IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15963 of 2011

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The Central Board of Trustees through the Assistant Provident Fund Commissioner, Regional Office, Employees Provident Fund Organisation, having his office at Bhavishya Nidhi Bhawan, R. Block, P.S. -Sachivalaya, District- Patna.

.... Petitioners

Versus

M/s. Gee Pee Furniture (New), R.K. Avenue, Nala Road, P.S.- Kadamkuan, District - Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate

For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-08-2018

Heard learned counsel for the petitioner and learned counsel for the sole respondent.

2. The facts giving rise to the present writ petition, bereft of unnecessary details, are that the respondent-establishment runs a business of food and furniture. On 11.02.1993, the Enforcement Officer visited respondent-establishment for the purpose of survey for applicability of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act'). He met one Shailendra Prasad, maternal-uncle of the proprietor, who

informed that Sri Gopal Prasad Singh is not available and the records are in his custody. In absence of records, applicability of the Act could not be decided on the spot. Hence, he directed the proprietor of the establishment to produce relevant records. Thereafter, an inspection was conducted upon the establishment on 24.06.1993 and the coverage was extended to the establishment with effect from the date of inspection. The coverage letter was sent to the establishment through registered letter. The Enforcement Officer again visited the establishment on 27.12.1996. He directed the proprietor of the establishment to produce relevant records on 22.01.1997 before the Regional Provident Fund Commissioner, Bihar, Patna. Subsequently, the Assistant Provident Fund Commissioner, Patna directed the establishment to pay the provident fund dues for the period from June, 1993 to March, 2001, but the establishment failed to deposit the provident fund dues for the said period. Subsequently, a proceeding under Section 7-A of the Act was initiated against the establishment fixing the date of proceeding as 28.10.2002. During the proceeding, Sri Gopal Prasad Singh appeared on 16.07.2003 and took a plea that the establishment did not come under the purview of the Act and it had never employed 22 or more persons. He demanded copies of relevant papers related to coverage of the establishment. Thereafter, several adjournments were granted but the representative of the establishment failed to appear. Subsequently, the Assessing Authority, vide order dated 20.04.2004, in exercise of the powers conferred under Section 7-A (1) of the Act directed the establishment to start making compliance with the provisions of the Act immediately and also to deposit the dues outstanding since the date of coverage. The establishment challenged the order dated 20.04.2004 before the Tribunal and the Tribunal set aside the order of the 7-A Authority vide its order dated 26.04.2011.

3. Assailing the impugned order dated 26.04.2011 passed by the Tribunal, learned counsel appearing for the petitioner submitted that the Tribunal has failed to appreciate that during inspection 22 persons employed in the establishment had been identified by name by the Enforcement Officer, but for no justifiable reason, it held that the order of the Authority does not indicate the exact staff strength of the respondent-establishment. He contended that the Tribunal relied upon the bald statement of the establishment that it had not engaged more than 22 persons. Another contention advanced on behalf of the petitioner is that the order passed by the Assessing Authority was based upon a valid inspection made by the Enforcement Officer. He pleaded that the Tribunal also failed to appreciate that the establishment was granted

several opportunities to produce relevant records and make compliance with the provisions of the Act, but the establishment deliberately did not accept any of the notices or letters issued by the Enforcement Officer.

4. On the other hand, learned counsel appearing for the respondent submitted that the respondent-establishment is a shop registered under Bihar Shops and Establishments Act. There are only two employees in the establishment. As such, the provisions of the Act would not be applicable on the respondent-establishment. According to him, the order dated 20.04.2004 passed by the Assessing Authority under Section 7A of the Act was not only bad in law but also on facts, as the same had been passed without any inquiry and evidence required under sub-section (3A) of Section 7 of the Act and without affording due opportunity to the respondent. Lastly, he pleaded that the Tribunal after appreciating the facts and law involved in the case in exercise of its power under Section 7-I of the Act rightly set aside the order dated 20.04.2004 vide impugned order dated 26.04.2011.

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

6. The Employees Provident Fund Scheme is governed by Employees Provident Fund Organization (EPFO), a

statutory body under the Government of India. It helps private sector employees to save small portion of their salary every months. All establishments, which have hired more than 20 employees, are obliged to enroll with the EPFO. Under the scheme of the Act, each employer and employee, in every establishment falling within the Act, do contribute into a statutory fund. The employee gets a lumpsum amount including the self and employers contribution with interest on both on retirement.

7. Section 7A under the Act provides for determination of moneys due from employers, which reads as under:-

> **“7A. Determination of moneys due from employers**.-
>
> (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,
>
> (a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and
>
> (b) Determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]
>
> (2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court

under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:

(a) Enforcing the attendance of any person or examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit;

(d) Issuing commissions for the examination of witnesses;

And any such inquiry shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such enquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an

> irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.
>
> **Explanation:** Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-pert order.
>
> (5) No order passed under this Section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]"

8. There can be two reasons for issue of 7A notice:-

(i) In a case where a dispute arises regarding the applicability of this Act to an establishment; and

(b) Determine the amount due from any employer under any provision of the Act.

9. In order to carry out the applicability of the Act on an establishment, an inquiry is required to be initiated after actionable and verifiable information. If on the basis of report of the Enforcement Officer, it is decided that it is a fit case for initiation of inquiry under Section 7A of the Act, then the report of the Enforcement Officer and observations thereon of the compliance of the proceedings should be forwarded to the Assessing Officer for initiation of an inquiry under Section 7A of the Act.

10. In the instant case, the order passed under Section 7A(1) of the Act by the Assistant Provident Commissioner is in four

paragraphs, which read as under:-

> "1. Whereas the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter 'the Act') and the Schemes framed thereunder have been made applicable upon M/s Gee Pee Furniture (New) (hereinafter 'the establishment') with effect from 24/06/93.
>
> 2. Whereas for the period 07-1993 to 03-2004 the establishment has failed to deposit the Provident Fund, the Pension Fund and the Insurance Fund dues as well as the administrative charges towards the Provident Fund and the insurance Fund in accordance with the provisions of the Act, the Employees' Provident Funds Scheme, 1952, the Employees' Pension Scheme, 1995 and the Employees' Deposit Linked Insurance Scheme, 1976.
>
> 3. And whereas for the purpose of determining the amount due for the said period an inquiry under section 7A(1) of the Act was initiated and the establishment was offered an opportunity to represent its case on 23-10-2002 either in person or through an authorized representative vide summons no.BR/EB.I/7303/7A/5997 dated 27-09-2002. On 16-07-03 Sh. Gopal Prasad Singh,

Partner, appeared at the inquiry and stated that his establishment did not come under the purview of the Act as he had never employed twenty or more persons. He demanded copies of the relevant papers related to coverage of the establishment. Thereafter number of adjournments were allowed but till 09-03-04 no evidence could be collected for deciding the applicability dispute and for determining the dues payable.

4. On 09-03-2004, it was observed in the employer's absence that while raising the dispute of applicability the establishment has quite reasonably demanded copies of the relevant papers related with its coverage so that it could properly represent its case. It was further observed that the establishment/employer should come on the next date of hearing. Peruse the documents on records and take copies of such documents if it desired to. It was however, added that if the establishment did not attended the inquiry as it had been found to do on the previous several occasions it would be concluded that the establishment was not interested in representing its case and then the inquiry shall be decided in terms of section 7A (3-A) of the Act. The next date for the hearing was fixed to be 05.04.04 and a copy of the

> observations made on 09-03-04 was sent to the employer for necessary compliance on his part. On the scheduled date of hearing i.e.05-04-04 the employer once again abstained from attending the inquiry and so it was concluded that the establishment/employer was not interested in representing its case any more. Accordingly, I, in exercise of the powers conferred upon me under section 7A (1) of the Act hereby decide on the bases of the documents available on record that the provisions of the Act have been quite rightly made applicable on the establishment. The establishment is hence directed to immediately start making compliance with the provisions of the act and also to deposit the dues outstanding since the date of coverage."

11. When the aforestated order was challenged before the Tribunal, the Tribunal set aside the order passed by the Assessing Authority holding therein: *"the order of the Authority does not indicate the exact staff strength of the appellant nor any list of employees or the report of the squad was furnished. So, there was no material on record to hold that the staff strength of the establishment reached 20 and the Act was applicable to it*."

12. When I give a close look to the order passed by

the Assistant Provident Fund Commissioner, as noted above, I find that the order passed by the Assistant Provident Fund Commissioner is a cryptic order. The proceeding under Section 7A (1) of the Act was *quasi judicial* proceeding. Recording of reasons in support of the conclusions arrived at in an order by a quasi judicial authority has been recognized since inception.

13. It is well settled position in law that right to know the reasons for the decision made by the *quasi judicial* authority is an indispensable right of a litigant. The Assistant Provident Fund Commissioner while passing the order has recorded that in exercise of the power conferred upon him under Section 7A(1) of the Act, he had decided on the basis of documents available on record that the provisions of the Act have been quite rightly made applicable to the establishment. It is not known what were the documents available on record on the basis of which, he came to the conclusion that the provisions of the Act had been quite rightly made applicable on the establishment. Mere use of the provision of the Act without any mention of the relevant facts and the evidence available thereon could not have been sustained by the Tribunal.

14. Thus, the Tribunal rightly set aside the order passed by the Assessing Authority.

15. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2018
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