(2004) 3 LLJ 428 : (2004) 102 FLR 115 : (2004) 2 JCR 399

Jharkhand High Court

Case No: C.W.J.C. No. 559 of 1994 (R)

Ranchi Goshala	APPELLANT
Vs	
Regional Provident Fund Commissioner and Another	RESPONDENT

Date of Decision: July 21, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A

Citation: (2004) 3 LLJ 428 : (2004) 102 FLR 115 : (2004) 2 JCR 399

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Satish Bakshi and M.A. Khan, for the Appellant; P.P.N. Roy, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.
This application has been preferred by M/s, Ranchi Goshala against the order No. 2736/93, dated 5th February, 1994 passed by the Assistant Provident Fund Commissioner, Ranchi in a proceeding u/s 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short E.P.F. Act).

By the aforesaid order, the respondents held the petitioner an "Establishment" and a sum of Rs. 66,331/- as dues payable by the petitioner on various accounts under the E.P.F. Act.

2. One of the pleas taken by the petitioner is that the provisions of Section 7A of the E.P.F. Act is not applicable in the case of the petitioner, it being not an "Establishment" nor is it a manufacturer.

3. From the impugned order aforesaid, it will be evident that the petitioner disputed the applicability of the E.P.F. Act on the following grounds :

"A. The Unit is a charitable institution established under the Bihar Goshala Act, 1950 and is always in short of funds.

B. The establishment is excluded from the purview of even the Minimum Wages Act.

C. The establishment is not a factory engaged in any industry specified in the Schedule I.

D. No notification covering the establishment has been issued u/s 1(3)(b)."

4. However, it has not been accepted by the respondents on the ground that the petitioner''s Establishment has completed 3/5 years from the date of set up, have employed more than 20 employees and petitioner''s Establishment is a ''Factory'' notified under Schedule I u/s 1(3)(a)/fall under the notified class of establishments u/s 1(3)(b).

5. Admittedly, the petitioner did not appear at the time of final hearing as it requested to decide the preliminary issue whether the E.P.F. Act, 1952 is applicable to petitioner''s Establishment or not. However, on appearance, the petitioner filed a number of documents such as, Registration Certificate under Bihar Goshala Act; letter dated 15th November, 1970 issued by the Secretary to the Government showing exemption of Goshala from Land Ceiling Act; balance sheets for the year ending 31st March, 1986; 31st March, 1984; 31st March, 1981 and several letters.

6. From plain reading of the impugned Order No. 2736/93, it will be evident that the Assistant Provident Fund Commissioner, Ranchi failed to discuss the evidence led by the petitioner and merely observed that it has scrutinised all the transactions recorded in the Cash Book; Ledger, Voucher, etc. together with the balance-sheets for the relevant period.

7. In the case of "Shri Goshala", Goshala Road, Bhagalpur (Bihar), similar question fell for consideration, wherein the order passed u/s 7A of the Act was challenged by "Shri Goshala", Bhagalpur, Bihar u/s 19A (since deleted) of the E.P.F. Act, 1952. The competent authority from Ministry of Labour, New Delhi, vide its order dated 27th June, 1997, held as follows :

"....It may be mentioned that there is no evidence on record to establish that the petitioner is in any way engaged in the process of conversion of milk into curds, butter, butter-milk or ghee or treating the milk in any way such as pasteurizing the milk or treating the milk for packing. Therefore, more selling of milk as is taken from cows does not amount manufacture or in way conducting a manufacturing process. Since no manufacturing process with respect of the milk is carried out by the petitioner, it cannot be said that the petitioner''s catt. Is a factory engaged in the manufacturing of milk & milk products...."

The order passed u/s 7A of the E.P.F. Act was set aside.

8. In the present case, the Assistant Provident Fund Commissioner, Ranchi held that the petitioner is selling milk. No indication has been given that the petitioner is engaged in the process of manufacture of Curd, Butter, Butter-milk or Ghee or pasteurizing the milk or treating the milk for packaging. There is nothing on the record to suggest that the petitioner in any way conducting manufacturing process or that it can be said to be a manufacturer.

9. For the reasons aforesaid, the impugned Order No. 2736/93, dated 5th February, 1994 issued by the Assistant Provident Fund Commissioner, Ranchi cannot be upheld. It is, accordingly, set aside.

10. However, this order shall not stand in the way of the respondents to proceed in accordance with law if there is any report to suggest that the petitioner is a manufacturer.

11. The writ petition is allowed. However, there shall be no order, as to costs.