(2019) 01 RAJ CK 0367

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition No. 221 Of 2000

Regional Provident Fund Commissioner		APPELLANT
	Vs	
Shivdeep Industries Ltd. And Ors		RESPONDENT

Date of Decision: Jan. 22, 2019

Acts Referred:

- Employees' Provident Fund And Miscellaneous Provisions Act, 1952 - Section 1, 1(3)(a), 1(3)(b), 1(4), 1(5), 3(a), 16, 16(1), 16(3), 16(4)

Hon'ble Judges: Sanjeev Prakash Sharma, J

Bench: Single Bench

Advocate: Narendra Singh Yadav, Himanshu Jain

Final Decision: Dismissed

Judgement

1. Learned counsel for the petitioner while assailing the order passed by the Presiding Officer Employees Provident Fund Appellate Tribunal dt.

15.10.1998 submits that in terms of the judgment passed by the Supreme Court in Basant Lal Jain v. Regional Provident Fund Commissioner & Ors.,

the respondent was required to submit accounts in terms of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the order

passed by the Regional Provident Fund Commissioner, Rajasthan, dt. 29.04.1998 was justified and legal and the same could not have been set aside in

appeal.

2. Learned counsel further submits that vide notification dt. 07.03.1962, the Government of India had notified every trading and commercial

establishment employing 20 or more persons each and engaged in the purchase, sell or storage of any goods to come within the ambit of Act of 1952.

Accordingly, the respondent-Shivdeep Industries Limited which was engaged in manufacturing Bikaneri Papad and Bhujia were liable to be covered

under the schedule as trading and commercial establishment and was therefore required to produce books of accounts for the notice period.

3. Learned counsel appearing for the respondents supports the orders passed by the Appellate Tribunal and submits that the Tribunal has relied upon

its earlier orders passed in case of Sri Ram Papad Bhandar, Bikaner wherein a similar view was taken by it. It is submitted that the said decision

taken by the Tribunal has not been challenged by the petitioner and a different view therefore could not have been taken by the Tribunal. The

respondents would not also be allowed to take two different stands relating to similarly placed persons. This Court while issuing notices had observed

that the respondents establishment had accepted to be under the coverage of the Act and the provident fund was being deposited by the respondents.

The effect and operation of the order passed by the Appellate Tribunal was therefore stayed and the interim order is continuing.

4. Before dealing with the submissions, it would be appropriate to quote Section 1 of the Act of 1952 which would be relevant for the purpose on the

question of the applicability of the Act, which reads as under:-

1. Short title, extent and application.-(1) This Act may be called the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification

in the Official Gazette, specify, in this behalf: Provided that the Central Government may, after giving not less than two months' notice of its intention

so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than

twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-Section 3 of this Section or-sub-Section 1 of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

5. From perusal of the aforesaid Section, it is apparent that the provisions of the Act would apply in three different circumstances. Firstly, under Sec. 1(3)(a), Section 1(3)(b) and as per Section 1(4) as above. The question with regard to the applicability of Section 3(a) of the Act on the respondents has in the opinion of this Court become academic as the respondents have already started depositing provident fund and has by their action agreed of the application of the provisions of die Act in terms of Section 1(4) as noticed above. Keeping in view that the respondents have already deposited provident fund amount in terms of Section 1(4) of the Act of 1952, the provisions of Section 1(5) of the Act would come into operation and even if number of persons employed by them reduces from 20, they will have to continue to be governed by the Act of 1952. Accordingly, the question decided by the Appellate Authority has become otiose and does not call for adjudication in view of the admitted position of the respondents depositing provident fund of their employees under the EPF Act, 1952.

6. Accordingly, this writ petition is rendered infructuous and accordingly dismissed. The order passed by the Appellate Authority shall have no application now on the respondents.