(2008) 11 CAL CK 0032

Calcutta High Court

Case No: Writ Petition No. 18562 (W) of 2007, W.P. No. 18563 (W) of 2007

M/s. Satyanarayan Brick Field and Others		APPELLANT
	Vs	
Union of India and Others M/s. Padma Brick Field and Another Vs Union of India and Others		RESPONDENT

Date of Decision: Nov. 21, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 1(3)(a), 1(3)(b), 2(i), 4, 7(b)

Citation: (2009) 121 FLR 245 : (2008) 3 LLJ 666

Hon'ble Judges: Sailendra Prasad Talukdar, J

Bench: Single Bench

Advocate: Soumya Majumdar and Arjun Ray Mukherjee, for the Appellant; Shiv Chandra Prasad and aparna Banerjee Respondents in W.P. Nos. 18562(W), 18563(W) of 2007, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

The Judgment of the Court was delivered by:

1. Identical facts and points of law being involved in the two cases, those have been heard analogously and are governed by this common judgment.

2. The petitioner No. 1 in W.P. No. 18562(W) of 2007 is a registered partnership firm and engaged in a business of manufacturing brick. The petitioner Nos. 2 to 4 are the partners

of the said firm. Such establishment is a small-scale industry and it has the quarry permit. It pays royalty to the Government of West Bengal regularly for quarry of soil. The said establishment does not have any shed and the same is situated in an open field. The nature of industry is seasonal and the activities are purely dependent on weather. A large part of the year particularly the rainy season is spent without any activity. During the peak season, labourers are hired from independent contractors. Workers are mainly cultivators who work for additional income when they are otherwise free. This establishment was established in 1988. A code number was subsequently allotted to the said establishment by the Provident Fund Organization being C.A/33187 dated 8th December, 1995. A memo bearing reference No. R-ENF/SPL/WB/CA/33187/331 dated 8.12.1995 was issued by the respondent No. 3 in favour of petitioner No. 2. There was no mention in it as to whether it was covered as a ''factory'' or as an ''establishment'' u/s 1(3)(a) or u/s 1(3)(b) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''EPF and MP Act''). The said memo dated 8th December, 1995 purported to cover the establishment as a manufacturer of brick and it was given retrospective effect w.e.f. 30th January, 1989. Such establishment since then had been paying provident fund contributions under the misconception that the said Act is applicable to it. From time to time the Enforcement Officers used to visit the establishment and upon verification of relevant records used to report compliance of the statutory provisions by the establishment.

3. In the year 1999, proceeding u/s 7A of the EPF & MP Act, 1952 was initiated for the period from 12/92 to 01/99 for failure in payment of provident fund dues. Authorized representative of the establishment duly appeared before the respondent No. 4 but since 2002, the respondent authorities maintained a stoic silence in respect of the same. All on a sudden, petitioner No. 2 received a purported notice issued by respondent No. 5 in respect of the said proceedings. By such notice dated 12th February, 2007, intimation was given that the enquiry was last held on 14.9.2002 and in order to finalize the enquiry, petitioner No. 2 was summoned to appear in person or through an authorized representative on 22nd March, 2007. The matter was heard by respondent No. 4 on diverse dates. It was submitted that subject matter of the proceeding was the alleged provident fund dues by the said establishment for the period from February, 1989 to November, 2000 and since the said proceeding was reinitiated after a lapse of more than 18 years, relevant documents have been lost and/or misplaced. The petitioner No. 2 sought for time in order to enable him to collect such document but the prayer was turned down. By an order dated 22nd May, 2007 issued by respondent No. 4, petitioners were directed to pay a sum of Rs. 4,76,621/- along with interest in terms of Section 7Q of the EPF and MP Act for the provident fund dues for the period February, 1989 to November, 2000.

4. The enquiring authority relied upon a report dated 19.3.2007 of an Enforcement Officer and on 10th April, 2007, the departmental representative filed a report of the Assistant Provident Fund Commissioner. Copies of such reports were never served upon the

petitioners and this resulted in violation of the principles of natural justice.

5. Petitioner No. 2 is a member of the West Bengal Brick Field Owners Association and he was informed by the association that the activities of the said establishment do not constitute manufacturing process so as to bring the said establishment within the ambit of ''factory''.

6. Being aggrieved by such order dated 22nd May, 2007, petitioner preferred a review application u/s 7(b) of the said Act. The said review application, however, was rejected without even affording an opportunity of hearing to the petitioners. The review application was rejected in a slipshod manner without taking into consideration the various grounds taken by the petitioners. The order dated 26th July, 2007 is not a speaking order and it suffers from illegality, irrationality and procedural impropriety. This prompted the petitioner to approach this Court with the application under Article 226 of the Constitution for redressal of his grievances.

7. During pendency of the writ application, the petitioners were served with another notice, which prompted the petitioners to file a supplementary affidavit challenging the same.

8. The crux of the controversy is whether the nature of the establishment of the petitioners and its activities are covered within the meaning of the industry as defined u/s 2(i).

9. ''Industry'' means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification u/s 4. Section 4 gives the Central Government the power to add to Schedule I any other industry in respect of the employees whereof it is of opinion that a Provident Fund Scheme should be framed under this Act and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

10. Learned Counsel for the petitioners submitted that this was under consideration of this Court earlier and the said writ application being C.R. No. 10928 (W) of 1989 was disposed of by the learned Single Bench of this Court by order dated 17.3.2004 thereby holding that brick fields are not factories under the provisions of the Factories Act, 1948. It was submitted that the definition of ''Factory'' and ''Manufacturing Process'' as given in the EPF & MP Act, 1952 and the Factories Act, 1942 being pari materia, the said establishment cannot be said to be covered under Schedule I to the Factories Act, 1940 so as to be liable to be governed by the provisions of the EPF & MP Act, 1952.

11. It appears that the learned Single Bench of this Court, as referred to, relied upon a judgment and order of an earlier Single Bench decision of this Court in the case of G.R. Chowdhury vs. The State of W.B. & Ors. Following the rule of precedent, the aforesaid decision was arrived at. The copy of the earlier judgment, however, was not placed at the time of hearing.

12. In response to this, learned Counsel for the respondent authority categorically claimed that any industry engaged in manufacture of bricks is well covered under Schedule I of Section 4 of the Act. This was w.e.f. 31st October, 1980.

13. The subsequent unreported judgment of learned Single Bench of this Court in C.R. No. 10928 (W) of 1989 does not appear to have taken into consideration the aforesaid Schedule I of Section 4 of the said Act. Moreover, it appears that both the said unreported judgments dealt with the Factories Act and the aforesaid Schedule I of Section 4 of the said Act having not been taken into consideration, I am afraid the earlier unreported decisions of learned Single Bench of this Court cannot be binding precedent.

14. On perusal of the copies of the various documents including orders annexed to the writ application, I find it difficult to appreciate the grievance that the petitioners were denied reasonable opportunity of hearing. After all, ''reasonableness'' cannot be assessed with mathematical precision. It is a relative concept. It cannot be defined in a straight jacket manner. It varies from situation to situation, from case to case. Grievance relating to the applicability of the EPF and MP Act, 1952 was very well taken into consideration by the appropriate authority while issuing the orders, particularly the order whereby the review application filed by the petitioners was rejected.

15. Having regard to all relevant aspects, I do not find any illegality, irrationality or procedural impropriety in the orders impugned and as such, the present application being W.P. No. 18562(W) of 2007 fails and be dismissed.

16. There is no order as to costs.

17. Xerox certified copy of the judgment and order be supplied to the parties, if applied for, as expeditiously as possible. This judgment and order will govern being W.P. No. 18563(W) of 2007. Write petitions dismissed