Om Roller Flour Mill Vs Union of India (UOI)

Court: Calcutta High Court

Date of Decision: June 22, 2001

Acts Referred: Constitution of India, 1950 â€" Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 7A

Citation: (2002) 94 FLR 908 : (2002) 3 LLJ 228

Hon'ble Judges: Dilip Kumar Seth, J

Bench: Single Bench

Advocate: R.M. Majumdar, Susanta Pal and S.S. Bhutoria, for the Appellant;A.K. Gupta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dilip Kumar Seth, J.
The order dated March 14, 2001 contained in Annexure ""P- 11"" has since been challenged. Learned counsel for the

Petitioners contends that the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 was made applicable in the

said order passed u/s 7A of the said Act to the Petitioner''s establishment on the ground that there is more than 20 employees. While calculating

the number of employees, the authority had taken into consideration the 16 employees employed in the establishment added with the five partners

who are also employed in the establishment and received remuneration. The authority had relied on a decision in Writ Petition No. 13605(W) of

1999 S. G. Tin Printers Pvt. Ltd. v. RPF Commissioner, disposed of on January 21, 2000. In the said decision, it was held that the persons who

receive remuneration are also the employees. It appears that against the said decision an appeal was preferred. The Division Bench in its decision

in M/s. S.G. Tin Printers Private Ltd. Vs. R.P.F. Commissioner and Others, had held that the same person cannot hold dual capacity one as

employer as well as employee. Therefore, the said decision in S. G. Tin Printers Pvt. Ltd, was reversed. Therefore, the order impugned should be

quashed irrespective of the fact that the same is appealable u/s 71 of the said Act, since it cuts at the root of the jurisdiction without requiring any

determination of the facts when admittedly the five persons were treated as employees in order to cover 20 employees in the establishment.

2. Learned counsel for the respondents on the other hand points out that this Writ Petition is not maintainable in view of Section 71 of the said Act

which provides for an appeal before the Tribunal which is adequate alternative remedy. The appeal involves the question of determination of fact

which can best be decided by the Tribunal. The writ jurisdiction should not be exercised in order to determine such questions. He contended that

even on merits this Writ Petition cannot succeed since the Petitioner was given adequate opportunity to appear before the authority and despite

such opportunity the Petitioner had not appeared before the authority. Therefore, he should approach the appeal Court in order to determine such

question which the appeal Court can decide. Alternatively he contends that this matter may be remanded to the authority concerned where the

Petitioner may be given an opportunity to make out the case once again.

3. After hearing the learned counsel for the parties, it appears that admittedly there were 16 employees. Five partners, who admittedly received

remuneration, were also treated as employees and were added in the establishment to cover the minimum number of employees in order to attract

the application of the 1952 Act. The said order had taken note of the decision in S. G. Tin Printers Pvt. Ltd. which admittedly stands overruled by

the decision reported in M/s. S.G. Tin Printers Private Ltd. Vs. R.P.F. Commissioner and Others, . Thus it appears that it goes to the root of the

jurisdiction of the authority concerned so as to attract the application of the said Act to the establishment. The Division Bench in the said decision

held that one person cannot be an employer and at the same time an employee. Therefore, the partners could not be treated to be employees in

order to attract the application of the Act. As soon as reliance was placed on a decision which was overruled, the decision cannot be sustained. In

the present case, no amount of determination of fact is involved. It is only the law that is to be explained. In the admitted facts and circumstances of

the case, the law as stands does not make the provision of the said Act applicable to the establishment of the Petitioner by including five partners in

the category of employees so as to satisfy the minimum number of employees, in the establishment. Though appeal is available u/s 71 of the said

Act and is definitely an adequate alternative remedy, but such existence of alternative remedy does not preclude the writ jurisdiction altogether. It

varies from case to case. When it does not involve any amount of determination of fact, it is purely a simple question of law, which is apparent on

the face of the record, particularly when the decision is overruled and reliance has been placed on an overruled decision. The High Court is not

supposed to refuse to exercise jurisdiction on account of existence of alternative remedy.

4. Mr. Gupta has referred to an unreported decision in Writ Petition No. 7201(W) of 1999, Hostel Committee, Regional Engineering College,

Durgapur v. Regional Provident Fund Commissioner, West Bengal, disposed of on May 7, 1999 where in view of the alternative remedy this

Court had refused to exercise its jurisdiction. But it appears that the facts of that case is distinguishable from the one in this case. In the said case

there were certain disputes with regard to the facts which required a decision as was rendered in the said order. In that facts and circumstances,

the said decision cannot be attracted in the present case in view of the peculiar facts and circumstances as referred to above.

5. In the circumstances, I am not inclined to throw out the Petition on the ground of alternative remedy.

6. As observed, even on merit, it appears that the authority has not properly construed the principle of law in order to apply the provisions of 1952

Act on the establishment. If on the basis of the materials on which the authority has proceeded itself discloses that the law has not been correctly

applied, in that event it is no use remanding the case once again to the authority concerned which will be only an empty formality since on the basis

of this determination the authority had no alternative but to recall the said order. Therefore, it would be an infructuous exercise. The Court is not

supposed tp undertake infructuous exercise.

7. In the circumstances, the order dated March 13, 2001 contained in Annexure "P-11" to this Writ Petition is hereby quashed. However, this

order will not prevent the authority to consider the question afresh provided the condition for applicability of the 1952 Act is satisfied in

accordance with law, if they are so advised.

8. This Writ Petition is thus disposed of. There will be no order as to costs.

9. Xerox certified copy of this order, if applied for be given to the parties on the usual terms.