
(2007) 09 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 2332 of 2007

Varhadi That

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : (2008) 2 ALLMR 177 : (2008) 6 BomCR 511 : (2008) 116 FLR 610 :
(2008) 2 LLJ 34 : (2008) 1 MhLj 265

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : Shantanu Ghatge, for the Appellant; R.S. Sundaram, for the Respondent

Judgement

A.B. Chaudhari, J.—Heard Mr. Ghatge, learned Counsel for the petitioner and Mr. Sundaram, learned Counsel for respondent. Rule. Rule returnable forthwith. Heard finally by consent of parties.

By the present petition, the petitioner has challenged the order dated 29-5-2007 made by the Assistant Provident Fund Commissioner, Nagpur, on the application filed by the petitioner dated 28-5-2007 for permission to cross-examine the Enforcement Officer.

Facts:

2. The petitioner runs an establishment by name "Varhadi That". There is one more establishment, namely Varhadi That Garden Restaurant situated in different premises altogether and in a name of different proprietor with independent business and licence. On 3-2-2006 an order was made based upon the inspection that the two units are owned by one and the same person and it is on that basis the liability was fixed. In W.P. No. 1732/06 this Court by the order dated 8-11-2006 directed a fresh enquiry. In the meanwhile, Mr. D.K. Mahajan and A.B. Sharma the Enforcement Officers of the Provident Fund Organization made inspection and also filed a report. Having gone through the said report, the

petitioner filed application on 28-5-2007 requesting for permission to cross-examine the Enforcement Officers. That application came to be rejected. Hence, this writ petition.

Arguments:

3. Mr. Ghate, learned Counsel for the petitioner, argued that the crucial issue whether the two units could be clubbed together for the purpose of provident fund liability cannot be decided by the authority in a perfunctory manner. He submitted that the petitioner must get full opportunity of hearing and that includes the cross-examination of the Enforcement Officers who made the inspection and submitted the inspection report. He relied on the following judgments-

(i) Food Corporation of India Vs. Provident Fund Commissioner and Others, , (ii) Damjibhai L. Shah v. N.M. Gandhi and Ors. 1991(3) Bom.C.R. 5, (iii) Krushi Vaibhav Agency v. Regional Provident Fund Commissioner in W.P. 1960 of 2006 decided by me on 20-4-2007.

4. Per contra, Mr. Sundaram, learned Counsel for the respondent, opposing the submissions made by the petitioner argued that the proceedings are of summary nature and it is not necessary to allow a party to cross-examine the Enforcement Officers on inspection report. The inspection report can be relied and criticised by both the parties. It is not necessary to conduct the proceedings like regular judicial proceedings. He, therefore, prayed for dismissal of writ petition.

Consideration:

5. Having heard the learned Counsel for the parties, I find that the petitioner-unit is sought to be linked with another unit and thereby bring into the net of Employees Provident Funds and Miscellaneous Provisions Act, 1952. It is not in dispute that the petitioner is seriously disputing the stand of the department that the two units are one and the same. Shri Mahajan the Enforcement Officer having carried out the inspection on the said Establishment and having recorded certain observations in his report, his version mentioned in the report is liable to be tested by cross-examination. Even the petitioner will have to be allowed to produce his evidence in support of his case when the unit is being sought to be brought into the net of Provident Funds Act for the first time. I do not think that the petitioner can be deprived of the opportunity of cross-examining the Enforcement Officer on the report made by him. It has also to be borne in mind that it is the statutory duty of the authority to collect relevant evidence in order to find out the truth. By depriving the petitioner of opportunity of cross-examination, I do not think that the Commissioner would be able to come to a right conclusion. Paragraph 9 from the judgment in Food Corporation of India Vs. Provident Fund Commissioner and Others, , supports the above proposition of law stated by me. Para 9 reads as under:

It will be seen from the above provisions that the Commissioner is authorised to

enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

For all these reasons therefore the impugned order will have to be quashed and set aside and the application filed by the petitioner for permission to cross-examine the Enforcement Officers will have to be granted.

6. In view of the above, Rule made absolute in terms of prayer Clause (ii) of the writ petition. The application dated 28-5-2007 made by the petitioner is allowed. Petitioner is permitted to cross-examine the Enforcement Officers. Respondent is granted further time of three months from today for deciding the matter.