

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 18445 of 2017
With
CAN 1 of 2021**

**Fulia Tangail Shari Bayan Silpa
Samabay Samity Limited
Versus
The Union of India & Ors.**

For the petitioner : Mr. Pabitra Charan Bhattacharya

For the respondents : Mr. Shiv Chandra Prasad
P.F. Authorities

Heard on : 10th January, 2024

Judgment on : **10th January, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the communication dated 20th June, 2017 issued by the Assistant Provident Fund Commissioner (Compliance) whereby, the petitioner was informed that its establishment stood covered with effect from 1st April, 2009 under Section 1(3)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act") under the Schedule I, Head "Textiles".

2. The petitioner is a Primary Handloom Cooperative Society. The petitioner was originally registered under the West Bengal Cooperative Societies Act, 1973, which had since, been repealed and had been substituted by the West Bengal Cooperative Societies Act, 1983. Subsequently, the West Bengal Cooperative Societies Act, 2006 had been notified thereby, repealing the West Bengal Cooperative Societies Act, 1983.
3. The petitioner claims that all its members are weavers by profession, and are all displaced persons and hail from Tangail, formerly in East Pakistan, presently in Bangladesh.
4. In usual course, the members of the petitioner receive wages from the Society on nominal basis, depending upon the quality and quantity of the sarees produced by them.
5. It is the petitioner's contention that notwithstanding not being covered by the provisions of the said Act, a coverage survey was conducted by the provident fund authorities on 11th May, 2017. Pursuant to the aforesaid, by a communication in writing dated 1st June, 2017, the Assistant Provident Fund Commissioner (Compliance) had forwarded the petitioner the information regarding allotment of the Provident Fund Code Number and had by such letter called upon the petitioner to submit the compliance status, along with documentary evidence as detailed therein.

6. Upon receipt of such notice the petitioner, however, by communication in writing dated 2nd June 2017, had attempted to make out a case that the petitioner was complying with the State Government circular with regard to payment of provident fund. It was also clarified that the petitioner being a Co-operative Society was otherwise exempted from the provisions of the said Act, and by reasons of the petitioner employing only fourteen regular and eight temporary employees, the petitioner cannot be brought into the purview of the said Act.
7. Subsequently, by a communication in writing dated 20th June, 2017, the Assistant Provident Fund Commissioner (Compliance) had notified the petitioner that pursuant to the online application made by the petitioner, the establishment stood covered with effect from 1st April, 2009 under Section 1(3)(b) of the said Act under the Schedule Head “Textiles” and accordingly, had called upon the petitioner to comply with the provisions of the said Act and the scheme framed thereunder.
8. The petitioner challenges this communication primarily on the consideration that even if coverage of the said Act has been extended to the petitioner based on the petitioner’s application, the same could not date back to the year 2009 on the basis of inclusion of textiles in the Schedule I of the said Act.
9. Mr. Bhattacharya, learned advocate representing the petitioner, by drawing attention of this Court to Section 1(3)(b) read with

Section 16 of the said Act, submits that the said Act can be made applicable to a Co-operative Society provided the society engages 50 or more persons. By drawing attention of this Court to the survey report conducted by the enforcement officer at the petitioner's establishment on 11th May, 2017, it is submitted that the respondents themselves had identified that the petitioner engages no more than 22 employees. Unfortunately, the Assistant Provident Fund Commissioner (Compliance) by overlooking the relevant provisions of the said Act, has held that the petitioner's establishment to be covered under Section 1(3)(b) of the said Act on the basis of "Textiles" being included in Schedule I of the said Act. According to Mr. Bhattacharya, the petitioner's establishment being a Co-operative Society could not have been covered under the Schedule I of the said Act. It is submitted that the order passed is based on complete non-application of mind and the same cannot be sustained and should be set aside.

10. The affidavit-in-reply filed in Court today on behalf of the petitioner is taken on record.
11. *Per contra*, Mr. Prasad, learned advocate representing the provident fund authorities, submits that the petitioner had voluntarily applied for being covered under the provisions of the said Act. Having applied for coverage, the petitioner cannot evade its liability.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. To appreciate the argument canvassed on behalf of the petitioner it is relevant to consider the provisions of Section 1 of the said Act, which deals with the applicability of the provisions of the said Act. The same is extracted hereinbelow: -

“1. Short title, extent and application. — [(1) *This Act may be called the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.*]

[(2) *It extends to the whole of India [***].*]

[(3) *Subject to the provisions contained in section 16, it applies—*

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]

[(4) *Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of*

employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

[(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.]”

13. As would appear from the above though, the provisions of Section 1(3)(a) of the said Act provide for applicability of the said Act to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed, while Section 1(3)(b) of the said Act provides for applicability of the said Act to any other establishment employing 20 or more persons which the central Government may in the notification, specify. However, applicability of the aforesaid provisions is subject to the provisions contained in Section 16 of the said Act. Section 16 of the said Act carves out certain exceptions as regards applicability of the provisions of the said Act on certain establishments. To morefully appreciate the above, Section 16 of the said Act is also extracted hereinbelow: -

“16. Act not to apply to certain establishments.—*[(1) This Act shall not apply—*

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

[(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

*(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; [***]*

*[***]*

[(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt [whether prospectively or retrospectively] that class of [establishments] from the operation of this Act for such period as may be specified in the notification.]”

14. A bare perusal of the aforesaid Section, in no uncertain terms would demonstrate that the said Act shall not apply to any establishment registered under the Cooperative Societies Act

employing less than 50 persons and working without the aid of power.

15. Since, the Act itself makes an exception to the applicability of the provisions of the said Act insofar as Cooperative Society is concerned, and since, the petitioner does not, on the basis of the survey conducted by the provident fund authorities, employ 50 persons or more, and further no notification having been published to bring the petitioner within the fold of the Act, in my view, the said Act cannot be made applicable to the petitioner by falling back on either Section 1(3)(a) or 1(3)(b) of the said Act. Applicability of Section 1(3)(b) of the said Act, is subject to Section 16 of the said Act and in certain conditions subject to publication of notification by the Central Government in the Official Gazette. Section 1(3)(b) of the said Act cannot be applied independent of Section 16 of the said Act to make the provisions of the said Act applicable to the petitioner. Nor can Section 1(3)(b) of the said Act be made applicable based on inclusion of “Textiles” in Schedule I of the Act, as Schedule I of the Act only refers to applicable establishments under Section 1(3)(a) of the said Act.

16. Having regard to the aforesaid, it is apparent and clear that the communication issued by the Assistant Provident Fund Commissioner (Compliance) dated 20th June, 2017, insofar as the same makes the provisions of the said Act applicable on the

petitioner's establishment, by placing reliance on the provisions of Section 1(3)(b) of the said Act, is based on complete non-application of mind and cannot be sustained. The said communication is accordingly, set aside and quashed. The petitioner, however, must continue to comply with the provisions of the said Act from the date of its online application, in the light of Section 1(5) of the said Act.

17. With the aforesaid observations and/or directions, the writ petition stands disposed of.
18. In view of disposal of the above writ petition, the connected application being CAN 1 of 2021, in effect praying for early disposal, is dismissed having become infructuous.
19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)