

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13169 of 2011

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M/S Shankar Gas Service through its Proprietor Shankar Prasad Sah S/O
Late Chedi Prasad Sah R/O Parbatti Chowk, NH 80, P.S.- Tatarpur, Distt.-
Bhagalpur, Bihar

.... Petitioner

Versus

1. The Union of India through Regional Provident Fund Commissioner,
Employees Provident Fund Organisation, Regional Office, Road No.6, 'R'
Block, Patna-800001
2. Assistant Provident Fund Commissioner, Employees Provident Fund
Organisation, Sub-Regional Office, Adampur Chowk, Bhagalpur, Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha

For the Respondent/s : Mr. Binay Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

7 19-08-2015 Heard Sri Alok Kumar Sinha, learned counsel for the

petitioner and Sri Binay Kumar Pandey, learned counsel for the

Respondents/ Employees Provident Fund Organisation.

The petitioner, invoking writ jurisdiction of this Court
under Article-226 of the Constitution of India, has prayed for
quashing of an order dated 04.03.2011 passed by Employees
Provident Fund Appellate Tribunal, New Delhi. By the said order,
the appellate authority has upheld the order of the Assistant
Provident Fund Commissioner, Employees Provident Fund
Organisation, Bhagalpur holding the petitioner firm as covered
and liable for payment of Provident Fund dues and interest under
the Employees' Provident Fund and Miscellaneous Provisions

Act, 1952 (hereinafter referred to as the “Act ,1952”).

Short fact of the case is that the petitioner, who is distributor of LPG appointed by IOC in the year 2005 itself, submitted an application in proforma on 25.01.2005 for coverage for the benefit of the employees of the Establishment under the Act. In view of the fact that the petitioner had engaged 20 persons at the time of furnishing proforma, a demand draft towards contribution of Provident Fund was submitted by the petitioner. However, subsequently, it was noticed that the petitioner was not following the terms and conditions and, accordingly, a proceeding under Section 7-A of the Act was initiated for determination of due and an order was passed determining the dues. Against the said order, the petitioner preferred an appeal before the Appellate Tribunal and the Tribunal affirmed the order passed under Section 7-A of the Act.

Sri Alok Kumar Sinha, learned counsel for the petitioner tried to persuade the Court that it was mistake on the part of the petitioner itself. He submits that earlier in the year 2005, the petitioner had included names of five persons, who were not the employees of the petitioner firm, rather they were labourers engaged by the contract transporter, who as per agreement was to provide loading and unloading facility and on

this very ground, he submits that the petitioner had employed less than 20 persons and, as such, there was no question to make any contribution towards Employees Provident Fund under the provisions of the Act.

Fact remains that the petitioner in the year 2005 itself had furnished information in proforma, wherein he had indicated regarding employment of 20 persons. I have also perused the order passed under Section 7A of the Act. The question for inapplicability of the Act, which is being raised by the petitioner before this Court, appears to be not entertainable due to the reason that in exercising power of judicial review, it would be difficult for this Court to entertain such question of disputed facts that too in a case where petitioner himself has admitted earlier regarding employment of 20 persons.

In view of facts and circumstances, I do not find any defect in either of the orders. The writ petition stands dismissed.

(Rakesh Kumar, J)

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