IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.821 of 1999

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M/S Jagdish Silk Mill, a proprietary firm through its proprietor Shri Praveen Budhia, son of late Jagdish Prasad Budhia, resident of Nath Nagar, Hajari Sah Lane, Bhagalpur, P.S. Nath Nagar, District-Bhagalpur.

.... Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Finance, New Delhi
2. The Regional Provident Fund Commissioner, Bihar, Patna
3. The Assistant Provident Fund Commissioner, Bhagalpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 8481 of 1999

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M/S Shiv Silk Mills, a proprietary firm having its head office at Nathnagar, P.S. Nathnagar, District Bhagalpur through its proprietor, Shri Shiv Kumar Budhia.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Regional Provident Fund Commissioner, Bihar, Patna
3. The Assistant Provident Fund Commissioner, Adampur Chowk, Bhagalpur
4. The Recovery Officer, Employees Provident Fund, Adampur Chowk, Bhagalpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 8482 of 1999

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M/S Masudan Silk Mills, a proprietary firm having its head office at Nathnagar, P.S. Nathnagar, District Bhagalpur through its proprietor, Shri Masudan Lal Budhia

.... Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Regional Provident Fund Commissioner, Bihar, Patna
3. The Assistant Provident Fund Commissioner, Adampur Chowk, Bhagalpur
4. The Recovery Officer, Employees Provident Fund, Adampur Chowk, Bhagalpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 8728 of 1999

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M/S Mohan Silk Factory, a proprietary firm having its head office at 208, Jamuna Lal Bajaj Street, Calcutta-7 through its proprietor, Shri Mohan Lal Budhia

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of

India, New Delhi.
2. The Regional Provident Fund Commissioner, Bihar, Patna.
3. The Assistant Provident Fund Commissioner, Adampur Chowk, Bhagalpur
4. The Recovery Officer, Employees Provident Fund, Adampur Chowk, Bhagalpur.

.... Respondent/s

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Appearance :
(In all the cases)

For the Petitioner/s : Mr. Sumit Kumar Jha, Advocate.

For the E.P.F.O. : Mr. Ram Shankar Pradhan, Sr. Advocate.
Mr. Jainandra Kumar, Advocate.
For Union of India : Mr. Ravinder Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 13-03-2015

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Heard learned counsel for the petitioner and learned counsel for the State.

In all the cases identical issue has been raised and as such they are being heard together and disposed of by this common order.

For the convenience, fact of C.W.J. C. No.821 of 1999 has been taken. In the present writ petition petitioner is challenging the order dated 25.9.1998 passed by the Employees Provident Fund, Appellate Tribunal (hereinafter referred to as 'the Tribunal') in Case No. ATA/3(15)98 by which the said Tribunal dismissed the appeal and affirmed the order dated 12.6.1997 passed by the Assistant Provident Fund Commissioner, Bhagalpur in exercise of power under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') determined statutory dues of Provident Fund against the petitioner firm for the period February 1990 to August 1993.

It appears that the present management established its factory in the year 1969 and on 28.11.1977 the factory was formally closed and paid all legal dues to the employees such as his retrenchment compensation and also the Employees Provident Fund. At the time of closure, 21 workmen were employed in the factory. The petitioner informed about closure of the factory to the Factory Inspector on 21.12.1977. After receipt of notice the Factory Inspector has visited the premises of the petitioner on 17.1.1978 and found the factory closed and gave its certificate on 9.11.1993 (Annexure-5) showing the closure of the factory. It further appears that Factory Inspector again inspected the premises of the petitioner on 13.8.1979 and submitted the closure report of the factory.

After closure of the factory, the petitioner entered into lease agreement with five individual persons and leased out its looms for the purposes of production of Silk thread and yarn. In pursuance thereof the individual lease holder appointed new worker as an employee and started its production. The petitioner owns all the machines of factory. It also appears that in case of power break down the generator maintained by the petitioner used to supply the power on rent. Petitioner used to charge as rent at the rate of Rs.300 per machine per month. When the Provident Fund Department could know the fact that they have started production of Silk thread/yarn a proceeding under Section 7A of the Act was initiated against the petitioner for the period from February, 1990 to August, 1993. The plea of the petitioner was considered and the same was rejected, holding that the petitioner is the owner and occupier of the premises and he can not wash off its hand from all the liabilities to pay the contribution. The petitioner has taken the plea that lease holders are independent person running the machines for which he is getting the charge. They have employed their own man, having no control over the workers employed and production and the present petitioner has nothing to do with the affairs of those who have taken the looms on rent. So much so number of employees employed by lessee individually is not covered under the Employees Provident Fund Act.

The plea of the petitioner was rejected by the Provident Fund Commissioner in its order dated 12.6.1997 and the same was confirmed by the appellate authority in the order dated 25.9.1998 passed in Case No. ATA/3(15)98.

Though the fact is that the present petitioner for all purposes closed down its factory on 28.11.1977 but the question arises when the establishment started its production not by the main management but management leased out the looms to some independent persons who started production in premises of establishment. All the machines are same laying in the same premises, silk yarn and thread are/were spun led to production. All machines in the premises get power from one source which owned by the petitioner and in case of power tripping the present petitioner used to supply the power through generator. It appears to this Court artificial arrangement has been made for running mill, cannot evade compliance of the Employees Provident Act. They cannot be treated to be separate unit in same premises if the premises is same, production is at one place and they are getting power from one source, it is not a case that lease holders have invested any money to run the machine rather they started running unit as it was so this Court is of the view that this artificial arrangement cannot be allowed to violate the provision of law and deprive the poor employees from the benefit of the Employees of Provident Fund. This Court is of the view that all persons working within the premises in the entire machine to be treated to one unit and their working members would not be treated different and distinct but one unified group. The petitioner has relied on the judgment in the case of Provident Fund Inspector Vs. Secretary, N.S.C. Cooperative Society, Changnacherry, reported in AIR 1971 SC 82 is not applicable to the present case as that case has been decided in different facts and circumstances, as in that case entire establishment was sold to third party, and again thereafter new establishment had emerged but in the present case it is not a sale but it is a lease. Petitioner is still owner of the property and he has right title over the property. The present petitioner owns machine and premises within which all employees were working so much providing power and facilities to the employees and lesee.

In this view of the matter, this Court feels that view taken by the Commissioner as well as appellate authority cannot be said to be illegal. Accordingly all the writ petitions are dismissed.

Vinay/-

(Shivaji Pandey, J)

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