

Emami Paper Mills Limited Vs The Union of India

Court: CALCUTTA HIGH COURT

Date of Decision: Dec. 5, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 17(2A)

Citation: (2017) 1 CLR 910 : (2017) 152 FLR 560 : (2017) LabLR 522 : (2017) 1 LLJ 445

Hon'ble Judges: Samapti Chatterjee, J.

Bench: Single Bench

Advocate: Mr. S.C. Prasad, Advocate, for the Respondent; Mr. Mihir Kundu, Advocate, for the L.I.C.; Mr. P.B. Chowdhury, Mr. S.K. Singh, Mr. Mainak Ganguly, Advocates, for the Petitioners

Final Decision: Allowed

Judgement

Mr. Samapti Chatterjee, J. - The issues to be determined in the present case are as follows :-

(a) Whether upon submission of the application for exemption as well as relaxation under Section 17 (2A) dated 20th May, 2001 by the petitioner

company the provident fund authority was under any obligation to allow relaxation as well as exemption in favour of the petitioner from the

operation of EDLI Scheme and communicate the same without any delay?

(b) Whether the provident fund authorities by their act thereby accepting the inspection charge from the petitioner establishment treated the

petitioner company as an exempted establishment ?

(c) Whether the provident fund authorities in forwarding the file of the petitioner company to the Exempted Section vide letter dated February 4,

2008 made it abundantly clear that the petitioner company is exempted one ?

Petitioner company assailing the impugned communication dated 19th December, 2014 issued by the Enforcement Officer of the Employees"

Provident Fund Organisation directing the petitioner company to purchase the EDLI exemption/relaxation order on deposit of the dues in the

statutory fund from May, 2001 onwards, filed the present writ petition.

2. The petitioner"s case in a nutshell is as follows :- The petitioner company since 2001 upto 2011 had introduced a Group Insurance Scheme

(GIS) instead of EDLI for its employees but since 2012 till date the petitioner company regularly deposited the amount to the EDLI. Unfortunately

by the impugned order dated 19th December, 2014 passed by the Enforcement Officer and the Employees' Provident Fund Organisation the

petitioner company was arbitrarily asked to deposit the dues in statutory fund from May 2001 onwards as the company failed to produce any valid

document in respect of relaxation/exemption granted by the provident fund authority in favour of the petitioner company.

3. Mr. P.B. Chowdhury, learned Advocate appearing for the petitioner company vehemently contended that it is the duty of the Employees'

Provident Fund Organisation to grant exemption/relaxation in favour of the company as far back as on 20th May, 2001 since the petitioner

company submitted the application under Section 17 (2A) for grant of relaxation as well as exemption from the operation of EDLI scheme.

4. Mr. Chowdhury further vehemently urged that till date no formal relaxation order has been issued by the Employees' Provident Fund

Organisation in favour of the petitioners company, therefore, petitioner company is not in a position to produce order of relaxation/exemption as

directed in the impugned order.

5. Mr. Chowdhury further argued that by reasons of the acts of the provident fund authority it should be presumed that the provident fund authority

has granted relaxation in favour of the petitioner company particularly for the fact that the said authority regularly accepted inspection charge from

the petitioner company.

6. Mr. Chowdhury further emphasized his argument on the point that it is reflected from the circular dated 12th June, 1987 as appears at page-31

of the writ petition that general direction was given by the Central Provident Fund Commissioner vide letter dated 25th June, 1987 mentioning that

all Regional Provident Fund Commissioner to adopt the practise of issuing order of relaxation to an establishment which has already introduced to

their employees" the Group Insurance Scheme of L.I.C.I. Relying on the said letter, Mr. Chowdhury vehemently urged that based on the circular it

should be presumed that relaxation/exemption had been granted in favour of the petitioners' establishment to deposit in GIS of LIC instead of

EDLI.

7. Mr. Chowdhury further vehemently contended that the respondent authorities by their act of continuous acceptance of the inspection charge

without any objection from the petitioner company have forfeited their right to ask the petitioner to make payment towards the alleged dues.

8. Mr. Chowdhury also argued that this particular respondent provident fund authority had earlier rejected the legitimate claim of one of the

employees of the petitioner on the ground that petitioners' establishment being exempted from the operation of EDLI Scheme cannot claim any

benefit under scheme from the provident fund authority. Therefore, that being the scenario the provident fund authority is debarred from claiming

the dues from the petitioner company towards the statutory fund including payment of EDLI dues in A/c XXI from March, 2012 onwards till

November, 2014.

9. Mr. Chowdhury further vehemently urged that in general cases the provident fund authority claims charges under Section 6 (4a) but when

exemption is granted they charge inspection charges. Since the petitioner company has been allowed to deposit inspection charges without any

break for a long period, therefore, it is presumed that the provident fund authority has granted relaxation in favour of the petitioners' establishment.

In support of his contention Mr. Chowdhury relied on various Sections of the said Act i.e. Section 17 (3) (a), Section 6 (c) , Section 6 (4) (a)

which are quoted below :-

Section-17 (3) (a)- Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section

from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such

person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment-

(a) shall, in relation to the Provident Fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts,

submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges, as the Central Government

may direct.

Section-6-C-Employees' Deposit-Linked Insurance Scheme.-(1) The Central Government may, by notification in the Official Gazette, frame a

Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of

any establishment or class of establishments to which this Act applies.

Section-6 (4) (a) - The employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which

he is required to make under sub-section, (2) as the Central Government may, from time to time, determine to meet all the expenses in connection

with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that scheme.

10. Mr. Chowdhury further submitted that the petitioner company paid continuously in LIC from May, 2001 till February, 2012 but from March,

2012 again the company switched over to EDLI. In support of his contention Mr. Chowdhury relied on a Hon'ble Division Bench decision

reported in 1997 (I) CHN Page-137 Paragraph-4 (Jayanta Nath Majumdar v. The State of West Bengal & Ors) where the Hon"ble Division

Bench held when a person accepted money he is debarred from raising any question challenging the same.

11. Per contra, Mr. S.C. Prasad, learned Advocate appearing for the provident fund authority vehemently urged that no formal relaxation order

has ever been passed in favour of the petitioner company by the Provident Fund Commissioner for depositing the amount in LIC instead of

depositing the same in EDLI.

12. Mr. Prasad further contended that the petitioners' establishment has violated the rules. It was the duty of the establishment to obtain the order

of exemption from the operation of the EDLI scheme of the Employees' Provident Fund Authorities, before shifting over to GIC. Majority of the

employees of the Gulmohar Unit of the petitioner company had exercised their option in favour of the Group Insurance Scheme and as such the

certificate dated 26.06.2001 was issued by the petitioner stating that majority of its employees had opted for the GIS with the LIC. But the

establishment under Section 17 (2A) of EPF Act for exemption from the operation of the EDLI scheme from May 2001 have applied only on 31st

May, 2001. No formal relaxation and/or exemption from operation of the EDLI scheme has been granted in favour of the petitioner company.

13. Mr. Prasad further contended that the petitioner contributed inspection charges under A/c No.22 and stopped making payment under A/C

No.21. But being an establishment petitioner company is liable to pay inspection charges under Section 17 (3A) (a) of the EPF and MP Act,

1952.

14. Mr. Prasad further vehemently urged that the petitioners' establishment will not be allowed to deposit the dues unless the payment of EDLI

dues is made up as after March 2012 the petitioners' establishment had deposited EDLI contribution instead of GIS of LIC. In support of his

contention Mr. Prasad submitted that upon a claim made in respect of the deceased employee under EDLI on 7th March, 2014 the EPF authority

rejected the same on the ground that establishment is exempted from the EDLI in the year 1976.

15. Mr. Prasad further urged that it is revealed from the records that the petitioners' establishment without obtaining exemption for EDLI Scheme

from the respondent authority suo-moto adopted GIS Scheme under LIC thereby violating the rules. Therefore, there is no illegality in the

impugned direction of the respondent no.4 to the petitioners' establishment to make payment of the dues under EDLI Scheme from May, 2001.

16. Mr. Prasad further contended that the premium deposited to LIC upto March, 2012 is wholly without jurisdiction as no exemption order has

been issued by the provident fund authority.

17. Mr. Prasad also urged that on 19th December, 2014 when Enforcement Officer went to the office of the petitioners' establishment for

inspection of the record pertaining to the status of the exemption then one Sri Aich produced the proof of payment of premium to LIC up to the

year 2012 but Sri Aich failed to produce any EDLI exemption order. The petitioner company only made an application for exemption on 14th

June, 2001 which does not create any right in favour of the petitioner company to claim that the exemption has been granted by the provident fund

authority.

18. Considering the submissions advanced by the learned Advocates appearing for the parties and after perusing the records I find that though it is

established that no formal exemption order has been granted by the provident fund authority in favour of the petitioner company on the basis of the

application dated 14th June, 2001 but from the act of the provident fund authority it is apparent that exemption has been granted by the provident

fund authority in favour of the petitioners' establishment as time to time the provident fund authority accepted the inspection charge from the

petitioners' establishment.

Further, Court cannot ignore the submissions of Mr. P.B. Chowdhury that after exemption is granted only then right of acceptance of inspection

charge by the provident fund authority applies.

It is also established that the provident fund authority continuously accepted the inspection charge from the petitioner company. This fact clearly

established beyond any doubt that petitioner's application for exemption dated 14th June, 2001 has been excepted. Therefore, now at this stage

by the impugned order dated 19th December, 2014 the Enforcement Officer EPFO cannot turn around and direct the petitioners' establishment to

deposit the dues in the statutory fund from May, 2001 onwards. On the other hand authority was in obligation to grant formal exemption/relaxation

order.

19. It also appears from the circular dated 12th June, 1987 (at Page-31) of the writ petition that general direction was given by the Central

Provident Fund Commissioner to all the Regional Provident Fund Commissioner to adopt a uniform practice of issuing orders of relaxation to an

establishment if the said establishment had introduced GIS of the LIC for its employees from the 1st date of the month when such application for

exemption is made. It further appears that such orders may be conveyed to the establishment within the month of the receipt of the application for

exemption under Section 17 (2A) of the Employees' Provident Fund and Miscellaneous Provident Fund Act, 1952
Further such exemption order

should be reached the Central Provident Fund Commissioner within six months of the issuance of relaxation order. But
unfortunately in the present

case no such steps has been taken by the Regional Provident Fund Commissioner to grant relaxation on the basis of
the petitioner's application

dated 14th June, 2001 to switch over from the EDLI to GIS of LIC.

20. In my opinion the provident fund authority was under obligation to grant relaxation on the application of the
petitioner dated 14th June, 2001.

Considering the decision relied on by Mr. P.B. Chowdhury (Jayanta Nath Majumdar (supra)) and in the facts and
circumstances of this case as

discussed above, in my opinion, the impugned order dated 19th December, 2014 issued by the Enforcement Officer.
EPFO is not at all

sustainable.

21. Accordingly, the impugned order dated 19th December, 2014 is hereby quashed and set aside.

22. Resultantly the writ petition stands allowed, however no order as to costs.

23. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the
formalities.