
(1995) 12 DEL CK 0021

In the Delhi High Court

Case No : C.W.P. No"s. 2632, 2633, 2691 and 2696 of 1993 and 2402 of 1995

Vatika Plantations Pvt. Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Citation : (1996) 74 FLR 2769

Hon'ble Judges : Dr. M.K. Sharma, J;Devinder Gupta, J

Bench : Division Bench

Judgement

Dr. M.K. Sharma, J.—As all these writ petitions involve similar facts and similar question law, we propose to dispose of these petitions by this common judgment and order.

Before we embark upon to decide the issues raised before us, we feel inclined to set out the facts of each of the writ petitions.

C.W.P. No. 2691 of 1993 :

By this writ petition the petitioner has challenged the legality and validity of the order dated July 18, 1991, passed by the Regional Provident Fund Commissioner, New Delhi, determining that the establishment of the petitioner was dealing in engineer and engineering contractor and that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called "the Act"), and the scheme framed there under are applicable to the said establishment. The aforesaid order was ex parte against the petitioner.

According to the petitioner, it is engaged in the business of cultivation of all types of trees, crops and other such like agricultural produces. The permanent staff in the roll of the petitioner-company varied between 5 to 7 and was engaged 10 by the petitioner for tilling and levelling the land. By a letter dated September 5, 1990, the respondent required the petitioner to furnish information regarding coverage of the petitioner establishment under the provisions of the Act. In

pursuance of the same the petitioner submitted the required information contending, inter alia, that the provisions of the Act had no applicability to the establishment of the petitioner-company. The petitioner alleged that it did not receive any communication from the office of the respondent regarding holding of enquiry envisaged in their letter and was surprised to receive a copy of the aforesaid impugned order directing coverage of the establishment of the petitioner under the classification "engineer and engineering contractor", which was in violation of the principles of natural justice.

2. The respondent on the other hand, contended that from the details of employees employed by the petitioner for the period from July 1989 to May 1991, and also from the list of employees submitted by it for the month of July 1989 it was apparent that the petitioner employed six permanent employees and 69 temporary employees. It was further contended that since the petitioner establishment fulfilled all the conditions of coverage, the same was covered provisionally from July 25, 1989. It was stated that the order was passed ex parte against the petitioner as nobody appeared on behalf of it on a few occasions after its appearance on several dates and on its failure to produce the relevant records.

C.W.P. No. 2696 of 1993 :

This writ petition has been preferred seeking to quash the impugned order passed by the Regional Provident Fund Commissioner on October 12, 1991, determining the dues from the petitioner establishment for the period from August 1989 to March 1992, in exercise of the powers u/s 7-A(1)(b) of the Act.

The facts and grounds of challenge of the aforesaid order are similar to that of writ petition No. 2691 of 1993.

C.W.P. Nos. 2402 of 1995 and 2633 of 1993 :

These two writ petitions by Vatika Township Pvt. Ltd. and Vatika Resorts, respectively, have been preferred against the actions of the Regional Provident Fund Commissioner directing for attachment of their respective bank accounts for the alleged Provident fund dues in arrears against another separate body corporate and legal entity called Vatika Plantations Pvt. Ltd. who is the petitioner in the aforesaid three writ petitions. The ground of challenge is that such actions are totally illegal and without jurisdiction.

It is the admitted position of the parties that the alleged arrears dues towards provident fund of Vatika Plantations Pvt. Ltd. for the period for which the impugned orders have been passed, as of date, stand satisfied and collected by the respondent.

Learned Counsel appearing for the petitioners raised several legal issues before us stating that the petitioner could not be classified as an industry of engineer and engineering contractors, besides the fact that such an industry is neither specified in Schedule 1 to the Act nor under any Central Government notification.

Several facts mentioned in the impugned order are stated to be error of facts also.

3. We have given our considered thought to the submissions of learned counsel for the parties. We find that although opportunity was afforded to the petitioner, it could not submit the relevant records on genuine and sufficient grounds and accordingly the decision of the respondent regarding applicability of the provisions of the Act appear to be based only on the materials available with the respondents. It is not spelt out in the impugned orders that the nature of such materials excepting stating that the same consists of the list of employees employed by the petitioner. However, for coming to a decision other factors like nature of the business of the petitioner are also required to be considered. But from the impugned order it is not as to what materials were considered by the respondent for coming to such conclusion in respect of the nature of the business of the petitioner.

4. In view of the aforesaid facts and circumstances of the case, we are inclined to hold that the petitioners are entitled to another opportunity of hearing prior to determination of the dispute with regard to the question of applicability of the provisions of the Act to the petitioner-company and also the liability, if any, and the quantum of the dues of the provident fund to its employees. We, accordingly, quash the impugned orders of all the aforesaid writ petitions and remit back the matter to the Regional Provident Fund Commissioner for a fresh and considered decision in accordance with law. We direct the petitioner to appear before the Regional Provident Fund Commissioner on January 25, 1996, for necessary directions and date for further hearing before him. The Regional Provident Fund Commissioner shall allow an opportunity to the petitioner to place the relevant records before the Regional Provident Fund Commissioner and also hear the petitioner before passing a final order. In view of the long pendency of the matter, it would be necessary for the Commissioner to take a decision and pass a final order in the matter as expeditiously as possible and preferably within a period of 10 weeks from January 25, 1996, the date on which the petitioner shall first appear before the Commissioner. If the petitioner fails to co-operate in the process of hearing of the matter and does not appear before the Commissioner except on reasonable and sufficient ground, it would be open to the Regional Provident Fund Commissioner to proceed and decide the matter *ex parte* and on the materials available before him. The Provident Fund dues collected by the respondent from the petitioner for the periods involved in these writ petitions shall continue to be in the custody of the Regional Provident Fund Commissioner and shall be subject to his final decision and order. The parties shall appear before the Regional Provident Fund Commissioner on January 25, 1996, for necessary order and further date for hearing.

With the aforesaid observations and directions these writ petitions stand allowed to the extent indicated above but without any costs.