Supreme Court of India
Food Corporation Of India vs The Union Of India & Ors on 6 April, 1998
Author: K Venkataswami
Bench: K. Venkataswami, A.P. Misra

PETITIONER:
FOOD CORPORATION OF INDIA

Vs.

RESPONDENT:
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT: 06/04/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R K. Venkataswami,J.

These two appeals arise out of an order dated 9.12.94 of the Kerala High Court in Writ Appeal No. 664/91 and O.P. No. 7523/89. The questions that arose for consideration before the High Court in Writ appeal No. 664/91 were (a) whether the Food Corporation of India (for short 'FCI'), the appellant herein, for the purposes of application of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") would be an 'establishment' and (b) whether 31 headload workers (workers in question for short) engaged b y the Contractor in loading and unloading operation at Kuttipuram Railway Station would be regarded as 'employees' of the FCI within the meaning of Section 2(f) of the act and consequently liable to remit the contributions required under the act. The latter question required under the act. The latter question alone was agitated before us.

The question for consideration before the Kerala High Court in O.P. No. 7523/89 was whether the Contractor (petitioner in the said O.P.) was entitled to refund of security deposit amounting to Rs.1,35,000/- with interest at 12% p.a. from the FCI.

In the view we propose to take, we do not intend to deal with the matters elaborately. As the

question of refund of security deposit was inter-related withe the question relating to the liability or otherwise of the FCI under the Act as referred to above, the High Court decided the two matters by a common judgement and for the same reason we have also dealt with these two appeals by this common order.

Initially, the second respondent, Regional Provident Commissioner, fixed the liability on the FCI under the Act on the basis of a Report given by the Provident Fund Inspector prepared behind the back of the appellant. It was challenged before the High Court. A Division Bench of the Kerala High Court in Writ Appeal No.467/85 dated 13.10.87 set aside the assessment made by the second respondent and remanded the case to the Provident Fund Commissioner with a direction that if the proposes to rely upon the Inspector's Report, a copy of the same should be furnished to the appellant and an opportunity of showing cause of being heard should also be afforded to the appellant before rendering a final decision. Accordingly, the second respondent after issuing the show-cause notice and supplying a copy of the Inspection Report and after giving an opportunity to the appellant again found that the appellant was the real employer of the said 31 headload workers through the Contractor and as such, liable to pay the contributions under the act. For coming to this conclusion, the second respondent placed reliance on an alleged agreement entered into between the FCI and the Union representing the railway goods shed workers. Principally, based on the said agreement, the decision of the second respondent was rendered. We may at once point out that through notice was served on the second respondent, none appeared and assisted the Court when these appeals were heard by this Court. There is nothing on record to evidence the said agreement. It is also denied by the appellant that there was any such agreement which will show that the appellant was the real employer of the 31 headload workers through the Contractor.

Aggrieved by the order of the second respondent, the appellant filed O.P. No.10332/88-E before the Kerala High Court. The learned Single Judge, after referring to the role played by the FCI in settling the dispute between the workers and the Contractor, reached a conclusion that the workers in question are the employees of the FCI through the Contractor and, therefore, the second respondent was justified in fixing the liability on the appellant. Still aggrieved, the appellant preferred Writ Appeal No.664/91 before the Division Bench of the same High Court. The Division bench noticed the facts as follows:-

> "It is submitted that the workers in the Railway shed do loading and unloading work in respect of wagons and not exclusively in respect of wagons containing the petitioner's goods. These workers are not engaged by the petitioner- Corporation but by the independent contractors who have contracted with the petitioner to do the loading and unloading operations. These independent contractors enter into contracts for the Handling and Transport of Foodgrains for specific periods. The persons are engaged by the contractors and the petitioner-Corporation has no say in the engagement of the workers. Therefore, the only question is to proceed further on this undisputed position for the decision of the questions spelled out hereinbefore."

However, while deciding the issue the Division Bench observed as follows:-

> "It is on record, as has been also sought to be taken up by the learned Judge for support to the conclusion that the 31 persons are employees, that the Corporation has intervened in the matter of settling the disputes between the contractors and the workers the learned Judge observes that the intervention is justifiable because the Corporation is under an obligation to see that the foodgrains are distributed properly at proper time and any stalemate caused by the disputes between the workers and the contractors will affect the system of distribution. This additional aspect also, in our judgement lends assurance to the conclusion reached, on the admitted to the conclusion reached, on the admitted pleadings that the 31 workers are employees of the Corporation under the extended definition."

Section 2 (e) and (f) of the Act define 'employer' and 'employee' as follows:-

> "2(e) "employer" means -
>
> (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub- section(1) of Section 7 of the Factories act, 1948, the person so named; and
>
> (ii) in relation to any other establishment, the person who, or the authority which has the ultimate control over the affairs ate entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;
>
> (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 aprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment."

As already pointed out, no materials are placed before us and we do not find that any material was placed before the High Court to come to a conclusion that there was an agreement between the FCI and the Union representing the railway goods shed workers to hold the FCI as employer of the workers in question in the light of the definitions of 'employer' and 'employee' in the Act. Further, in the counter affidavit filed in this Court on behalf of Respondents 1 and 2 in paragraph 8, it is stated as follows:-

"These employees were doing exclusively the work connected with the Food Corporation of India and wages of these employees were paid by the contractors engaged/appointed legally by the Food

Corporation of India. There were even agreement subsisting between the Food Corporation of India and the union representing the employees working in the Railway Goods shed on their demands. The employees engaged by or through the contractors, therefore, fall within the definition of "employee" as per Section 2(f) of the Employees' Provident Funds and Miscellaneous Provision Act, 1952."

Again, expect the averment as above, no material is placed before us to decide the issue. In the absence of materials, we are of the view that the High Court was not justified in assuming certain factors to fix the liability on the FCI without appreciating the relevant provisions in the Act. Likewise, in the absence of materials before us we do not want to decide the issue finally and, therefore, we set aside the order under appellants remit the matter to the Division Bench for fresh hearing. The parties are at liberty to place before the High Court all relevant materials to substantiate their respective contentions. As the question of refund of the security deposit is inter-related with the decision regarding the liability of the FCI to pay the contribution under the Act, that matter will also be heard by the Division Bench in O.P. No. 7523/89 is also set aside and the matter is remanded to be heard along with Writ Appeal No.664/91.

The appeals are allowed accordingly with no order as to costs.