

GAHC010018982015



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/4705/2015

ON THE DEATH OF SMTI. MANJU BARDIA
HER LEGAL HEIR, 1(a) JOY KUMAR BARDIA, S/O LATE GULAB CHAND
BARDIA R/O- JANIGANJ BAZAR, SILCHAR, DIST.- CACHAR, ASSAM,
1(b) RUCHI BARDIA, RESIDENT OF JANIGANJ BAZAR, SILCHAR IN THE
DISTRICT OF CACHAR, ASSAM-788001.1(c) LIPI BARDIA, D/O- JOY KUMAR
BARDIA, RESIDENT OF JANIGANJ BAZAR, SILCHAR IN THE DISTRICT OF
CACHAR, ASSAM- 788001.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECY., MINISTRY OF LABOUR AND EMPLOYMENT, SHRAM
SHAKTI BHAWAN, FARI MARG, NEW DELHI- 110001.

2:THE EMPLOYEES' PROVIDENT FUND ORGANISATION
REP. BY THE CENTRAL BOARD OF TRUSTEES
BHAVISHYA NIDHI BHAWAN
14
BHIKAIJI CAMA PLACE
NEW DELHI- 110066.

3:THE EMPLOYEES' PROVIDENT FUND ORGANISATION
N.E. REGION
REP. BY THE REGIONAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAWAN
G.S. ROAD
NEAR BHARALU BRIDGE
BHANGAGARH
GHY- 5
ASSAM.

4:THE ASSTT. PROVIDENT FUND COMMISSIONER COMPLIANCE AND

RECOVERY
THE EMPLOYEES' PROVIDENT FUND ORGANAZATION
N.E. REGION
BHAVISHYA NIDHI BHAWAN
G.S. ROAD
NEAR BHARALU BRIDGE
BHANGAGARH
GHY- 5
ASSAM.

5:THE ENFORCEMENT OFFICER
EMPLOYEES' PROVIDENT FUND ORGANISATION
NORTH EAST REGION
JAGANNATH TRAVELS BUILDING
2ND FLOOR
HOSPITAL ROAD
SILCHAR- 788005
ASSAM

Advocate for the Petitioner : MD.ASLAM

Advocate for the Respondent : C.G.C.

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

20.02.2024

Heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Ms. K. Sarma, learned counsel for the petitioner. Also heard Mr. P.K. Roy, learned Senior Counsel assisted by Mr. A. Chakraborty, learned counsel for respondent Nos. 2 to 5.

- 2.** By this writ petition, the petitioner is challenging the action of the respondent authorities in initiating proceedings under Section 7(A) of the Employees' provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act).
- 3.** The fact of the case is that the petitioner has been engaged in the business of tent house by providing in rent furniture/utensils and such other allied goods to be

used in wedding ceremonies etc, and through the income earned therefrom has been sustaining herself and her family members.

4. It is the further case of the petitioner that the petitioner had employed about 6 to 7 persons to manage the day to day affairs of the tent house.

5. It is the further case of the petitioner that the petitioner received a letter dated 21.10.2013 issued by respondent No. 4 bringing the petitioner concern i.e. M/s Chakkeswari Bhandar under the purview of the Employees' provident Funds and Miscellaneous Provisions Act, 1952 w.e.f 29.12.2013.

6. It is the further case of the petitioner that it is alleged in the said letter that the petitioner had not deposited the contributions and as such, it was directed to deposit the same, failing which penal damages shall be imposed upon the petitioner as per the Act. Thereafter, proceedings under Section 7A of the said Act was initiated against the petitioner wherein several notices for appearances have been issued to furnish the requisite documents.

7. It appears that the petitioner has not appeared in the aforesaid proceedings on one or other pretext. Finally, by filing this writ petition, the petitioner has challenged the Notice dated 13.03.2015 (23.03.2015) whereby the petitioner was asked to furnish all the relevant records, such as salary and wages, attendance register/record etc. in respect of the employees. In the said writ proceedings, further action of the PF authorities was stayed until the returnable date which was extended later on till disposal of the writ petition.

8. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the petitioner submits that the petitioner concern does not fall under the purview of the said Act, 1952 and as such, the show cause notice is bad. He further submits that the service provided by the petitioner is not a notified service under the said Act.

9. Mr. P.K. Roy, learned Senior Counsel for the respondents on the other hand submits that the proceeding under Section 7A of the Act is at the initial stage wherein the petitioner has been asked to submit necessary documents and as such, for want of document, the proceedings could not be concluded. He further submits that this writ petition is premature and is an abuse of the Court process.

10. I have heard the submissions made at the bar and I have perused the materials available on record.

11. It appears from the impugned notice annexed to the writ petition at Annexure-15 that the petitioner instead of appearing and producing the relevant documents before the proceedings under Section 7A of the Act sought time by their letter dated 13.05.2015 (Annexure 17) on the ground that they cannot come to Guwahati to submit the requisite records as Guwahati is an earthquake prone area. The aforesaid reply does not appear to be sound in the mind of this Court.

12. In order to appreciate the rival submissions of the contesting parties, Section 7A of the Act is reproduced hereunder for ready reference:-

“[7A. Determination of moneys due from employers.-[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order 4[***] shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

7[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]]”

A bare perusal of the aforesaid Section indicates that the dispute as regards the applicability of this Act to an establishment can also be decided under Section 7A of the Act. Further, the authority under Section 7A has been deemed to be a judicial proceeding and has also been vested the powers of a Civil Court under CPC in relation for trying a suit, for the purpose of holding inquiry to decide the dispute under Section 7A of the said Act. In view of the aforesaid mandate of law, it appears that the dispute as regards the applicability of this Act to an establishment can be decided under proceedings held under Section 7A of the Act.

13. In view of the above, it appears to this Court that the petitioner can appear before the proceedings under Section 7A of the Act and show that the Employees' provident Funds and Miscellaneous Provisions Act, 1952 is not applicable in the case of the petitioner.

14. That being the position of the law, this Court finds no justification as to keep this matter pending and not allowing the said proceedings to continue.

15. As such, the writ petitioner has failed to make out any case warranting interference from this Hon'ble Court.

16. With the above observation, this writ petition stands dismissed.

17. Interim order passed earlier accordingly stands vacated.

No cost.

JUDGE

Comparing Assistant