

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23159 of 2011

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M/s. Khemka Enterprises through its Binod Kumar Khemka, proprietor Son of Late Thakur Prasad Khemka, Resident of Mohalla-Sadar Bazar Jamalpur, P.S.-Jamalpur, District- Munger

.... Petitioner

Versus

1. The Union of India through the Secretary, Department of Labour, Govt. of India, New Delhi
2. The Registrar, Employees Provident Fund Appellate Tribunal, New Delhi
3. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office R-Block, Bihar, Patna
4. The Regional Provident Fund Commissioner S. R. O. E. P. F. Office, Adampur, Bhagalpur
5. The Assistant Provident Fund Commissioner E. P. F. Office S. R. O. Adampur, Bhagalpur
6. The Recovery Officer, E.P.F. Office S.R.O. Adampur, Bhagalpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Jai Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 25-07-2017

This writ petition has been filed for issuance of a writ of certiorari for quashing of the order dated 14.09.2011 in A.T.A. No.191 (3) of 2010 whereby the Presiding Officer of the Employees Provident Fund Appellate Tribunal, New Delhi has rejected the appeal of the petitioner for quashing of the order dated 11.03.2010 passed by the Regional Provident Fund Commissioner, Bhagalpur.

2. The facts of the case are not in dispute. By order dated 24.03.2005 passed in Case No.600 of 2005 by the Assistant



Commissioner, Employees Provident Fund, Bhagalpur, the petitioner had been held to be covered by the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') and it had been directed accordingly for complying with the requirements under 'the Act' within seven days.

3. Being aggrieved by the aforesaid order dated 24.03.2005, the petitioner filed a writ petition before this Court vide C.W.J.C. No.10113 of 2005. This Court vide order dated 10.01.2006 disposed of the writ petition directing the petitioner at the first instance to file an appeal before the Appellate Tribunal under 'the Act' within three weeks and the Appellate Tribunal was directed to consider the desirability of disposing of the appeal on merits after condoning the delay if any.

4. Being aggrieved by the order dated 10.01.2006 passed by the writ court, the petitioner filed an intra-court appeal vide L.P.A. No.454 of 2007, which was dismissed by the Division Bench vide order dated 21.07.2008. Thereafter, the petitioner filed Special Leave to Appeal before the Supreme Court vide Special Leave to Appeal (Civil) No.26544 of 2008, which also was dismissed finding no merit in the application.

5. After the dismissal of the aforesaid Special Leave petition, the petitioner once again filed an application before the Regional Provident Fund Commissioner, Bhagalpur. The



application of the petitioner was rejected by the Regional Provident Fund Commissioner vide order dated 11.03.2010.

6. The operative part of the order dated 11.03.2010 passed by the Regional Provident Fund Commissioner, Bhagalpur reads as under:-

“6. Section 7A of the Act is the leading provision so far determination of the dispute relating to the applicability of the Act and dues are concerned. Section 7B lays down that in case the establishment/employer is aggrieved by any order passed under section 7A of the Act, it is free to make an application for review of the order under Section 7A as per the procedure laid down under section 7B of the Act. If the establishment/employer is still aggrieved by the order of the authority made under section 7A or section 7B, it may agitate the matter before the Employees Provident Fund Appellate Tribunal as laid down under section 7-I. Section 7C gives liberty to the officer who has made the order under section 7A or 7B to reconsider the matter within a period of 5 years in case he comes across any amount which has escaped his attention while considering the matter under section 7A or section 7B. The records show that the order under section 7A was agitated under section 7B. And upon, being aggrieved, the matter was brought before the Hon’ble Employees Provident Fund Appellate Tribunal and also before the Hon’ble High Court, Patna did not find any merit in the petition and dismissed the same. The effort of the establishment met the similar fate in SLP (C) no.26544/2008 agitated before the Hon’ble Apex Court. The effort of the establishment is to bring the matter to light de novo which has already been settled by the quasi judicial and judicial authorities.

7. After going through all the papers and documents presented before me I find that



disposal of dispute relating to applicability of the Act to the establishment has rightly been made on the basis of facts available before the Assessing Authority. I also find that establishment has availed the benefit of the different stages of appeal laid down under the Act and the law of the land. In none of the judicial decisions, the Hon'ble Employees Provident Fund Appellate Tribunal or the Hon'ble Apex Court found the establishment uncoverable under the Act.

8. Hence, the appeal of the establishment in this connection has no merit and is rejected. The employer is ordered to make compliance in terms of the provisions laid down under the Act and the Schemes framed thereunder to secure the legitimate social security benefit of its workers.”

7. The petitioner filed an appeal under ‘the Act’ before the Employees’ Provident Fund Appellate Tribunal, New Delhi. The Tribunal having considered the entire matter rejected the appeal vide order dated 14.09.2011. The said order dated 14.09.2011 is under challenge in the present writ petition.

8. The operative part of the order passed on 14.09.2011 by the Appellate Tribunal reads as under:-

“6. The burden to prove that the staff strength was below 20 and the Act is not applicable lies upon an establishment as the quantity of staff strength is within the personal knowledge of the establishment. In the case of M/s Saraswati Construction Company Vs. Central Board of Trustees reported in 2010 LLR at page 684, the Hon'ble High Court of Delhi held that, *“it is a settled legal position that if any establishment or employer is not covered under the Act then it is for the employer to place sufficient cogent and convincing materials before the designated authority under an inquiry under Section 7A of the Act so as to satisfy the authority with*



regard to inapplicability of the act and on failure to place any such material the onus cannot be shifted on the Authority to prove the applicability of the Act". In this case, the appellant has relied upon the letter written by M/s Hindustan Petroleum which shows that the appellant engaged 14 employees. Apart from this letter no other document has been placed on record showing the staff strength. On the other hand, the report of the Enforcement Officer shows that the establishment engaged 21 employees. No document has been placed on record to reject the list of the Enforcement Officer. In the case of M/s H.C. Narula Vs. Regional PF Commissioner reported in 2003 Vol. II LLJ at page 1131, the Lordship held that, *"the petitioner were given all the reasonable opportunity to show that the report of the inspect was not correct the petitioner however could not dispute the content of the aforesaid report submitted by the inspector. It is proved and established that the petitioner had more than required number of persons and therefore the said unit was rightly held to be covered."* In the case in hand also, there is no material to dis-believe the report of the E.O.

7. Thus in view of the discussion held above, no infirmity is noticed in the order of the Authority. Hence ordered, the appeal is dismissed. The order of the Authority is hereby upheld. Copy of the order be sent to the parties. File be consigned to record room."

9. Having perused the materials available on record and having considered the pleadings advanced on behalf of the parties, I am of the considered opinion that the writ petition is devoid of any merit. The petitioner Gas Agency was allotted E.P.F. Code No.25478 dated 28.01.2005 with effect from 10.01.2005 as per report made by the Enforcement Officer, E.P.F. Office, Bhagalpur. The authorities under 'the Act' after verifying all the essential parameters came to a finding that since 22 workers were physically found employed in the establishment under scheduled



head Petroleum and Natural Gas Refilling, it was covered under 'the Act'. The applicability of 'the Act' was challenged by the petitioner not only under section 7A and 7B of the Act, but also before the Single Judge of this Court in writ petition and the Division Bench in Letters Patent Appeal. When the petitioner failed to get any relief from this Court, it challenged the order passed in LPA by filing Special Leave Petition before Supreme Court, which also was dismissed and thereafter the petitioner has initiated the second round of litigation de novo.

10. In my considered opinion, the finding of the writ petition, in the background of the facts stated above is misuse of the process of the court.

11. In that view of the matter, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2017
Transmission Date	NA

