

(2003) 06 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 7542 of 2000

The Tamil Nadu Small Industries Development Corporation
Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17,
17(1), 17(2A), 2, 7A

Citation : (2004) 1 LLJ 67 : (2003) WritLR 766

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : B. Shanthakumar, for the Appellant; V. Vibhishanan, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—The petitioner is Tamil Nadu Small Industries Development Corporation Limited, an undertaking of the Tamil

Nadu Government. The petitioner prays for the issue of a writ of certiorarified mandamus to call for the records relating to the order of the

respondent dated 11.4.2000, to direct the respondent not to enforce the order of withdrawal of relaxation until the petitioner finally evolves an

appropriate procedure in accordance with law for the coverage and protection of the contract employees.

2. The petitioner being an undertaking of the State Government, they had applied for the grant of exemption from the provisions of the Employees"

Provident Funds and Miscellaneous Provisions Act, 1952. The same is pending for consideration till now. In the mean time, a relaxation order was

issued by the respondent. The petitioner establishment was functioning all these years in accordance with the provisions of the Act. They have been

complying with the suggestions and directions as per the relaxation order. In the month of December, the respondent had in fact, recommended to the Central Provident Fund Commissioner about the release of remaining 15 per cent of the P.A. amount in the form of securities from various branches of all the units at the request of the petitioner. The petitioner contends that the said action of the respondent would confirm the fact that the Employees Provident Fund Trust of the petitioner establishment had been functioning and administering the affairs of the Trust to the satisfaction of the respondent except for certain minor irregularities. The Inspection Register was also maintained by the petitioner which will amply prove that periodical inspection was being done by the respondent at regular intervals. After 1997, the respondent visited the petitioner's establishment only on 11.8.1999 and 16.8.1999. The respondent had made eight observations and had directed the petitioner to report about the compliance and the action taken thereon before 5.9.1999. Subsequent to the inspection by letter dated 10.9.1999, the respondent had taken a totally different attitude by reiterating the irregularities noticed during the inspection. It is further contended that without any notice to the petitioner, the respondent had withdrawn the Relaxation order granted to the petitioner with effect from 1.10.1999.

3. The petitioner had replied by a D.O. Letter dated 24.8.1999 requesting the respondent to revoke the withdrawal of relaxation by accepting the reasons stated by the petitioner for not complying with the some of the conditions. The respondent by their letter dated 21.10.1999 kept the earlier order in abeyance and had stated that the petitioner should carry out all the observations within three months and report compliance. On subsequent inspection the respondent had found that all the observations have been duly complied with by the petitioner. In the mean time, the Enforcement Officers had also requested the petitioner to provide the list of Contractors, number of workmen engaged by the Contractor and the amount of wages paid by the Contractor. As per the undertaking given by the petitioner, they have submitted the entire list of contractors and their addresses together with the amounts paid to them.

4. It is further submitted by the petitioner that a detailed letter dated 4.1.2000 was addressed to the respondent explaining the stand taken by the

petitioner requesting revocation of the withdrawal of relaxation. Further inspection was conducted on 21.2.2000. Though the Inspecting Officer

had expressed satisfaction after about one week, the respondent took a totally different attitude for reasons best known to them and had sent a

letter dated 28.2.2000. The petitioner had been directed to enrol all the employees who were eligible to become members and to remit all the

statutory dues within 15 days, failing which the relaxation order shall stand withdrawn without any further notice. The petitioner further submits that

despite the sincere efforts to find a solution, the petitioner was not in a position to take any final decision particularly regarding the labourers

employed during the year 1998-99 since all the contracts were entrusted to the contractor for carrying out seasonal works as and when required.

5. Therefore, the petitioner contends that the impugned order cannot be sustained in law taking retrospective effect from 1.4.2000 without

affording any opportunity or hearing to the petitioner. Hence, the writ petition.

6. In the counter filed on behalf of the Regional Provident Fund Commissioner, the respondent states that the petitioner was governed by scheme

framed under the Act with effect from 1.1.1973 under Code No. TN/7626. Pending grant of exemption u/s 17(1)(a) of the Act, Relaxation Order

has been issued with effect from 1.1.1991. The recommendations for grant of exemption has not been forwarded to the Head Office so far due to

non-rectification of discrepancies pointed out from time to time. The respondent further contends that the establishment was not administering the

fund properly and has committed the following serious irregularities and violation of the conditions governing the grant of exemption:-

A. The employees employed through contractors have not been enrolled as Provident Fund members of the exempted fund.

B. The pattern of investment has not been followed from 1993-94 to 1998-99 which is very serious lapse on the part of the Trust.

C. The Provident Fund monies have been kept invested in Fixed Deposit which is contrary to the pattern of investment prescribed by the

Government of India.

D. Rules relating to the grant of advances and withdrawals have not been followed strictly.

E. The LIC policies have not been assigned in favour of Small Industries

Development Corporation Limited Provident Fund Trust.

F. The establishment has neither implemented the provisions of Employees' Deposit Linked Insurance Scheme 1976 nor applied for exemption u/s

17(2A) of the Act and acted unilaterally and circumvented the authorities competent to grant exemption from the provisions of the Employees'

Deposit Linked Insurance Scheme 1976. The dues determined u/s 7A of the Act under Account numbers 21 and 22 has not been paid by the establishment.

7. Several show-cause notices were issued on 11.8.1998, 24.2.1999 and 12.7.1999, but the said discrepancies were not rectified and the

inspection of the Enforcement Officers also reveal the persistence of above mentioned violation of conditions for the grant of exemption and other

serious irregularities.

8. A letter dated 10.9.1999 was addressed to the Central Office that in anticipation of the order of the order of the Central Provident Fund

Commissioner for withdrawal of the Relaxation Order, the administration of the fund was being taken over with effect from 1.10.1999. A letter

dated 10.9.1999 was also issued to the petitioner establishment informing that the relaxation order was withdrawn with effect from 1.10.1999 and

the petitioner was advised to transfer entire funds as per the procedure. The Chairman and Managing Director of the petitioner sent a

representation dated 24.9.1999 and as requested by him the establishment was inspected and the Enforcement Officers confirmed that the

objections pointed out by them earlier have not been rectified. An undertaking was given by the petitioner on 7.10.1999 that the said objections

will be rectified immediately. On the strength of the assurance and the undertaking, the request was considered and the petitioner was informed by

letter dated 21.10.1999 that the withdrawal of relaxation order was kept in abeyance. The petitioner establishment was directed to comply with

two requirements immediately namely, (i) all the employees employed by or through any contractor in or in connection with the work of the

Corporation should be enrolled as members of the Provident Fund Trust from their date of appointment and (ii) the pattern of investment of

Provident Fund monies should be followed without any deviation.

9. Further inspection revealed that though the maintenance of the records was

satisfactory, the objections raised by the respondents had not been complied with. The various other averments raised in support of the writ petition, had also been denied in the counter.

10. Mr. B. Shanthakumar appearing for the petitioner/establishment contended that the respondent without properly considering the petitioner's

application for exemption from the provisions of the Act, was repeatedly insisting that the petitioner should give all the particulars relating to the

employees of the contractor. The said requirement was not feasible, nor practicable for compliance. The Contractors have been employed for

temporary works and those workmen under the contract were casual employees. All that the petitioner could do is to furnish the details relating to

the contractors and the petitioner establishment has absolutely no source of information regarding the individual workers who had been employed

by the contractors. The direction relating to the investment is also complied with and hence the attitude of the respondent in seeking impossible

particulars from the petitioner, was not in order. The respondent instead of taking steps for withdrawal of the relaxation, could have considered the

claim for exemption which is pending with the authorities for sufficiently long time. Mr. Vibhishanan appearing for the respondent contends that the

exemption from the provisions of the Act is not automatic. The establishment seeking exemption must satisfy that the Scheme framed by them is

beneficial to the employees and will also be a proper substitution for the Schemes under the Act. Learned counsel refers to the following provisions

in support of his contentions and submits that the principal employer is also liable for payment due to the workers under the contractor and in order

to avail the relaxation, the establishment shall satisfy all the requirements and directions of the respondent.

11. Reference is made to Section 2(f) of the Act which defines "employee" which includes any person who is employed for wages in any kind of

work, manual or other otherwise or in connection with the work of an establishment. Section 8-A deals with recovery of moneys due from

employers and contractors. The said provision also makes it clear that the amounts recovered in respect of an employee employed by or through a

contractor, may be recovered by such employer from the contractor.

12. Section 17 deals with power to grant exemption. Such exemption can be

granted only in the event of the establishment constituting their own

Trust and is found by the Government that such benefits are not less favourable to the employees as they would be entitled to under the provisions

of the Act. Therefore, according to learned counsel for the respondent, exemption is not to be granted merely on the ground that the petitioner

establishment is a Government undertaking. The request for exemption cannot be considered unless the establishment satisfies that the

Trust/Scheme framed by them is beneficial to the majority workers.

13. Reference is also made to Paragraph No. 26 of the Employees Provident Fund Scheme, 1952 which categorises the Class of employees

entitled and required to join the fund. Paragraph 30 deals with payment of contribution and it is made clear that the employer shall, in the first

instance, pay both the contribution payable by himself and also for employees employed by him directly or by or through a contractor. Therefore,

learned counsel contends that the principal liability is with the employer. Section 30(3) also makes it clear that it shall be the responsibility of the

principal employer to pay both the contribution payable by himself and also employees employed through the contractor. Under paragraph No.

36-B, every contractor shall submit to the principal employer a statement showing the recoveries of contributions in respect of employees

employed by or through him and shall also furnish to him such information as may be required.

14. Reference is also made to paragraph No. 79 which holds that notwithstanding anything contained in the Scheme, the Commissioner may in

respect of which an application for exemption u/s 17 of the Act has been received for exemption, grant relaxation pending disposal of the

application, in such manner as he may direct.

15. Mr. Vibhishanan also contends that in spite of several opportunities given to the petitioner establishment and their own undertaking to comply

with the requirements within a specific period of time, the petitioner did not rectify the defects, and the respondent is left with no other alternative

except to withdraw the relaxation.

16. I have considered the submissions of both sides. A perusal of the above mentioned provisions under the Act and the Rules would disclose that

the fact that the petitioner-establishment sought for exemption u/s 17 of the Act,

will not put them outside the purview of the Act, nor entitle the petitioner-establishment to receive exemption automatically. They have to frame their own scheme and have to satisfy the respondent that the Trust constituted by the petitioner-company is really beneficial to the workers under the petitioner-establishment. Therefore, unless and other wise the conditions are properly fulfilled by the petitioner-establishment, the petitioner cannot claim to be exempted from the provisions of the Act as a matter of right. It is not disputed that while granting relaxation u/s 17 pending disposal of the exemption application, certain conditions were imposed. It is also not disputed that after two inspections several defects were pointed out and after repeated inspection ultimately two of the requirements were allegedly not fulfilled namely, the details relating to the employees employed by or through any contractor were not furnished to the respondent and that the pattern of investment of Provident Fund was also not in terms of the directions by the respondents.

17. In fact, the stand taken by the petitioner-establishment themselves would disclose that they do not dispute the fact that the said two requirements have not been rectified. By a letter dated 14.3.2000, the petitioner has merely asked for one month time to spell out their stand on the issue after consultation with the legal experts and other Government Corporations executing the Civil works through the contractors. A perusal of the above quoted provisions of the Act as well as the Rules discloses that there are options available to the petitioner either to continue in terms of the Act or to constitute their own Scheme subject to the terms of relaxation order. As regards the liability of the principal employer, above quoted provisions are very clear to the effect that the liability is mainly on the principal employer. It is the duty of the principal employer to insist from the contractor to furnish all the details relating to the employees and there is also a corresponding duty cast upon the contractor to furnish all the particulars to the principal employer. Therefore, the petitioner establishment as the principal employer is duty bound to comply with all the requirements and the attitude of the officers of the petitioner-establishment in raising untenable contentions which are not consistent with the provisions of the Act and Rules cannot be appreciated. Considering that the petitioner-establishment is a Government establishment, the

respondent has also shown sufficient indulgence and on the request of the petitioner establishment, they have also chosen to keep the withdrawal under abeyance. But in spite of the same, no concrete steps have been taken by the petitioner establishment thereby leaving no other alternative except to withdraw the relaxation order. It is not sufficient for the petitioner to plead that it is not possible for them to obtain particulars of the employees employed by or through the contractor. The provisions of the act mandate all the establishments to comply with the Scheme and conditions on which the relaxation is granted in strict terms. The failure to comply with the pattern of investment of the Provident Fund scheme monies is also a deviation by the petitioner establishment.

18. Therefore, there is no justification for interfering with the impugned order of the respondent. However, taking note of the fact that the petitioner- establishment is a Government establishment which does not derive any benefits or profits and is not under the control of any definite or permanent authorities, I am inclined to adopt indulgent attitude towards the petitioner-establishment and to dispose of the writ petition, subject to the following observations:-

(i) The petitioner is directed to comply with the instructions of the respondent within a period of six months from the date of receipt of a copy of this order.

(ii) Till then the respondent is directed to keep their order of withdrawal of the relaxation in abeyance for the said period of six months.

(iii) Considering the passage of time, it may not also be practically feasible to insist on the petitioner furnishing details of employees under the contractors of the past period. The respondents may also adopt a practical approach considering that the petitioner institution is a Governmental organisation and does not derive any profit. The petitioner-establishment is directed to strictly comply with the requirements at least in future as found under the Act and Scheme of the respondents without fail.

(iv) Respondent is also directed to expeditiously consider the request of the petitioner-establishment to exempt them from the provisions of the Act as contemplated u/s 17 of the Act, if they are otherwise entitled to.

19. With the above observations, the writ petition is disposed of. No costs.