

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1582 of 2013
In
Civil Writ Jurisdiction Case No. 9808 of 2010

- =====
1. The Union Of India Through Regional Provident Fund Commissioner, Regional Office, R.Block, Patna- 1
 2. Assistant Provident Fund Commissioner (C) Bihar, Patna, R Block, Patna- 1

.... Appellant/s

Versus

1. M/S Hotel Delta International, Delta More, Bodh Gaya Through Its Managing Director, Surendra Nath Singh, Son Of Late Brahmdeo Singh Resident Of Damuhan, P.S.- Bodh Gaya, District- Gaya
2. Employees Provident Fund Appellate Tribunal Through Its Registrar Scope Minar, Core- 2, 4th Floor, Laxmi Nagar District Centre, Delhi- 110092

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Sinha, Advocate
Mr. Bava Jha, Advocate
For the Respondent/s : Mr. Manager Sah, Advocate
Mr. Rakesh Kr. Samrendra, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

6 12-07-2017 Heard parties.

This Letters Patent Appeal has been preferred against the order dated 24.09.2013 passed by a Single Judge Bench of this Hon'ble Court vide C.W.J.C. No. 9808 of 2010.

The order impugned, which has been appended as Annexure-7 to the writ petition, discloses that when the premises was inspected on 26.03.2003, there were only sixteen employees whose names were mentioned in the Attendance Register. However, at the same time about 20 persons were found working



there. A reply was filed. Thereafter, the order impugned in the writ petition was passed. However, learned Single Judge has opined as under in the matter.

“ This Court had occasion to opine earlier that the object of adjudication under Section 7A is to identify each and every beneficiary, who are working with an establishment, so that they can derive the benefit of the welfare legislation and that can never be achieved by mere “herd count” or “head count”.

In the present case, the Court has no hesitation in coming to a conclusion after having gone through the impugned order, contained in Anneure-7 that the deliberation or the reason given therein by Assistant Provident Fund Commissioner is without any deliberation or discussion of the kind of evidence and of identifications of the number of employees, which could establish the applicability of the Act to the establishment. There has been no deliberation or consideration of evidence, which has gone into the final adjudication, which is mandated under Section 7A and the parameters under which such adjudication are required to be made are well spelt out not only under the Act but also by the interpretations given by the Hon’ble Apex Court in many a decisions earlier.

The Court is not impressed by the submissions made on behalf of the counsel representing the Provident Fund Commissioner that the adjudication is based on an enquiry which was held earlier, of which a copy was made available to the petitioner. A reading of the impugned order does not even indicate as to what was found in the enquiry and what were the materials, which compelled adjudicatory authority to hold the applicability of the Act in relation to the petitioner.

The impugned order contained in Annexure-7, dated 15th of March, 2005, passed by the Assistant Provident Fund Commissioner is hereby quashed, as it suffers from the vice of non-application of mind and material evidence.

Writ application is allowed with liberty to the respondents to adjudicate the matter afresh after following due procedure.”



It appears from the order itself that the writ petition was allowed with liberty to the respondents to readjudicate the matter after following the due procedure. Accordingly, we are of the view that the order does not require any interference as no prejudice has been caused to the appellants as they are at liberty to readjudicate the matter in accordance with law. However, before parting with the matter we must indicate that the respondents concerned would also be obliged to co-operate in the matter.

As a result, this Letters Patent Appeal stands dismissed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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