

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3239 of 2015

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1. Central Board of Trustees, Employees Provident Fund Organization through the Assistant Provident Fund Commissioner (Legal) Regional Office, Patna having his office at R. Block, Road No. 6, P.S.- Sachivalaya, District- Patna

.... Petitioner/s

Versus

1. M/s Hotel Delux, New Market, Dr. Rajendra Prasat Path, Katihar through Partner, Sri Sanjay Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
Mr. Prakash Jha, Adv.

For the Respondent/s : Mr. Jaswir Singh Arora, Sr. Adv.
Mr. Sanjay Kumar Ghosarvey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-11-2017

Heard Mr. Prashant Sinha, learned Advocate for the petitioner and Mr. J.S. Arora, learned Senior Advocate for the respondent.

2. The prayer of the petitioner in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of order dated 24th April, 2014 passed by the Employees Provident Fund Appellate Tribunal, New Delhi (for short 'Tribunal') in ATA No. 715(03) 2012 whereby the Tribunal has set aside the order dated 13th July, 2012 passed by the Regional Provident Fund Commissioner-II, Bhagalpur in a proceeding bearing No. 65/2008 under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act,



1952 (for short 'EPF & MP Act').

3. The facts of the case in brief are that the respondent is involved in the business of hotel and restaurant. On 12th January, 2009, a letter was issued to the respondent by the Sub-Regional Office, Bhagalpur to produce the records before the Enforcement Officer for determination of applicability of the EPF & MP Act and the schemes framed thereunder over the establishment. The Enforcement Officer submitted his report on 9th February, 2009 intimating the Assistant Provident Fund Commissioner, Sub-Regional Office, Bhagalpur that he visited the establishment on 12th January, 2009 in compliance to his order and met with Sri Sanjay Prasad in connection with the applicability of the EPF & MP Act and also requested for production of records, but the management of the establishment was reluctant to produce any record and they took the plea that the records are with the Accountant, who is not present. However, the respondent produced two Labour Licenses. On scrutiny of the aforesaid Labour Licenses issued by the Factory Inspector, Katihar, the Enforcement Officer found that there are two establishments, namely, (1) M/s Hotel Delux, New Market, Katihar engaged in Hotel and Sweetmeat shop having maximum number of nine employees and (2) M/s Hotel Delux, New Market, Katihar engaged in the business of Niwas and Bhojnalay (residential and



restaurant) having maximum number of nine employees. The Enforcement Officer noticed that both the establishments are partnership firms and they are situated in one premises, entrance is one, cash counter is common, activities of the establishments are common and partners of both the establishments are members of one family. He also noticed that more than 20 employees were engaged by the establishment. Thus, he recommended for applicability of the EPF & MP Act over the establishment vide his inspection report dated 9th February, 2009.

4. On the basis of the report of the Enforcement Officer, the establishment was brought within the purview of the EPF & MP Act with effect from 9th February, 2009 and it was allotted with a Code No. BR/25750. The establishment challenged the applicability of the Act on 16th March, 2009 leading to institution of Case No.65 of 2008 to decide the applicability of the EPF & MP Act. The respondent contended that they never employed 20 employees. They produced Labour License and Attendance-cum-payment register with regard to M/s Hotel Delux Residential & M/s Hotel Delux Restaurant. They demanded list of employees on the basis of which the establishment was brought within the purview of the EPF & MP Act whereafter the Enforcement Officer was directed to provide the list of employees by 12th June, 2009. On 7th July, 2009, the Enquiry Officer kept the



proceeding in abeyance till the order dated 28th May, 2009 is complied with on the basis of which the establishment was brought within the purview of the EPF & MP Act. The Enforcement Officer furnished the names of 21 employees of the establishment in compliance of the order dated 28th May, 2009 vide letter no. 1125 dated 21st August, 2009. Vide letter no. 865 dated 4th October, 2011, a show cause notice was again issued to the establishment for compliance of the provisions of the EPF & MP Act. The establishment again appeared and challenged the applicability leading to revival of 7A proceeding.

5. The Enforcement Officer submitted his report vide letter dated 27th April, 2012 in which he stated that the list of employees was furnished to the establishment vide letter dated 21st August, 2009. The report of the Enforcement Officer dated 27th April, 2012 was provided to the establishment on the same day and it was granted time till 25th May, 2012 to respond to the report of the Enforcement Officer. On 25th May, 2012, the establishment appeared and participated in the proceeding. The proceeding was adjourned to different dates and finally the Enquiry Officer, vide his order dated 13th July, 2012 upheld the applicability of the EPF & MP Act over the establishment on the ground that 20 employees were found working in the establishment by the Enforcement Officer on 12th January, 2009.



The Enquiry Officer also held that both the establishments belong to one family and divided in two firms, the cash counter of both the establishments is common, both the establishments are running in the same premises and both are being managed by Sri Sanjay Prasad.

6. The order passed by the Enquiry Officer was challenged in appeal before the Tribunal, which was allowed vide impugned order dated 24th April, 2014.

7. Assailing the aforesaid order dated 24th April, 2014, in the present writ petition, Mr. Prashant Sinha, learned counsel for the petitioner submitted that the Tribunal has wrongly allowed the appeal ignoring the statutory provisions of the EPF & MP Act. He submitted that the Enquiry Officer had correctly appreciated the law and the facts involved in the case and the findings recorded by the Tribunal are erroneous. The Tribunal failed to appreciate that the test of unity of ownership and the unity of management and control of both the firms belonging to one family fully applied upon the establishment. The Tribunal also failed to appreciate that the Enquiry Officer had provided list of 21 employees to the establishment on 21.08.2009, which fact was also reported by the Enforcement Officer in his report dated 27th April, 2012, but the establishment never challenged the list of employees supplied to it for almost two years. On the basis of the submissions made above, learned counsel for the petitioner contended



that the impugned order dated 24th April, 2014 passed by the Tribunal is not sustainable in law.

8. Per contra, Mr. J.S. Arora, learned Senior Advocate appearing for the respondent submitted that there are two separate and independent establishments, one is known as Hotel Deluxe Restaurant, which was registered under the Bihar Shops and Establishment Act in the year 1975 and another is Hotel Deluxe Awasiya, which was registered under the Bihar Shops and Establishment Act in the year 2008. There was no functional integrity between the two establishments, but the 7A authority had wrongly treated the two establishments as integral part of another independent firm. He submitted that it was only one firm i.e. M/s Hotel Deluxe, which was noticed by the 7A authority and no notice was ever issued to M/s Hotel Deluxe Awasiya. He contended that the Enforcement Officer had not bothered to record the details of the employees working in both the firms. The list of employees dated 21st August, 2009 furnished by the Enforcement Officer, as contained in Annexure-2 to the writ petition, would itself demonstrate that the same was prepared on table without conducting any enquiry and there is duplication of names without there being parentage, permanent address, age etc. of the employees. The Enforcement Officer had never ever visited the premises of the establishment. Hence, there was



no occasion to ask for any record from the partners of the establishment. According to him, if the Enforcement Officer would have visited the premises of the establishment, he would have found separate billing, separate cash counter, separate attendance register, separate entrance and separate activity of both the establishments. He would have recorded the name, age, parentage and permanent address of the employees working in these establishments, but he failed to do so in order to ascertain the facts about the beneficiaries i.e. the employees. He contended that having noticed these discrepancies, the Tribunal, in exercise of its appellate power, vide its order dated 24th April, 2014, rightly set aside the order dated 16th July, 2012 passed by the Regional Provide Fund Commissioner-II, Bhagalpur.

9. I have heard learned counsel for the parties and carefully perused the record.

10. The entire case against the respondent is based on the so called report dated 21st August, 2009 furnished by the Enforcement Officer, Bhagalpur, as contained in Annexure-2 to the writ petition. The report made by the Enforcement Officer does not inspire any confidence. It would be manifest from the list of the employees that necessary details are missing from the report. At serial no.4, name of one Sri Sanjay has been mentioned. Even according to the petitioner, one Sanjay Prasad is said to be the person actively managing both the



establishments. It is not clear as to whether Sri Sanjay mentioned in the list refers to the same Sanjay Prasad or is a different person. Further at serial nos. 6 and 11, a common name Sri Suraj is mentioned. Neither their parentage nor their address nor their age nor any other detail has been given by the Enforcement Officer. Under the circumstances mentioned above, there appears to be substance in the submission of the learned Senior counsel for the respondent that the report is a table work of the Enforcement Officer. It is not known whether the name of one employee has been given at two places or whether the names, which have been given are imaginary and fictitious. In view of absence of father's name, place from which the employee hails, designation, length of service, his signature or thumb impression or address, the perfunctory report of the Enforcement Officer could not have been made basis for passing the order by the Regional Provident Fund Commissioner against the respondent under Section 7A of the EPF & MP Act. Further, the establishment Hotel Deluxe Awasiya admittedly registered as a separate entity under the Bihar Shops and Establishment Act in the year 2008 was never noticed in the matter by the Enforcement Officer or the Regional Provident Fund Commissioner.

11. In view of the discussions made above, I am of the opinion that the Tribunal has rightly set aside the order passed by the



Regional Provident Fund Commissioner under Section 7A of the EPF
& MP Act.

12. The writ petition, being devoid of any merit, is
dismissed.

13. No costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11-11-2017
Transmission Date	

