

(2003) 06 GAU CK 0025

Gauhati High Court

Case No: Writ Petition (C) No. 1702 of 2002

Midland Hospital and Research
Centre (P) Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: June 27, 2003

Citation: (2004) 1 GLR 260 : (2004) 2 LLJ 632

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Advocate: R.P. Sharmah and S.C. Dutta, for the Appellant; B.C. Pathak, CGSC, for the Respondent

Final Decision: Dismissed

Judgement

P.G. Agarwal, J.

The petitioner before us, M/s Midland Hospital and Research Centre (P) Ltd., is a private limited company having Nursing Home at Guwahati since 1991. The petitioner engaged employees on regular basis as well as on daily wage basis, and a notice was issued by the respondent Assistant Commissioner, Provident Fund, N.E. Region, informing the petitioner that provisions of the Employees Provident Fund and Misc. Provisions Act, 1952 (for short, the Act) applies to them as there are more than 20 employees. Thereafter, the respondents assessed the liability of the petitioner at sum of Rs. 1,87,170 for the period from January, 1995 to October, 1997 on account of provident fund contribution. An appeal was filed against the said order and the appellate authority on 13.9.1998 rejected the appeal, and hence, the present application.

2. In this case, we find that the petitioner company had submitted Annexure-B furnishing a list of workers as on 31.8.1994 wherein we find that there are as many as 33 employees. The main grievance of the petitioner is that these employees did not continue for long and they remained in service for a few months and thereafter left the job for other green-pastures and some of them are part time employees or

daily wages employees. In their application for review, the petitioner stated as below :

"That, in this connection it may be stated that like other organisations / establishments, this institution does not employ any person on a regular basis and there is no regular and permanent staff. The number of people employed by this institution varies from day to day and most of them are employed on daily wage basis according to day to day requirement. The personnel employed also change from day to day and there is no regular and permanent set of people. Very few people are kept on monthly salary basis and at no point of time the number of such employee exceed ten or twelve. Even those people who are engaged on monthly basis there is frequent change of personnel as the employed always consider it as a spring board for sojourn, and they leave the institution as soon as they get better opportunity. This there is no permanent or regular set of people working in this institution."

3. The respondents, on the other hand, claim that on physical verification, it was found that there were as many as 24, 26, 27, 27, 27, 31, 30 and 31 number of employees in the establishment during the month of January to August 1994 respectively. The fact that some of them were daily wage basis or some of them were paid stipend, are immaterial. In view of the decision of the Apex Court in the case of SK Nasiruddin Biri v. Central P.F. Commissioner reported in (2001) 2 SCC 612 where it was held that the Act would be applicable even in respect of home workers engaged through contractors. In an earlier decision reported in [Shri Mahila Griha Udyog Lijjat Papad Vs. Union of India \(UOI\) and Another](#), the Apex Court held that the workers who were paid on piece rate basis are also employee under the Act. We, therefore, find no force as some of the employees are paid on daily wages basis or that the employees go on changing as it will not be a relevant fact for exempting the petitioner's company from the purview of that.

4. The learned counsel for the petitioner has also placed reliance on the decision of the Apex Court in the case [The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan](#), the Apex Court held :

"Considering the language of Section 1(3)(b) in the light of the foregoing discussion it appears to us that employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act would not be covered by this definition. The word "employment" must, therefore, be construed as employment in the regular include employment of a few persons for short period on account of some passing necessity or some temporary emergency beyond the control of the company. This must necessarily require determination of the question

in each case on its own peculiar facts. The approach pointed out by us must be kept in view when determining the question of employment in a given case."

In the present case, it is not the plea of the petitioner that the above employees were employed in the month of August to tide over any emergency. Further, the decision in T.S. Hariharan (supra) was given by the Apex Court On 1.4.1971 on interpretation of the provisions of Section 1(3)(A)(b) of the Act and the proviso to Sub-clause 5 of Section 1 of the Act. It may be mentioned here that the said proviso to Sub-clause 5 was omitted by an Act of 1971 with effect from 23.4.1971.

5. Further, we find that in Kedarnath's case the Apex Court has observed that the Act is a social welfare legislation and Court should not interfere with the narrow interpretation to defeat the very object and purpose of the Act. In view of the admitted position of the present case, we find no merit in the writ petition and accordingly hold that the petitioner's company comes under purview of the Act. The writ petition is accordingly, dismissed. It is, however, provided that the petitioner will be at liberty to approach the respondent authorities for extending any benefits available to them in view of the observations of the Apex Court in Nasiruddin Biri (supra).