

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.204 of 2019

In

Civil Writ Jurisdiction Case No.16336 of 2010

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M/S Gandak Area Development Agency through its Area Development
Commissioner and Chairman, Combined Building, Court Compound,
Muzaffarpur

... .. Appellant/s

Versus

Central Board of Trustees, EPF through the Assistant Provident Fund
Commissioner, Employees Provident Fund Organization, New Vakalathkhana
Building, Court Compound, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Chandra Jha 3, Adv.

For the Respondent/s : Mr. Jai Prakash Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 15-11-2022

Heard Mr. Satish Chandra Jha No.3, learned
advocate for the appellant and Mr. Jay Prakash Verma for the
Respondent/Central Board of Trustees, EPF.

The Central Board of Trustees, EPF through the
Assistant Provident Fund Commissioner, EPFO, Muzaffarpur
came up before this Court vide CWJC No. 16336 of 2010
against the order dated 24.11.2009 passed in ATA No. 681(3)
of 2006 passed by the Presiding Officer, Employees Provident
Fund Appellate Tribunal, New Delhi, whereby the order passed



by the Assistant Provident Fund Commissioner, Muzaffarpur under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "EPF & MP Act, 1952") by which the appellant herein was directed to pay the entire outstanding dues of Rs. 57,96,695/-, had been quashed.

The learned Single Judge, on perusal of Section 16 of the EPF & MP Act, 1952 found that the appellant/organization was not exempted from making payments to the EPF as there was no declaration of exemption by the Central Government by notification in official gazette either prospectively or retrospectively from the operation of the Act to the aforesaid organization. On such findings, the order passed by the Tribunal was set aside, restoring the order of the Provident Fund Commissioner directing for payment of Rs. 57,96,695/- with the EPF.

The appellant viz. Gandak Area Development Agency (in short "GADA") has challenged the aforesaid order of the learned Single Judge on various grounds.

From the pleadings of the parties, it appears that the GADA was constituted under Section 3 of the Bihar Agriculture



and Rural Area Development Agency Ordinance, 1974 as an independent agency and a body corporate under Section 3(1) (c) of the Act. This agency was constituted for various districts in the State of Bihar. Presently, the controlling department of GADA is the Water Resources Department of the Government of Bihar.

It is the specific case of the appellant that the Board of Director of GADA, Muzaffarpur had approved the Employees Contributory Provident Fund Regulation, 1978 which was implemented in the organization with effect from 01.04.1979. This was with the consent of the employees. Ever since, the Contributory Provident Fund Regulation is in force in GADA, Muzaffarpur. In terms of the aforesaid regulation, the Contributory Provident Fund is being deposited in a nationalized bank, in the individual account of the employees of GADA and such amount is pledged in the name of Drawing and Disbursing Officer of the agency. The amount gets paid to the individual employees on their superannuation.

Mr. Jha, learned counsel for the appellant, has further informed this Court that there are two circles where



this agency operates. The litigation in the present case concerns the Planning and Investigation Division of Raxaul. The decisions and rules are equally in force for all circles/divisions/sub-divisions as different circles, divisions or sub-divisions do not have their specific independent identities of their own. We further find from the records that GADA was initially under the financial control of the State Government in its Agriculture Department but later, the Water Resources Department became the nodal department for controlling the affairs of GADA.

As an agency under the statute, associated with a Department of the Government, there was no way in which the directions of the Government could have been avoided to be carried out. Since the base organization i.e. GADA, Muzaffarpur operated under the statute framed by the Legislature and controlled by a government Department, the employees in all such divisions/sub-divisions were getting equal facilities and, therefore, none of the units were liable to pay the provident fund contribution as the exemption under Section 16(1) (a),



(b) and (c) of the Act applies to such units of the organization *proprio vigore*.

Some correspondence between the Assistant Provident Commissioner, EPF, Muzaffarpur and the Secretary of the GADA have been brought on record, which indicate that the detailed information, with supporting evidence, was provided to the EPFO but, those facts were totally ignored and the Assistant Provident Fund Commissioner, on 05.07.1999, holding the Raxaul division to be an independent establishment and covered under Section 2(a) of the EPF & MP Act, 1952 with effect from 01.04.1982, allotted a separate PF Code and directed for payment of the amount as contributory employees provident fund. This led the appellant/organization to approach the Tribunal, which set aside the order of the Assistant Provident Fund Commissioner, holding that the appellant/organization was exempted from making such payment.

The aforesaid decision of the Tribunal, as noted above, has been set aside by the learned Single Judge and the order of the Assistant Provident Fund Commissioner has been



restored on the sole ground that there is no declaration of exemption in favour of the organization to claim exemption and evade making payment of the assessed value.

Mr. Jha, the learned counsel for the appellant has drawn the attention of this Court to the provisions contained in Section 16(a) and 17 of the EPF & MP Act, 1952 and has submitted that the appellant/organization falls in category (b) and (c) of Section 16(1) for which no declaration is required.

Section 17 of the Act provides power to the appropriate Government to grant exemption but, such power is a limited one and is subject to conditions as may be specified in the notification with respect to the prospective or retrospective exemption or operation of the Act. This power to the appropriate government to grant or refuse exemption is applicable if in the opinion of the appropriate government, the rules of the provident fund of the organization with respect to the rates of contribution are not less favourable than those specified in Section 6 of the Act, or if the appropriate government is of the opinion that the employee of an organization are in enjoyment of the benefit in the nature of



provident fund, pension or gratuity or that such benefit, separately or jointly, are on the whole, not favourable to such employee than the benefits provided under this Act or any scheme in relation to employees in any other establishment of a similar character. This exemption could be granted by the appropriate government only after consultation with the Central Board which, on such consultation, would forward his views on exemption to the appropriate government within such time limit as may be specified in the scheme. In case of exemption having been granted to an establishment under Section 17, the provisions of Section 6, 7A, 8 and 14B shall apply to the employer of the exempted establishment in addition to other conditions so specified and if such employer contravenes or makes default in complying with any of the conditions or provisions of the Act, such deviation would be punishable.

Per force, it would be necessary to refer to the provisions contained in Section 16A of the Act which has been incorporated only in the year 1988. According to Section 16A, on an application made to the Central Government by any employer under a situation when the majority of the employees



constitute 100 number or more, the Central Government may, by an order in writing, direct for maintaining a provident fund amount in relation to the establishment which could be subject to such terms and conditions which may be specified in the scheme. Any authorization made under this Section could be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorization or had committed any offence under the provisions of this Act, during the three years immediately preceding the date of such authorization.

Mr. Jha therefore contends that with the promulgation of Contributory Provident Fund Scheme of the State Government having been made applicable to GADA, Mujaffarpur and, therefore, to the sub-head at Raxaul, the appellant would stand exempted from making any further contribution.

The power to grant further exemption vested in the appropriate government, according to Mr. Jha is with respect to the organization which do not fall in the category of 16 (1)(a) to (c). Since the Contributory Provident Fund Scheme of the



State Government was made applicable to the special entity namely GADA for all its sub-divisions, Mr. Jha contends, there is no requirement of further declaration of exemption under Section 17 of the Act. This aspect of the matter, it has been urged before us, was not adverted to by the learned Single Judge, who found fault with the order passed by the Tribunal by which the order of the Assistant Provident Fund Commissioner was set aside and the appellant was directed to make payment of Rs. 57,96,695/-.

We have taken note of the submissions advanced on behalf of the appellant that the State Contributory Provident Fund Regulation has been in force in GADA, Muzaffarpur and the requisite fund is being deposited in a nationalized bank in the individual bank account of the employees, some of whom have retired and have also been paid their dues. It has also been brought to our notice that during the pendency of this litigation, with effect from 01.06.2016, the post of Area Development Commissioner cum Chairman of GADA Muzaffarpur has been abolished and Superintending Engineer, Headquarters, Muzaffarpur, has been made the head of the



GADA, Muzaffarpur. The Bihar Agriculture Rural Area Development Act, 1978 has also been repealed by Act 6 of 2018 which has come into effect from 01.07.2017. By the repealed Act, the command agencies under the Bihar Agriculture Rural Area Development Agency Act, 1978 have been abolished and all the employees of all the four command agencies now have become the employees of the Water and Land Management Institute (WALMI), Khagaul, Patna and the Chief of Water and Land Management Institute, Patna controls all the Command Areas.

Mr. Jay Prakash Verma however submits that the employees of the organization are not being given the benefits to which they are entitled.

In case, the EPFO is sanguine about such complaint against the organization, nothing prevents it from removing the organization from the list of exempted organization for which necessary/separate proceeding is required to be undertaken. Should such a proceeding be initiated in future against GADA, Muzaffarpur, that shall be taken to its logical conclusion on the charges so leveled against the GADA.



After having said so, we find that on inchoate set of facts, the learned Single Judge has set aside the order passed by the appellate tribunal and has restored the order of the Provident Fund Commissioner, holding that the GADA, Muzaffarpur specially in its circle at Raxaul, is a separate entity and is required to make contribution as the exemption would not apply to it.

Under these circumstances, we set aside the order passed by the learned Single Judge and restore the order passed by the Tribunal.

The appeal stands allowed accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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