fixed commission from him. It was also maintained that V.S. Kartar Ghand keeps his own account and for the employees under him, he maintains a regular attendance register under the Shops and Establishment Act. This stand did not find favor with the appellant who by letter dated 2nd March, 1966 informed the respondent that his plea was not acceptable and that six employees employed through the contractor i.e. V.S. Kartar Ghand were working in his establishment and doing work in connection with the establishment and should be enrolled as eligible employees as members of the Fund, Respondent thereupon took up the matter with the Central Government u/s 19A of the Act but was informed by the Central Government vide its letter dated 6th August, 1966 that the point of references in the letter to the Government was not covered by Section 19A of the Act. Thereafter the appellant asked the respondent No. 2 by letter dated 2nd November, 1966 that he should enroll all the contractor's employees to the fund as already intimated vide the letter dated 2nd March, 1966. The respondent then filed writ petition and made two grievances 1) that the Central Government has failed to exercise its jurisdiction u/s 19A of the Act, in refusing to deal with the points raised by him; secondly that he has not been given proper opportunity by the Regional Provident Fund Commissioner as required by Section 7A(3) of the Act. The learned Judge found both the points in favor of the writ petitioner and allowed the writ petition and directed the appellant to forebear from enforcing the demand in dispute unless and until the matter has been determined by the competent authorities after affording the respondent a reasonable opportunity of being heard.

(3) The Commissioner has come up in appeal. We made enquiries from the counsel for the appellant whether in pursuance of the directions given by the learned single Judge any enquiry was held to again to determine the liability of respondent No. 1 but were told that it has not been held. We do not know why it was not done, notwithstanding the filing of the appeal, because if enquiry was held all this interval could have been properly utilised, and matter determined rather than leaving it in still nebulous condition even after a period of seven years.

(4) The finding of the learned single Judge that the reference by the respondent No. 1 fell within the ambit of Section 19A of the Act, can no longer be upheld in view of the judgment of the Division Bench of this court in Cr. R. No. 16 of 1974 Ram Sankar etc. v. Provident Fund Inspector etc. decided on 13th September, 1976 wherein it has been held that reference u/s 19A of the Act could only be invoked by the Commissioner and that the employer cannot invoke it in a case like the present where the Commissioner is not having any difficulty in implementing the Act. To this extent the finding of the learned single Judge is set aside.

(5) That leaves for consideration the second point of controversy, namely has the

respondent been given proper opportunity before making determination u/s 7A of the Act. Now Section 7A of the Act does require that determination of money due from the employer will be done only after giving a reasonable opportunity to the employer. The appellant no doubt being aware of this, called upon the respondent to show cause why the labour employed through the contractor be not included to the benefits of the fund. The respondent took the stand that V.S. Kartar Chand was working independently and was not a contractor of the respondent. It maintained that V.S. Kartar Chand booked the orders independently and the respondent was only getting a fixed commission, that employees of Kartar Chand had a separate attendance register maintained by him under the Shops and Establishment Act. In the memo. dated 22nd July, 1966 sent to the Central Government (a copy of which was also sent to the appellant) it was specifically pleaded that V.S. Kartar Chand could accept orders from outside and it was not obligatory for him to confine his business activities solely to the orders of the respondent. These points were also repeated in the writ petition. In the counter-affidavit justification is given as to why Kartar Chand should be treated as a contractor of respondent No. 1. Reliance was placed on the investigation carried out by the Provident Fund Inspector who had stated that during the inspection it was revealed that there was no written agreement between the contractor and the respondent to show that the respondent only charged fixed commission from V.S. Kartar Chand. It was denied that V.S. Kartar Chand was registered under Shops and Establishment Act. It was also maintained that the orders were booked by M/s. Glamour on its own receipts forms and payment received. It is not disputed that the report of the inspector was not sent to the respondent V.S. Kartar Chand. It is also clear that there is no finding given by the Regional Provident Fund Commissioner about the points which have been raised by the respondent. No doubt it is for the respondent to give evidence which he wants. But the respondent had detailed various grounds to support his plea that V.S. Kartar Chand was not his contractor. Of course it was open to the Commissioner not to find the explanations satisfactory. But before doing that it was incumbent on the appellant to give the respondent an opportunity of hearing as required by Section 7A(3) of the Act. Mr. Bagai refers to the letter of 3rd April, 1965 written by the respondent to the appellant in which it is stated that their representative met the Regional Provident Fund Commissioner and this shows that an opportunity of hearing was given. But this is where the respondent makes a grievance by pointing out that though the letter gave various facts on the basis of which it was claimed that V.S. Kartar Chand could not be held to be his employee were not dealt with and a bald finding was given that six people working for V.S. Kartar Chand would be treated the employees of the respondent. But without holding an enquiry it was not permissible to give a finding on points which necessarily required looking into the evidence. Inspector's report, apart from being no substitute for a proper enquiry, was not even made available to the respondent. The respondent is entitled to show that the inspector's report is not based on facts and hence the establishment is not covered by the Act. This opportunity was denied to the

respondent and we, Therefore, agree with the learned Judge that the impugned order could not be sustained.

(6) As a result though we have held that the finding of learned Judge u/s 19A of the Act is not sustainable the appeal has to be dismissed cause of our finding that the impugned order was passed without giving opportunity as provided by Section 7A of the Act. Of course, it will be open, as the learned Judge has already directed for the appellant to redetermine the liability of the respondent under the Act but only after giving reasonable opportunity to the respondent in this regard. With these observations the appeal is disposed of with no order as to costs.