

IN THE HIGH COURT OF TRIPURA AGARTALA

W.P. (C) 12 of 2006

M/S. Somnath Enterprise,
A Partnership Firm,
Mahaprabhu Mandir Road,
Maharajganj Bazar,
Agartala – 799001,
District – West Tripura.
(To be represented by it's Partners –

(1) Shri Mono Mohan Pal,
S/O. Late Umesh Chandra Pal,
Shantipara, South Lane,
P.S. – East Agartala,
District – West Tripura.

(2) Smt. Dipti Pal,
W/O. Late Rabindra Pal,
Shantipara, South Lane,
P.S. – East Agartala,
District – West Tripura.

(3) Sri Swarup Kanti Dey,
S/O. Late Lalit Mohan Dey,
Krishnanagar, Old Kalibari Lane,
P.S. – West Agartala,
District – West Tripura.

..... Petitioner.
- Vs -

1. The Union of India,
(To be represented by
the Secretary to the
Government of India,
Ministry of Labour and Employment,
Srama Sakti Bhawan,
New Delhi – 110 011.
2. The Sub Regional Provident Fund,
Commissioner, Airport Road,
Agartala, West Tripura West.
3. The Assistant Provident Fund
Commissioner, Sub Regional Office,

Employees' Provident Fund
Organization, Government of India,
Ministry of Labour, Airport Road,
Agartala, West Tripura.

4. The Enforcement Officer,
Employees Provident Fund Organization,
Sub-Regional Office,
Airport Road, Agartala,
West Tripura District.
5. Mr. P.K. Mistra
Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund
Commissioner,
Bhakishyanidhi Bhavan, Panposh Road,
Rourkella – 769-004.

..... Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioner : Mr. P. Roy Barman, Advocate.
Mr. B. Saha, Advocate.

For the respondents : Mr. A. Lodh, Advocate.

Date of hearing &
delivery of Judgment
& order : 31.03.2014.

Whether fit for Reporting : NO

JUDGMENT & ORDER (ORAL)

Heard learned counsel, Mr. P. Roy Barman for the petitioner and learned counsel, Mr. A. Lodh for the respondents.

It is submitted by learned counsel, Mr. Roy Barman that the petitioner, M/S. Somnath Enterprise is a partnership firm consisting of three partners namely, Shri Mono Mohan Pal, Smt. Dipti Pal and Shri Swarup Kanti Dey and the firm dealing with

business of matches, milk powder, electric goods etc. There is another partnership firm namely, M/S. Rakshyakali Industries consisting of two partners namely, Shri Mano Mohan Pal and Shri Amar Pal and that firm dealing with the business of spice products.

2. On 21.03.2003, an inspection was carried out in the premises of M/S Rakshyakali Industries by the enforcement officer of the respondents and at that time, the enforcement officer found 10 workers present and working in the premises of M/S Rakshyakali Industries and a list of the employees was prepared. After preparation of list, Amar Pal, the partner of M/S. Rakshyakali Industries was asked to sign the list, but it is alleged that Amar Pal refused to put the signature and thereafter, Swarup Kanti Dey signed the list of employees. Subsequently, a notice was issued to Swarup Kanti Dey, who is a partner of M/S. Somnath Enterprise to appear and file affidavit in respect of his signing the paper while inquiry was conducted in the premises of M/S. Rakshyakali Industries on 21.03.2003. It is further submitted by learned counsel, Mr. Roy Barman that the issue was taken up before the Gauhati High Court, Agartala Bench by filing W.P. (C) No. 204 of 2004 and by order dated 16.09.2004, the writ petition was disposed of with a direction to the Provident Fund Commissioner to re-investigate into the matter relating to the number of employees working in the establishment of the petitioner-firm i.e. M/S.

Rakshyakali Industries. The respondents, thereafter, passed the impugned order dated 08.08.2005 (Annexure-I to the writ petition) holding that there is managerial integrity and functional integrity between the two partnership firms i.e. M/S. Somnath Enterprise and M/S. Rakshyakali Industries and passed the order concluding as follows:-

"Considering entire affairs of the case and keeping all aspects of the case in mind, I, Sir K.B. Ghosh Dastider, Assistant Provident Fund Commissioner, S.R.O. Agartala, by virtue of power conferred to me u/s 7(A)(a) of the Act decide the applicability dispute by pronouncing an order to the effect that the coverage Notice issued under Notice No. SRO/TR/AS/2479/Enf/Cov/7305 – 7307 dated 31.03.2003 making the Act applicable provisionally w.e.f. 21.03.2003 u/s 1(3) (b) of the Act under the schedule head 'Trading and commercial" stands correct."

3. It is submitted by Mr. Roy Barman, learned counsel of the petitioners that M/S. Somnath Enterprise and M/S. Rakshyakali Industries are two distinct partnership firms and the impugned order has been passed integrating/clubbing together both the partnership firms in respect of its employees without giving any notice to the petitioner-firm and without hearing them. A notice was issued to Swarup Kanti Dey, who is incidentally a partner of M/S. Somnath Enterprise for the reasons that he signed a statement of employees of M/S. Rakshyakali Industries when it was inspected by the enforcement officer of the respondents. Such notice can in no way be said as a notice to M/S. Somnath Enterprise for the purpose of clubbing the said firm with M/S. Rakshyakali Industries. It is, therefore, submitted by learned counsel, Mr. Roy Barman that the petitioners only want that a

notice be given to them properly and they should be heard before clubbing them with M/S. Rakhyakali Industries.

4. Appearng on behalf of the respondents, Mr. Lodh, learned counsel referring to the impugned order dated 08.08.2005 (Annexure-I to the writ petition) has submitted that the order itself clearly reflects that after the order passed by the High Court, on numerous occasions, the matter was listed for hearing, but the representatives of M/S. Rakhyakali Industries avoiding the hearing and delaying the process in different ways and means and as a result, the matter could not be disposed of for a pretty long time. Learned counsel has submitted that Annexure-F, the notice dated 13.04.2005 is enough to arrive at a conclusion that M/S. Somnath Enterprise got information about the inquiry/inspection going on since both the concerns functioning from the same premises and the workers were same.

5. I have meticulously gone through the impugned order dated 08.08.2005 (Annexure-I to the writ petition) passed by the Assistant Provident Fund Commissioner.

Admittedly, an inquiry under the EPF & MP Act, 1952 was initiated against M/S. Rakhyakali Industries. Annexure-R-5, the letter dated 21.03.2003 clearly shows that Regional Provident Fund Commissioner-II directed Mr. K. Bhattacharjee, the enforcement officer to visit the establishment of M/S. Rakhyakali

Industries for a physical verification in respect of its number of employees working in the establishment. Annexure-R-6 shows that Sri K. Bhattacharjee, enforcement officer visited the premises on 21.03.2003 and prepared a list of 10 employees working in the establishment of M/S. Rakshyakali Industries. One of the partner of the firm namely, Mr. Amar Pal was present and he was asked to sign the statement, but he refused and he asked Mr. Swarup Kanti Dey to sign the statement and Swarup Kanti Dey signed it accordingly. Subsequently, on 13.04.2005, Annexure-F notice was issued to Swarup Kanti Dey addressing him as a partner of M/S. Somnath Enterprise to appear, give evidence and to file an affidavit in respect of the paper he has signed on 21.03.2003 while the establishment of M/S. Rakshyakali Industries was under inspection. The contents of said notice may be reproduced for fair appreciation of the issue, which reads as follows:-

**"To
Shri Swarup Kanti Dey,
Partner of M/S Somnath Enterprise,
Mahaprabhu Mandir Road,
M.G. Bazar, Agartala.**

Sub: Summon issued under section 7A of the EPF & MP Act'52.

Whereas as enquiry under section 7A of the EPF & MP act'52 is going on against M/S Rakshakali Industry as per order of the honourable Guwahati High Court

AND

Whereas it is understood that you have signed a paper on behalf of the partner of M/S Rakshakali Industry and handedover the same to the Enforcement officer of EPFO at the time of inspection conducted by him on 21.03.2003.

I direct you to appear before the undersigned at 11AM of 27.4.05 to give evidence an affidavit.

**(K B GHOSH DASTIDER)
ASSTT P F COMMISSIONER"**

6. The above notice can in no way be said as a notice to M/S. Somnath Enterprise, which is a separate concern for clubbing together both the partnership firms in respect of their employees for bringing the firms under the operation of EPF & MP Act. In the impugned order dated 08.08.2005 (Annexure-I to the writ petition), the Assistant Provident Fund Commissioner has observed that there were managerial integrity and functional integrity of both the partnership firms in respect of their business and that both the firms functioning from the same premises and therefore, those were clubbed for arriving at a conclusion as indicated hereinbefore. The observation of the Assistant Provident Fund Commissioner that both the partnership firms functioning from the same premises has been disputed in this writ petition. The Assistant Provident Fund Commissioner, while coming to the conclusion that both the partnership firms functioning together under the same managerial establishment was supposed to hear both the firms asking them to place before him the records of both the firms. There is nothing to show that M/S. Somnath Enterprise was ever asked to place its records and documents for inspection or that the enforcement officer inspected M/S. Somnath Enterprise in course of his inspection on 21.03.2003.

7. Since the petitioner firm i.e. M/S. Somnath Enterprise already got the copy of order dated 08.08.2005 which has implicated them, I think, the further notice on M/S. Somnath Enterprise is not called for. It is presumed that they have got the required notice in respect of the action initiated by the Provident Fund authority under the EPF & MP Act, but it will not be appropriate to club both the concerns without affording both of them an opportunity of being heard. The Assistant Provident Fund Commissioner, therefore, is required to afford an opportunity to both the concern before arriving at a conclusion that there is managerial integrity and functional integrity of both the partnership firms. The impugned order dated 08.08.2005 is therefore, interfered to that extent and the Assistant Provident Fund Commissioner is directed to give an opportunity to M/S. Somnath Enterprise and M/S. Rakshyakali Industries of hearing in respect of the issue of clubbing together of both the firms of its managerial integrity and functional integrity is concerned.

8. The matter may be listed by the Assistant Provident Fund Commissioner giving a reasonable time for both the concerns to appear and submit their case before the respondent-Assistant Provident Fund Commissioner. In the event a date is fixed and notice is given, the petitioners should appear and cooperate in the

process of hearing on the issue and after hearing the petitioners on the issue the respondents shall pass appropriate order.

9. The issue may be set at rest within three month from today.

JUDGE

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