(1987) 03 AHC CK 0050

In the Allahabad High Court

Case No : C.M.W.P. No. 6176 of 1980

U.P. State Electricity Board APPELLANT

Vs

Regional P.F. Commissioner RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1), 2A

Citation : (1995) 3 LLJ 470

Hon'ble Judges : A. Banerjee, J

Bench : Single Bench

Advocate : Sudhir Chandra, for the Appellant; J.N. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—This is a petition filed on behalf of the U.P. State "Electricity" Board, hereinafter referred to as the Board under Article 226 of the Constitution of India quashing of an order passed by the Regional Provident Fund Commissioner dated 15th March, 1980, Annexure-5 to the writ petition.

2. The Board is a statutory Corporation duly incorporated u/s 5 of the Electricity (Supply) Act, 1948. The Board is engaged in a number of operations for the purposes of generating, distributing and transmitting electricity to various consumers in the State of Uttar Pradesh. According to the Board, Electricity Transmission Division, U.P. State Electricity Board, Mirzapur is a new establishment and was created for the purpose of transmission of electricity in a specified area in the district of Mirzapur. The main functions of the Transmission Division are the maintenance of sub-stations and transmission of electricity which involves the construction of electricity lines and maintenance thereof. The Electricity Transmission Division, Mirzapur, started functioning with effect from the 17th of July, 1976.

3. The Regional Provident Fund Commissioner by a letter addressed to the

Executive Engineer, Electricity Transmission Division, Mirzapur, dated 12th of January, 1979, stated that the Employees Provident Fund and Miscellaneous Provision Act, 1952, hereinafter referred to as the. ''Act'' was applicable to the transmission Division provisionally with effect from the 1st of April, 1977 subject to the further verification of records, it was further stated that the Executive Engineer should comply with the provisions contained in the Act from the date the Act is found applicable to the establishment and that Code Number UP/6184 should be quoted in all further correspondence.

4. On 10th December, 1979 the Regional Provident Fund Commissioner (for short, Commissioner) issued a notice to the Executive Engineer petitioner No. 2, asking him to show cause as to why recovery proceeding under the Act be not taken against him. Petitioner No.2 replied that the establishment was set up on July 17, 1976 and it was entitled to exemption from the applicability of the Act for a period of three years u/s 16(1)(b) of the Act. It was further stated that since the Code number had been allotted in January, 1979, the Act would be applicable to the establishment only after three years. The Commissioner was not satisfied with the reply and initiated proceedings u/s 7-A of the Act. The Commissioner by his order dated 25th March 1980, held that the Act was applicable to the establishment viz., Electricity Transmission Division, Mizapur, from the date of its establishment. The reasons given was that it had been agreed upon between the representative of the Board and the Regional Provident Fund Commissioner in a meeting held on the 5th of May, 1979 that the Act would be applicable to all the units and establishments of the Board. The Commissioner, therefore, held that no exemption could be allowed for the infancy period of three years u/s 16(l)(b) of the Act. The Commissioner calculated that a sum of Rs. 1,23,265.90 was payable by the petitioners towards provident fund of its employees for the period 1st of August, 1976 to the 31st of December, 1978. This order was passed on the 25th August 1980. It is this order that has been challenged in this petition.

5. Learned counsel for the petitioner strenuously urged that the Electricity Transmission Division, Mirzapur was a new establishment and, as such, was entitled to exemption u/s 16(l)(b) of the Act. Secondly, it was contended that the Transmission Division having been set up on 17th of July, 1976, the Act would be applicable only on the expiry of three years from that date. Thirdly, there had been no agreement, between the Commissioner and the Board that the exemption to infant establishment had been waived. Fourthly, it was urged that the Board had issued a notification dated 17.2.1982 and had enforced General Provident Scheme of its employees with effect from 1.4.1972 or thereafter. Consequently, no amount was liable to be paid to the Commissioner. A copy of the notification is marked as Annexure-I to rejoinder affidavit.

6. It would be relevant to point out "that the Act has been enacted to provide for the institution of provident funds, family pension fund and deposit linked insurance fund for employees in factories and other establishments. The

Employees Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to every establishment covered by Section 1 of the said Act.

7. Section 1(3)(b) of the Act, says that "subject to the provisions contained in Section 16, it applies to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in Official Gazette, specify in this behalf." The Board is an establishment within the meaning of Section 1(3)(b) of the Act. There is no dispute that the petitioner No. 2 employed more than twenty persons. It is, therefore, clear that the Act has application to the Board and consequently the Board has to make deposit of provident fund of the employees with the Commissioner. Section 2-A of the Act reads as under: -

"2-A. Establishment to include all departments and branches. For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment."

The provision of Section 2-A makes it clear that all the departments and branches of an establishment would be considered to be one establishment. Even if they are situate in different places, they all would be treated as parts of the same establishment. The Board has numerous departments and branches all over the State. They all would be treated as parts of the same establishment.

8. There Lordships of the Supreme Court in the case of Union of India (UOI) and Another Vs. Ogale Glass Works, held that "the Act applies to a composite establishment like a company which has (a) glass manufacturing Section (b) lantern and safety stove Section (c) enamel section etc." An establishment consisting of press and office establishment located in different premises owned by one person doing the business of publishing journal would be considered the same establishment notwithstanding that they had two different departments. The Electricity Transmission Division at Mirzapur may have been a new Section or Division of the Board, it would not mean that it was a new establishment. It is a part of the establishment known as U.P. State Electricity Board. The Act came to be applicable to the said Electricity Board from 1.4.1972. Consequently, the question of granting exemption to the Transmission Division at Mirzapur because it was established in July 1976, does not arise. As a matter of fact, the Electricity Transmission Division is not a new establishment. Consequently, is not entitled to any exemption u/s 16(1)(b) of the Act. This answers the first two contentions raised by the learned counsel.

9. The third question has no merits. There is no question of any waiver. There is no dispute that petitioner No. 2 employed more than twenty persons and was an ''Establishment'' within the meaning of Section 2-A from 1.4.1972 and, as such, it is not entitled to any exemption.

10. The last contention was that the Act does not apply, as the Board has

enforced General Provident Fund Scheme for its employees and the employees are entitled to retirement benefit and new family pension under the said Scheme. Consequently, no amount is liable to be paid to the Commissioner under the Act. Reference was made to the office note (Karyalaya Gyap) dated 17.2.1982. This office note, nowhere states that the provisions of the Act are not applicable.

11. For the reasons indicated above, I find no merits in this petition. The Commissioner was fully justified in asking for contribution to the Employees Provident Fund from the petitioner No. 2. The Writ Petition is accordingly dismissed with costs.