

## **Gurbir Kaur Vs Regional Provident Fund Commissioner, Employees" Provident Fund Organisation and Others**

**Court:** Calcutta High Court

**Date of Decision:** Dec. 21, 2005

**Acts Referred:** Employees Provident Funds and Miscellaneous Provisions Act, 1952 " Section 2A, 7A, 7Q

**Citation:** (2006) 1 CALLT 566 : (2006) 1 CHN 547 : 110 CWN 399 : (2006) 109 FLR 818 : (2006) 3 LLJ 98

**Hon'ble Judges:** Jyotirmay Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Partha Sarathi Sengupta and Ashis Chakraborty, for the Appellant; Ashok Dasadhikary and S.C. Prasad, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Jyotirmay Bhattacharya, J.

The determination of the petitioner's liability u/s 7A of the Employees' Provident Fund and Miscellaneous

Provisions Act, 1952 for non-payment of the provident fund dues on account of employer as well as employees' share of contribution and the

computation of interest thereon u/s 7Q of the Act made by the Assistant Provident Fund Commission (CC) being Annexure "P-16" to this writ

petition at page 192, are under challenge in this writ petition.

2. Both the husband and the wife carry on business as security detective agency from the same premises. The wife is the petitioner in this writ

petition. The wife claims that they are carrying on their respective businesses independently having different identity. The husband carries on

business under the name and style of Orient Security & Detective Agency. Wife carries on business under the name and style of M/s. Oxford

Security & Detective Agency. Husband started his business long back. Wife commenced her business with effect from 1st August, 1994.

3. After expiry of the infancy period of the wife's business, the wife (the writ petitioner herein) by a letter being Annexure "P-4" to this writ

petition, requested the Regional Commissioner, Employees' Provident Fund, Calcutta, to register the wife's firm under the said Act for giving the

benefits of the said Act to her employees.

4. In reply thereto, the provident fund authority, by its letter dated 24th November, 1999 intimated the petitioner that since it is the responsibility of

the principal employer to ensure compliance for payment of provident fund contribution in respect of the employees engaged by the petitioner

directly or indirectly through the contractor, the petitioner was advised to remit the provident fund contribution of the employees engaged by her

through the principal employer.

5. After coming to know that the provident fund authority started allotting code numbers to the contractors, the petitioner sometimes in 2002

applied before the respondent for coverage by filing prescribed forms and also paid the entire employees" as well employer"s contribution for the

month of August, 1997 by way of demand draft.

6. Thereafter, provident fund authority by its letter dated 24th July, 2002 allotted the code number to the petitioner with effect from 1st June, 1996

and directed the petitioner to remit the provident fund dues from July, 1996 to July, 2002.

7. The money which was deposited by the petitioner by way of demand draft on account of the employers" as well as employees" share of

contribution for the month of August, 1997 was wrongly appropriated by the provident fund authorities towards the alleged dues of the petitioner

for the month of June, 1996.

8. Thereafter, a proceeding u/s 7A of the said Act was initiated by the provident fund authorities for determination of the petitioner"s dues from

July, 1996 to July, 2002. Ultimately by an order dated 27th May, 2004, a sum of rupees 1,16,20,023 /- was levied upon the petitioner towards

the provident fund dues of the petitioner. Several bank accounts of the petitioner were seized by the provident fund authorities for non-payment of

the said dues of the petitioner.

9. The petitioner preferred an appeal against the said order before the appellate authority. For expediting the hearing of the said appeal the

petitioner moved a writ petition being W.P. No. 1099 of 2004 before this Court. The said writ petition was disposed of on 25th June, 2004 by

directing the appellate authority to dispose of the said appeal within two months. The operation of the impugned determination of the petitioner"s

liability u/s 7A of the said Act which was made on 27th May, 2004, was stayed.

10. In spite of such direction, the hearing of the appeal could not be expedited, as the appellate authority was not functioning at the relevant time.

Accordingly, the petitioner again approached this Court with an application for modification of the earlier order dated 25th June, 2004 passed in

W.P. No. 1099 of 2004. While disposing of the said application for modification. Justice Amitava Lala (as His Lordship then was) by an order

dated 31st August, 2004 directed the provident fund authorities to rehear the matter upon giving fullest opportunity of hearing to the petitioner and

to pass a reasoned order afresh within three months from the date of communication of the order.

11. Accordingly, a fresh determination was made by the concerned authority and ultimately by an order dated 12th September, 2005 the

petitioner's liability was assessed at Rs.1,16,20,023/- u/s 7A of the said Act. The dues payable by the petitioner u/s 7Q of the said Act was

assessed at Rs.61,16,473/-.

12. The said order being Annexure "P-16" to this writ petition at page 192 is under challenge in this writ petition.

13. Mr. Sengupta, learned Advocate, appearing for the petitioner, submitted that the impugned order was passed without following the direction

passed by this Court in the earlier writ petition. Though the concerned authority was directed by this Court to pass a reasoned order, but in fact,

no reason was supplied by the concerned authority in the said order in support of its conclusion. Even the basis of the computation has not been

disclosed in the said order. Nothing is mentioned in the said order as to how many employees the petitioner has in her establishment and their

respective salaries. In the absence of these specifications, assessment of the petitioner's liability under the said Act cannot be made.

14. >Mr. Sengupta further submitted that the impugned order cannot be sustained in law as the said order was passed by the concerned authority

in total disregard of the relevant provisions of the said Act.

15. Mr. Sengupta contended that the finding which was arrived at by the concerned authority to the effect that the wife's business, e.g. M/s.

Oxford Security & Detective Agency is a mere branch and extension of the husband's establishment e.g. the Orient Security and Detective

Agency, is absolutely based on the surmise and conjecture.

16. Mr. Sengupta further contended that the concerned authority acted illegally by assessing the liability of the petitioner by clubbing her employees

with the employees of her husband's establishment.

17. Mr. Sengupta further contended that even assuming that the wife's establishment is a branch of the husband's establishment, still then in view

of provision as contained in Section 2A of the said Act, assessment should have been made in the hands of the principal e.g. the husband's

establishment by treating the wife's establishment as his branch. Mr. Sengupta further contended that Section 2A of the said Act does not

authorise the concerned authority to assess the individual liability of the branches independent of the principal.

18. Thus, Mr. Sengupta submitted that even if it is accepted that the wife's establishment is a branch of the husband's establishment, still then the

impugned order whereby the wife's liability was assessed independently cannot be sustained in law.

19. Under such circumstances, Mr. Sengupta prayed for setting aside the order impugned.

20. Mr. Das Adhikary, learned Senior Advocate, appearing on behalf of provident fund authority, supported the impugned order fully. Mr. Das

Adhikary submitted that the impugned order cannot be discarded by describing the same as a non-speaking order. Mr. Das Adhikary submitted

that the reasons for which the concerned authority arrived at its conclusion to the effect that the petitioner's establishment is the branch of her

husband's establishment, have been given by the concerned authority sufficiently in the order itself.

21. Mr. Das Adhikary further submitted that the petitioner has her records in her establishment by production of which the petitioner could have

challenged the correctness of the computation by the concerned authority. But the petitioner has neither disclosed the number of the employees in

her establishment nor disclosed the respective salaries of her employees.

22. According to Mr. Das Adhikary, the petitioner cannot challenge the correctness of computation under Sections 7A and 7Q of the said Act

without disclosing the actual number of her employees and their respective salaries in her establishment.

23. Mr. Das Adhikary further contended that Section 2A of the said Act never put an embargo upon the concerned authority for assessing the

liability of a branch of the principal establishment independently.

24. Mr. Das Adhikary, thus, submitted that no interference is necessary with the order impugned in the facts of the instant case.

25. Heard the learned the learned Advocates of the parties. Considered the materials on record.

26. On perusal of the order impugned, this Court finds that the basis of computation u/s 7A of the said Act by the concerned authority has not

been disclosed in the impugned order. Without giving details of the employees i.e., the number of the employees and their respective salaries, no

computation can be made by the concerned authority.

27. In the impugned order, the said particulars are very much lacking. As such, such an order cannot be held to be a reasoned order. This order, in

my view, is absolutely a non-speaking order. This Court also records its inability to verify the correctness of the computation with reference to the

number of employees in the concerned establishment and their respective salaries. Unless these particulars are given, one cannot verify the

correctness of the computation.

28. No doubt it is true that the primary obligation to disclose such particulars lies on the employer but even then the authority cannot shirk its

responsibility to disclose those particulars in the order, so that the employer can verify the correctness of such computation. When the concerned

authority determined the liability of the petitioner u/s 7A of the said Act on verification of the relevant records of the petitioner, the concerned

authority cannot proceed on surmise and conjecture. Non-disclosure of such particulars in the order leads to the conclusion that the decision

arrived at, was based on surmise and conjecture.

29. Accordingly, I hold that the impugned order being a non-speaking order, cannot be sustained in law. The effect of the non-speaking order was

considered by the Hon"ble Supreme Court in the case of S.N. Mukherjee Vs. Union of India, , wherein it was held that an administrative authority

exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

30. Relying upon the said decision, this Court holds that the impugned order being a non-speaking order is liable to be quashed.

31. That apart, I fully agree with the submission of Mr. Sengupta to the effect that u/s 2A of the said Act liability of a branch of the principal cannot

be assessed independently. On plain reading of the said provision, this Court holds that in case a principal has several branches, the principal can

be assessed under the said Act by clubbing the employees of the principal with the employees of its branch offices. Thus, if I have to consider the

impugned order from this angle, then I find that the concerned authority exceeded its jurisdiction by assessing the liability of the petitioner

independently of its principal.

32. Thus, the impugned order cannot be supported as the said order was passed in total disregard of the provision contained in Section 2A of the

said Act.

33. Even the findings of the concerned authority to the effect that the establishment of the petitioner is an extension and/or branch of her husband"s

establishment, cannot be retained on record as no one can be punished unheard. When the concerned authority found that the petitioner"s

establishment is an extension of her husband"s establishment, then it was the primary duty of the concerned authority to hear the husband of the

petitioner before arriving at such a conclusion.

34. Thus, the said finding which was arrived at by the concerned authority behind the back of the Orient Security & Detective Agency cannot be

retained on record.

35. Under such circumstances, this Court finds no hesitation to quash the order impugned being Annexure "P-16" to this writ petition at page 192.

36. This order will not prevent the concerned authority from assessing the liability of the employer who is actually liable to pay the provident fund

benefits to the employees of the petitioner in accordance with the provision of law,

37. The impugned order, thus, stands quashed.

38. Accordingly, the writ petition is allowed.

39. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

Later:

After passing of the order, a prayer is made by the learned Advocate for the provident fund authorities for stay of the operation of this order. If

such prayer is allowed, the effect of allowing such prayer will be the restoration of the order impugned. Thus, if the impugned order is allowed to

operate by virtue of this stay, the provident fund authorities will be free to implement the said order which does not exist to operate in the eye of

law because of the order passed in this writ petition. Under such circumstances, the prayer for stay cannot be allowed. Hence, such prayer for stay

stands rejected.