

(2014) 07 CAL CK 0034

Calcutta High Court

Case No: W.P. No. 4377 (W)/2008

Bata India Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 3, 2014

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A, 7B

Citation: (2014) 142 FLR 931 : (2014) 4 LLN 96 : (2014) LLR 947

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: S. Pal, Dipak Kumar Ghosh and Ranajay De, Advocate for the Appellant; S.C. Prasad, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Soumen Sen, J.

The writ petition is directed against orders dated 12th December, 2007 and 3rd March, 2008 passed by the Regional Provident Fund Commissioner in a proceeding u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act). Mr. Pal, learned Senior counsel appearing on behalf of the petitioner submitted that although in the writ petition the petitioner has challenged the vires of Section 7B of the said Act, 1952 on the ground that it excludes hearing before an order could be passed in an application for review is arbitrary; but the said issue may be left open at this stage if the court is persuaded to hold that the order passed u/s 7A of the Act has been passed in violation of the principles of natural justice.

2. The learned Senior Counsel has drawn my attention to a portion of the adjudication order passed u/s 7A where the Regional Provident Fund Commissioner relied upon a report of the Squad Enforcement Officers headed by the Assistant Provident Fund Commissioner dated 20th June, 2007 in arriving at the conclusion

that the petitioner-establishment would be required to pay a sum of Rs. 5,68,34,357 to the provident fund authorities. The writ petitioner, thereafter, preferred a review petition in which it has been specifically stated that no copy of the squad report was made over to the representative of the petitioner-company, nor any opportunity was afforded to cross-examine the officers of the visiting squad of which reliance was placed by the authority. The said application for review was rejected, inter alia, on the ground that the authorized representative of the management had never asked for a copy of the report of the squad though it was placed before it in the course of hearing.

3. The undisputed fact emerges from the record is that the adjudicating authority has relied upon the squad report and arrived at a conclusion on the basis of the squad report, however, copy of the said squad report was not supplied to the petitioner.

4. In my view, this course adopted by the provident fund-authorities is contrary to the principles of natural justice. The principles of natural justice envisages that a fair procedure should be followed during adjudication. The petitioner needs to be informed that the adjudicating authority is going to rely upon the squad report which might go against the petitioner. This duty cannot be escaped by contending that the copy of the said report was not asked for, which recording, however, has been disputed by the management.

5. Mr. Prasad, learned counsel appearing on behalf of the petitioner (sic respondent) submits that these 63 associates are in reality contractors employed by the management and in terms of paragraph 30 sub-paragraph (3) of the Employees' Provident Fund Scheme, 1952 the management cannot escape its liability towards provident fund dues. Mr. Prasad in this regard has referred to a decision of the Hon'ble Supreme Court reported in [Employees' State Insurance Corp. Vs. M/s. Harrison Malayalam Pvt. Ltd.](#), and relied upon the following passage from the said report:

"Under the Act, it was duty of the respondent-company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer. On the admitted fact that the respondent-company had engaged the contractor to execute the work, it was also the duty of the respondent-company to get the temporary identity certificates issued to the workmen as per the provisions of Regulations 12, 14 and 15 of the Employees' State Insurance [General] Regulations, 1950 and to pay the contribution as required by Section 40 of the Act. Since the respondent-company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-company as to how many workers were employed by its contractor. If the respondent-company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since the workmen employed by

the contractor, it has only itself to thank for its default. Since the workmen in fact were engaged by the contractor to execute the work in question and the respondent-company had failed to pay the contribution, the appellant-Corporation was entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired."

6. There cannot be any two opinion that if ultimately on examination of facts it is found that the so-called associates are in reality the contractors and an artificial device has been created to circumvent the provisions of the Act, the Provident Fund Authorities are within their right to claim such amount towards provident fund dues from the writ petitioner, but the fact remains that there has to be a proper adjudication of the issue. The observations made by the Provident Fund Commissioner with regard to associates in the impugned order can apply only provided a definite finding is arrived at as to the true identity of these G3 associates as in reality contractors. The doctrine of identification is applicable in the instant case and only on ascertainment of the true identity of the associates any final order could be passed. The petitioner cannot be fastened with liability on the basis of a report of which no opportunity is given to the petitioner to contradict the same and it was only on this ground that I am inclined to give opportunity to the petitioner only to deal with the squad report dated 20th June, 2007 and the authority concerned shall adjudicate the issue upon furnishing a copy of the said squad report to the petitioner and decide the matter in accordance with law.

7. In view thereof, the authority concerned are directed to supply a copy of the squad report dated 20th June, 2007 to the petitioner within a period of two weeks from date and the petitioner shall file a reply to the said squad report within two weeks thereafter. The Regional Provident Fund Commissioner shall, thereafter, decide the issue within a period of eight weeks after giving reasonable opportunity of hearing to the parties and shall decide the matter in accordance with law by passing a reasoned order. A copy of the final order of adjudication shall be communicated to the petitioner within a week from the date of passing of the final order.

8. In view of the aforesaid order, the Bank guarantee earlier furnished stands discharged. The Registrar General shall encash the fixed deposit prematurely and make over the proceeds thereof to the petitioner after deduction of all costs, charges and expenses. The petitioner shall deposit a sum of Rs. 2 Crores with the Provident Fund Authorities within two weeks from date as a condition precedent for availing the benefit of this order. The authorities are directed to keep the said amount in a short-term fixed deposit in a Nationalised Bank yielding highest interest till the matter is finally adjudicated upon by the authority concerned. The Provident Fund Authorities shall furnish the particulars of such fixed deposit to the petitioner soon after creation of such fixed deposit. It is made clear that the authority concerned shall decide the matter uninfluenced by the observation made by this

Court. The impugned orders dated 12th December, 2007 and 3rd March, 2008 passed by the Regional Provident Fund Commissioner accordingly stands quashed. The vires of Section 7B of the said Act need not be gone into at this stage and the said issue is left open to be decided at an appropriate proceeding.

With the above observation the writ petition is disposed of.

There shall, however, be no order as to costs.