

(2012) 07 CAL CK 0186

Calcutta High Court

Case No: Writ Petition No. 9311 (W) of 2008

Board of Trustees, Bata India
Limited Employees" Statutory
Provident Fund Service and
Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: July 3, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 17, 17(1)(b)

Citation: (2012) 135 FLR 29 : (2012) LLR 1214

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Dipak Kumar Ghosh and Mr. Ranjay De, for the Appellant; S.C. Prasad, for the P.F. Authority, for the Respondent

Judgement

Hon"ble Mr. Justice Jayanta Kumar Biswas

1. The petitioners in this WP under art.226 dated May 13, 2008 are questioning a notice dated March 2008 (WP p.238) issued by an Under Secretary to the Government of India, Ministry of Labour and Employment calling upon the Chairman of Bata India Limited Employees" Statutory Provident Fund to show cause why exemption granted to the establishment concerned under s.17(1)(b) of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 should not be cancelled under sub-s.(4) of s.17. The show cause notice was challenged alleging that evident vagueness and non-application of mind vitiated it by a jurisdictional defect. By an order dated May 15, 2008 the WP was admitted and the respondents were restrained from taking any further step on the basis of the notice. Admittedly, by a decision dated May 19, 2008 the Central Government cancelled the exemption

and steps were taken for publishing the decision in the Official Gazette.

2. Mr. Ghosh appearing for the petitioners submits as follows. By filing a CAN No. 5915 of 2008 the petitioners questioned the decision dated May 19, 2008. They filed a contempt application as well. They complied with the requirements. Hence it was unfair to cancel the exemption. This Court passed an order dated June 3, 2008 restraining the respondents from taking any step on the basis of the decision. Hence it should be quashed.

3. The petitioners alleging that the show cause notice was vitiated by an evident vagueness, ought to have called upon the Central Government to remove the vagueness. Vagueness, if any, could not and did not vitiate the notice by an incurable jurisdictional defect. The Central Government granting the exemption possessed the power to issue the notice asking the employer to show cause why the exemption should not be cancelled. Specific allegations were made. Hence it cannot be said that the notice was vitiated by non-application of mind.

4. The WP was filed questioning the notice containing the allegations and asking the employer to show cause why exemption granted to the establishment should not be cancelled.

5. Once the decision dated May 19, 2008 was given cancelling the exemption, rightly or wrongly, the show cause notice - found to be not vitiated by any incurable jurisdictional defect - and consequently the WP, lost their relevance. By filing a CAN (an interlocutory application) in the pending WP the petitioners could not seek a writ in the nature of certiorari quashing the decision dated May 19, 2008. Only fresh original proceedings questioning the decision could provide them the legal remedy, if any, against the decision.

6. The case of the petitioners that they complied with the requirements mentioned in the show cause notice is of no significance; for this they should have stated in their show cause in response to the notice issued by the Central Government. It was for the Central Government issuing the show cause notice to examine the cause shown and satisfy itself regarding compliance with the deficiencies alleging which the show cause notice was issued. In any case, after the decision dated May 19, 2008 the issue lost significance in so far as this WP is concerned. For these reasons, I dismiss the WP making it clear that nothing herein shall prevent the petitioners from questioning the decision dated May 19, 2008 cancelling the exemption to the establishment concerned. The CANs (not appearing and treated as on the day's list by consent) are hereby disposed of. No costs. Certified xerox.