

(2011) 02 CAL CK 0078**Calcutta High Court****Case No:** Constitutional Writ Jurisdiction Appellate Side W.P. No. 16954 (W) of 2010

Tirupati Jute Industries Ltd. and

Another

APPELLANT

Vs

Employees Provident Fund

Organisation and Others

RESPONDENT

Date of Decision: Feb. 4, 2011**Acts Referred:**

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 2, 7A, 7A(2), 7A(3), 7B

Citation: (2011) 129 FLR 965 : (2011) 4 LLJ 197 : (2011) LLR 657**Hon'ble Judges:** Tapen Sen, J**Bench:** Single Bench**Advocate:** Partha Bhanja Chowdhury, S.K. Singh and Sujit Sharma, for the Appellant; P.K. Mallick and Anil Kumar Gupta, for the Respondent**Final Decision:** Dismissed**Judgement**

Tapen Sen, J.

In this writ petition, the Petitioners, M/s. Tirupati Jute Industries Ltd. and its Director, have prayed for an Order commanding upon the Respondents to withdraw and/or cancel and quash the Order dated 16.2.2009 as contained in Annexure-P/8 to the writ petition purporting to be an Order passed u/s 7-A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act). The Petitioners have also prayed for quashing the Order dated 26.2.2010 as contained in Annexure-P/10 passed under the provisions of Section 7-B of the said Act refusing to review the Order dated 16.2.2009. The Petitioners have also prayed for setting aside the Order/ Communication dated 23.7.2010 as contained in Annexure-P/11 whereby and whereunder the Senior Manager (Operations) of M/s. United Bank of India informed the Petitioners that their account has been attached by the Employees" Provident Fund Organisation and that they have been Ordered

by the Employees" Provident Fund authorities to pay the available balance which was lying in their account and for which the amount of Rs. 1,81,128.18 paise had already been debited on 15.7.2010. Other consequential prayers have been made including a prayer that the Respondents be injunctioned from giving effect to the impugned Orders.

During the course of submissions, Mr. Partha Bhanjan Chowdhury, learned Counsel appearing for the Petitioners, submitted that the very initiation of the proceedings u/s 7-A of the said Act was totally without jurisdiction inasmuch the said Act could not at all have been made applicable against the Petitioners qua Trainees/Apprentices in view of the fact that such persons are ousted from the definition of the word "Employee" as defined u/s 2(f) thereof. In support of such a contention, Mr. Chowdhury relied upon the case of Regional Provident Fund Commissioner, Bangalore v. Central Areacut and Coca Marketing and Processing Co-operative Ltd., Bangalore 2006 (108) FLR 805 (SC) Considering the aforementioned point argued, the Writ Petition was admitted for final hearing on 2.9.2010 whereafter it was heard on various dates and on 14.1.2011 the following Order was passed:

14.1.2011

W.P. 16954 (W) of 2010

Mr. Partha Bhanja Chowdhury

Mr. S.K. Singh, Mr. Sujit Sharma... for the Petitioner

Mr. P.K. Mallick, Mr. Amit Kumar Gupta... for the Respondents

Although this writ petition was admitted for final hearing on 2.9.2010 and matter was directed to be listed on 8.12.2010 with an interim order, this Court could not take up the matter as it was holding Court in Circuit Bench at Port Blair from 6th December, 2010 to 20th December, 2010. In the meantime another Hon"ble Single Judge directed the matter to be listed after the Christmas holidays and the interim order passed earlier was extended by one week after reopening of the Court. Thereafter on 10th January, 2011 the matter was argued both by Mr. Partha Bhanjan Chowdhury as well as by Mr. P.K. Mallick at great length and Mr. Mallick stated that he was fully ready with all points and since the case involved points of law, there was no necessity to file any counter-affidavit and therefore he proceeded to argue the case. The matter was therefore heard in extenso on that day and again, was ordered to be listed on 13th January, 2011 as a part-heard matter. On 13th January, 2011 the matter was given (sic again) heard for the whole of the second half. Today again the case has been heard for the whole of the second half. Hearing is now complete and order is reserved.

In view of the fact that affidavits have not been filed, allegations made, if any, would not be deemed to have been accepted by any of the Respondents.

(Tapen Sen, J.)

(Quoted)

2. It is on the basis of the aforementioned facts and points of law argued, that the writ petition was taken up for hearing and judgment was reserved on the said day i.e. on 14.1.2011.

3. Learned Counsel for the Petitioners, drew the attention of this Court to the first impugned Order dated 16.2.2009 which was passed u/s 7-A of the said Act and submitted that the Order itself would show that the Petitioners had raised the point that "Incentives" paid to an employee did not attract the provisions of the said Act and that the Petitioners were not liable for payment of Provident Fund Contribution on incentive allowances, Trainee Allowances and stipend as Trainees did not have any right of employment nor were they obliged to expect any employment even if offered by the Employers. He submitted that under the definition of the word "Employee" as defined u/s 2(f) of the said Act, such a person could be deemed to be an employee only if he was employed for wages in any kind of work, manual or otherwise. He submitted that Trainees/Apprentices engaged under the Apprentices Act or under the Standing Orders Act were excluded from the definition of the word "Employee" and therefore they could not be brought within the purview of Section 2(f) and therefore the very initiation of proceedings under the said Act was totally without jurisdiction.

4. In this context, learned Counsel also relied upon the definition of the words "basic wages" as defined u/s 2(b) and submitted that reading the provisions of Section 2(b) with Section 2(f), it would be abundantly clear that the two definitions clearly ousted Apprentices/trainees from the applicability of the Act read with the judgment referred to above. Learned Counsel then submitted that the Petitioner No. 1 (Jute Mill) was purchased in a liquidation proceedings and it started functioning on and from September, 1988. Suddenly, it received a Summons u/s 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, having Reference No. WB/HWR/R- Jute/ WB/90A/66 dated 13.4.2007, wherein the Assistant Provident Funds Commissioner, alleged that the establishment had failed to remit the Provident Fund, Family Pension Fund, Pension Fund and Insurance Fund dues in respect of allegedly evaded employees from the date of engagement to 3/07. Along with the said Summons u/s 7-A of the said Act dated 13.4.2007, the Petitioner No. 1 Company received another Summons u/s 7-A dated 13.4.2007, directing the deposit of (a) Provident Fund contribution for the period from 12/2006 to 3/2007, (b) Pension Fund contribution for the period from 12/2006 to 3/2007, (c) Insurance Fund contribution for the period from 12/2006 to 3/2007, (d) Administrative Charges/Inspection Charges to the Fund for the period 12/2006 to 3/2007 and (e) Administrative Charges/Inspection Charges to the Fund for the period from 12/2006 to 3/2007.

5. After receipt of the said Summons, the Petitioner No. 1 filed a Representation dated 8.6.2007. In the said representation, the Petitioner Company demanded the Report of the inspection on the basis of which the Section 7-A proceedings were initiated.

6. It is the grievance of the Petitioner that the aforementioned Report of the Inspector could not have been considered by the authorities without giving an opportunity of hearing to cross-examine the person who had prepared the same. This, according to the learned Counsel, was also contrary to the provisions of Section 7-A(2) read with Section 7-A(3) of the said Act, It is the further case of the Petitioners that they had brought on record the Certified Standing Orders (Annexure- P/1) which clearly went to show that an Apprentice was a learner who is paid allowances during the period of his training in terms of Standing Order No. 2(g) and therefore, such category of persons could not have been treated to be employees drawing wages. It is submitted that these points were not dealt with and although the Petitioners took these points in their petition for Review, they were not even touched and therefore the Orders are totally mechanical.

7. Having considered the submissions of the learned Counsel for the Petitioner, this Court notices that under the provisions of Section 2(f), an employee means a person who is employed for wages in any kind of work and who gets his wages directly or indirectly from the employer and includes any person who is engaged as an apprentice not being an apprentice engaged under the Apprentices Act or under the Standing Orders on the Establishment. Section 2(f) reads as follows:-

2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets, his wages directly or indirectly from the employer, [and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]

(Quoted)

8. In the instant case, Annexure-P/1 shows that it is a Standing Order in connection with the Indian Jute Mills Association and it is not a Standing Order in relation to the Petitioner No. 1. Even otherwise, whether an employee is an apprentice under the standing orders or not is a question of fact that has to be decided on evidences. The Employees" Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial legislation and under the "provisions of Section 7(1), any person who is aggrieved by any Order including an Order passed u/s 7-A or u/s 7-B has the right to prefer an

Appeal before the Tribunal. Under such circumstances, this Court is not inclined to make any comments in respect of the points argued either by the Petitioner or by the learned Counsel for the Respondents because any observations made by this Court might prejudice the case of the parties before the Appellate Forum and in any case, they would be at liberty to argue all the points before the Tribunal. Under such circumstances, this Court is not inclined to interfere with the Orders passed on the ground of existence of alternative statutory remedy.

9. The writ petition is accordingly dismissed. There shall be, however no Order as to costs.

10. The dismissal of the writ petition however will not prejudice the Petitioners in the event they choose to file an Appeal before the Tribunal and all points that have been argued or taken in this writ petition are left open to be decided by the Tribunal for which the parties will have the liberty to argue before the said Tribunal.

Upon appropriate Application(s) being made, urgent certified copy of this judgment, may be given/issued expeditiously subject to usual terms and conditions.