

(2009) 05 CAL CK 0043

Calcutta High Court

Case No: Writ Petition No. 17874 (W) of 2007

Wanson Leather Industries Pvt.
Ltd. and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: May 14, 2009

Acts Referred:

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

Citation: (2009) 3 CALLT 130 : (2010) 126 FLR 82 : (2010) 2 LLJ 424

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Soumya Majumdar, Sakyasen, Priyankar Saha and Subir Ranjan Ghosh, for the Appellant; Mihir Kundu, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The petitioners in this writ petition dated August 17, 2007 are questioning an order of the Regional Provident Fund Commissioner (1), Regional Office, Kolkata dated July 27, 2007, Annexure P9 at p.54, made u/s 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The commissioner determined the dues payable by the petitioners at Rs. 17,83,567.

2. The petitioners had a right to appeal to the Tribunal from the impugned Section 7-A order. The provisions of Section 7-A provides for an appeal. In the writ petition it has not been stated that from the Section 7-A order the petitioners could appeal to the Tribunal. On the contrary, in para 33 they have said as follows:

33. Your petitioner has no other alternative and/or equally efficacious remedy other than to invoke, writ jurisdiction before this Hon'ble Court under Article 226 of the Constitution of India.

However, the writ petition was entertained and admitted by order dated August 23, 2007. By the order the petitioners were directed to pay Rs. 3 lakhs by August 31, 2007 and the balance in three instalments. Mr. Majumder, counsel for the petitioners submits that in compliance with the order the determined amount was paid by petitioners.

3. Mr. Majumder has assailed the Section 7-A order on these grounds: (i) the Section 7-A proceedings were initiated for determination of dues for unspecified period; (ii) report of the visiting squad of enforcement officers based on projected salary and projected number of unidentifiable employees was relied on by the authority who made an unreasoned order; (iii) when the report of the visiting squad of enforcement officers gave one figure of the employees likely to be benefited, the authority made the Section 7-A order giving various different numbers of employees for various periods; and (iv) number of employees entitled to membership and the period from which they were to get membership have not been correctly mentioned, and this shows non-application of mind of the authority.

4. By a notice dated September 4, 2001 the Assistant Provident Fund Commissioner (Enf) directed the petitioners to extend membership to sixty-eight employees on the ground that though they were entitled to membership, the petitioners did not give them the benefit. It was stated in the notice that the evasion was detected by a squad of enforcement officers who carried out necessary investigation in July, 2001. A list of the employees who were entitled to membership, containing necessary particulars, viz. their dates of appointment, wages, and signed by the employees concerned, was supplied to the petitioners with the notice.

5. Since the petitioners did not give the benefit of membership to the sixty-eight employees named in the list annexed to the notice dated September 4, 2001, the commissioner initiated the Section 7-A proceedings and issued a summons dated November 20, 2001 asking the petitioners to produce all relevant records and giving them opportunity to contest the proceedings. In response to the summons the petitioners submitted a letter dated December 1, 2001 producing challans showing that they had deposited provident fund and other allied dues payable for the employees in question for September and October, 2001.

6. In support of the case of the provident fund organization the visiting squad of enforcement officers making the investigation and detecting the evasion jointly submitted their written deposition dated May 4, 2007. " They stated that after going through the relevant records produced by the petitioners at the time of inspection, they detected that sixty-seven employees of the establishment, though were entitled to membership right from November 1, 1990 when the establishment was covered, were not given membership till the evasion was detected by the squad; that membership was given to the sixty-seven employees concerned only from September, 2001; and that from the audited balance sheets from 1990-91 to 2001-02, salary and wage registers and other documents of the establishment

inspected by them it was evident that all the employees i named in the list annexed to the letter dated September 4,2001 were entitled to membership right from November 1, 1990. With the deposition the squad submitted the statement of dues. The matter was finally heard by the commissioner on June 20,2007.

7. It is apparent from the Section 7-A order that the order was made after giving full opportunity of hearing to the petitioners who 1 were represented before the commissioner by their Advocate. Copy of the deposition of the visiting squad of enforcement officers dated May 4, 2007 was supplied to the Advocate representing the petitioners on May 4, 2007² itself, when hearing was adjourned to enable the Advocate to go through the report and make submission. Before the commissioner the petitioners did not submit any written objection. No exception to the deposition of the squad dated May 4, 2007 was taken. No prayer was made to cross-examine the authors of the deposition. After considering the materials and the submissions, the commissioner made the impugned Section 7-A order holding that the" petitioners evaded payment of statutory dues with respect to the employees who were entitled to membership right from the date of coverage of the establishment

8. In view of the facts and circumstances, noted hereinbefore, I do not find, any force in Mr. Majumdar"s arguments. From the notice dated September 4, 2001 it is apparent that the provident fund organization asked the petitioners to give membership to sixty-eight employees right from the date of coverage of the establishment. It was clearly stated in the deposition of the squad dated May 4, 2007 that the establishment was covered from November 1,1990. The evasion was detected by the squad only in July, 2001. Immediately after receipt of the notice dated September 4, 2001 the petitioners gave membership to sixty-seven of the employees named in the list annexed to the notice dated September 4, 2001. The membership was, however, given only from September, 2001. The petitioners never raised any objection to the case of the provident fund organization that the sixty-eight employees named in the list annexed to the notice dated September 4,2001 were entitled to membership right from November 1, 1990.

9. On these facts, I am unable to see how the Section 7-A order of the commissioner can be questioned by the petitioners on the grounds that it was made for same unspecified period; that different numbers of employees were mentioned by the provident fund organization at different points of time; that the employees entitled to membership were not identifiable; that the deposition of the squad dated May 4, 2007 was based on projected salary and projected number of employees, and that the Section 7-A order is unreasoned. The number of employees, their respective names, salaries and dates of appointment were mentioned in the list annexed to the notice dated September 4, 2001, the list was duly signed by all the employees. Correctness of the list was never disputed by the petitioners who participated in the Section 7-A proceedings without submitting any written objection as well. On the contrary, the moment the evasion was detected, they gave membership to

sixty-seven out of sixty-eight employees named in the list, though the membership was given only from September, 2001.

10. It is thus evident that the fact of evasion of statutory obligation that was detected by the visiting squad of enforcement officers of the provident fund organization in July, 2001 was virtually admitted by the petitioners. I am therefore unable to agree that the Section 7-A order of the commissioner is perverse or vitiated by non-application of mind. Minor discrepancies in facts and figures, if there were any, could have been brought to the commissioner's notice by the petitioners by filing a review application u/s 7-B. They never thought it necessary to file any such application. Hence I do not see any reason to interfere with the order only on the ground that there are certain discrepancies in facts and figures. There is absolutely no reason to say that the order is vitiated by any jurisdictional error or by breach of any principles of natural justice.

11. For these reasons, the writ petition is dismissed. The application for vacation of interim order (C.A.N. No. 5707/2008), not appearing, is treated as on the day's list, by consent of counsel for the parties, and it shall be deemed to be disposed of. There shall be no order for costs.

12. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the Section concerned.