A M/S. S.K. NASIRUDDIN BEEDI MERCHANT LTD.

v.

CENTRAL PROVIDENT FUND COMMISSIONER AND ANR.

JANUARY 30, 2001

B [S. RAJENDRA BABU AND S.N. VARIAVA JJ.]

Labour Law:

Employees Provident Fund and Miscellaneous Provisions Act, 1952:
C *Section 7-A.*

Manufacture of Beedis—By home workers engaged through contractors—Applicability of Act—Manufacturer of beedis employed home workers through contractors—Contribution towards their provident fund
D *demanded in 1977—On challenge High Court dismissed the writ petition holding that Act was applicable to such home workers also—Fresh demand for July 1977 to August 1986 demanded—Writ petition dismissed—Supreme Court dismissed SLP and manufacturer furnished particulars of home workers to determine its liability—Subsequently, liability fixed under s.7-A—Manufacturer sought waiver from payment of home workers' contribution from October 1985 to May 3, 1993 on the ground that it was not able to collect the same—Validity of—Held: The Act is applicable even in respect of home workers engaged through contractors—The moment the Act becomes applicable to the home workers liability under s. 7-A arises—Manufacturer cannot rely upon his own laches in not deducting the wages from 1985 onwards—Hence, he is liable to make the payment of the home workers' contribution from October 1985 to May 3, 1993.*

The appellant, a manufacturer of beedis, employed home workers through a contractor. The appellant had not deducted from the wages of the home workers for contribution towards their provident fund on the ground that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was not applicable to such workers. The respondent in 1977 demanded from the appellant contributions towards the provident fund under Section 7-A of the Act. The writ petition challenging the aforesaid demand was dismissed by the High Court holding that the Act was applicable to such home workers also. A fresh demand was raised for the period July 1977 to August 1986,

which was challenged in two writ petitions. These writ petitions were dismissed. This Court dismissed the SLPs with the direction that the appellant could collect the names of the beedi workers who worked for it through their contractors and furnish the names of all the workers to the Provident Fund Commissioner who thereafter would verify these names and calculate the liability of the appellant. The appellant furnished the particulars of the home workers and the respondent determined the liability of the appellant under Section 7-A of the Act. The appellant filed a writ petition before the High Court for waiver of payment of the home workers' contribution from October 1985 to May 3, 1993 on the ground that it had not been able to collect the same. The High Court dismissed the writ petition. Hence this appeal.

Dismissing the appeal, the Court

HELD : 1. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 would be applicable even in respect of home workers engaged through contractors and cannot be cavilled any more. [698-B-C]

Mangalore Ganesh Beedi Works v. *Union of India,* AIR (1974) SC 1832 and *P.M. Patel & Sons* v. *Union of India,* AIR (1987) SC 447, relied on.

2. The applicability of the Act to any class of employees is not determined or decided by any proceeding under Section 7-A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7-A of the Act is only determination or quantification of the same. [698-D-E]

3. The appellant is protected for the period of coverage by the general stay order given by this Court on the applicability of the Act to the industry in question till the date of the final judgment; otherwise steps would have been taken in terms of the formal notice issued to the appellant in 1977 itself. Thus in respect of the period from June 1977 to September 1985 there was waiver of the liability by reason of the clarification issued by the Government under paragraph 78 of the Scheme. On the disposal of the matter by this Court in September 1985 the liability to deposit the employees' contribution became very clear. Though in law respondents were entitled to recover even for the period from June 1977, in view of the directions issued by the Government that was not demanded. For the period up to September 1985 and for the subsequent period there is no manner of doubt and the dispute raised by the appellant cannot be stated to be *bona fide* at all. In the circumstances, the appellant cannot rely upon his own laches in not deducting

the wages from 1985 onwards to enable him to make employees' contribution to the fund. [699-B-E]

District Exhibitors Association, Muzaffarnagar **v.** *Union of India,* **[1991] 2 SCR 477 and** *Mantu Biri Factory (P) Ltd.* **v.** *Regional Provident Fund Commissioner,* **Civil Appeal No. 6 of 1993 decided on 8-3-1994 (Cal), held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4285 of 1998.

From the Judgment and Order dated 12.12.97 of the Patna High Court in L.P.A. No. 403 of 1996.

Basudeo Prasad, Anil Kumar and Ajit Kumar Sinha for the Appellant.

T.L.V Iyer, Ajay Sharma, C. Radha Krishna and Arvind Kumar Sharma for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellant before us is a manufacturer of beedis. He challenged an order made by the respondents under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act']. The appellant had not deducted from the wages of the home workers employed through contractors for manufacture of beedis because of pendency of litigation in order to contribute towards the provident fund on the ground that the Act would not be applicable in cases of such employees. Earlier on the receipt of a notice under the Act from the respondents the appellant challenged the notice in the High Court in C.W.J.C. No. 4089 of 1988 on the ground that the Act has no application in respect of home workers engaged in rolling the beedis engaged through independent contractors. An interim stay had been granted by the court during the pendency of the proceeding. By an order made on July 27, 1989 the said writ petition was dismissed by holding that the provisions of the Act are applicable in respect of home workers engaged in rolling the beedis of the petitioner's establishment through contractors. This decision was questioned before this Court in Special Leave Petition No. 10538 of 1989. In the meanwhile, the Provident Fund Commissioner determined the amount due from the appellant and called upon it to deposit a sum of Rs. 66,84,930.50 being employer's and employees' contribution towards the provident fund from July 1977 to August

1986. By another order made on December 18, 1989 the appellant was called upon to pay a sum of Rs. 28,72,383.85 within stipulated time. These demands were also challenged in two writ petitions, C.W.J.C. No. 1114 of 1990 and C.W.J.C. 1115 of 1990. This Court by an order made on August 22, 1989 disposed of S.L.P. (C) No. 10538 of 1989 observing that the question involved in the matter could be heard and decided in the proceedings pending before the High Court. The two writ petitions, namely, C.W.J.C. No. 1114 of 1990 and C.W.J.C. 1115 of 1990 came to be dismissed on August 19, 1992. A sum of Rs. 46,90,051 out of a total demand of Rs. 95,57,314.35 was realised by the Provident Fund Commissioner. When the order made by the High Court in C.W.J.C. No. 1114 of 1990 and C.W.J.C. 1115 of 1990 was questioned in Special Leave Petitions (C) Nos. 15312-13 of 1992 filed in this Court, the same were dismissed on May 3, 1993 by stating as follows :

> "The SLPs are dismissed. It is open for the petitioner to collect the names of the Bidi workers who work for them through their contractors and furnish the names of all the workers to the Provident Fund Commissioner. The Provident Fund Commissioner thereafter will verify these names and calculate the liability of the petitioner on the basis of such verification. If any excess amount is found due from the petitioner, the Provident Fund Commissioner will recover such amount from the petitioner, on the other hand, if any amount is found due to the petitioner, the Provident Fund Commissioner will refund the same. The petitioner to furnish names of the workers, as above within six months from today."

Thereafter the appellant furnished the particulars of home workers stated to be engaged by the contractors to the best of information available with the appellant for final determination of its liability under Section 7-A of the Act as noticed by this Court. A claim was made by the appellant for waiver from payment of employees' contribution for the period from October 1985 to May 3, 1993 on the ground that he had not been able to collect the same. But the said claim was disallowed. The Regional Provident Fund Commissioner issued a certificate for recovery of the outstanding liability of Rs. 46,17,538.20 through the Recovery Officer, Bihar. This action of the respondent was called in question before the High Court. Three contentions were raised before the High Court, *vis-a-vis* :

> (i) In the circumstances arising in this case the appellant cannot be asked to pay retrospectively employees contribution to the provident fund without deducting that from their wages as it is

not possible to comply with the provisions of Para 32 of the Statutory Scheme. This situation arose on account of uncertainty of their liability until the same was settled by an order made under Section 7-A of the Act on June 2, 1994 by the Regional Provident Fund Commissioner;

(ii) There is a *bona fide* dispute as to the applicability of the Act and payment by the employer towards the employees' contribution to the fund would arise only after making deductions from their wages and that the employer cannot be made liable to pay that contribution from an anterior date to the final determination of their liability under Section 7-A of the Act, and

(iii) The demands in question are arbitrary and unreasonable in violation of Article 14 of the Constitution in view of the admitted position that the appellant had *bona fide* not deducted the employees contribution from the wages of the employees due to various uncertainties arising out of litigation before the courts.

The contesting respondents before the High Court submitted that after the law was settled in *P.M. Patel & Sons* v. *Union of India,* AIR (1987) SC 447, there was hardly any scope for litigation regarding applicability of the Act in respect of home workers employed by the appellant through contractors. When the liability became clear a formal notice as to coverage under the Act had been sent to the appellant in January 1977 to the effect that the notification issued by the Central Government applied to the appellant with effect from July 1976 to December 1977 and the Code Number is BR/7 A-Cell/1365/88/3445 in respect of the establishment of the appellant. Thus it was contended that the formal notice had already been issued as to the coverage and, therefore, it is not open to the appellant to contest their liability arising under the Act by stating that it is the date of determination that will attract the provisions of the Act and not the date of notification extending the application of the Act to the industry in which the appellant is engaged. The learned Single Judge of the High Court concluded as follows :

"In the instant case, I have found that the petitioner raised dispute as regards the applicability of the Act *bona fide* and that until collection of particulars of the home-workers engaged by the contractors and furnishing thereof in compliance with the order dated 3.5.1993, passed by the Hon'ble Supreme Court, the petitioner did not have the particulars of the home-workers engaged by the contractors. The petitioner also did not get deduction of those employees' contributions

from their wages by the contractors for the period from October, 1985 to 3.5.1993, as the petitioner *bona fide* took the view that the employers of these home-workers were the contractors and not the petitioner. As such, it cannot be said that the petitioner deliberately or negligently did not make deduction of the employees' contribution from the wages of the home-workers for the period from October, 1985 to 3.5.1993. No doubt, as per the provision of paragraph 30 of the Employees Provident Funds Scheme, 1952 (hereinafter mentioned as 'The Scheme'), the employer is required to pay both contributions payable by the employer as well as the employees and the employees' contributions, equal to the contribution of the employer, are to be deducted from their wages. Now, in case the petitioner is required to pay the employees' contribution for the period from October, 1985 to 3.5.1993, in view of the provisions of paragraphs 31 and 32 of the Scheme, the petitioner will not be able to make deduction of the employees' contribution from the wages of the home- workers for the said period."

In this background, the learned Single Judge is of the view that it is inequitable and unfair to saddle the petitioner with the liability to pay the employees' contribution for the period from October 1985 to May 3, 1993 which the appellant could not and did not deduct through its contractors on *bona fide* ground. In reaching this conclusion, the learned Judge placed reliance upon the decision of Calcutta High Court in *Mantu Biri Factory (P) Ltd.* v. *Regional Provident Fund Commissioner,* Civil Appeal 6 of 1993 decided on March 8, 1994. The matter was taken up in appeal before the Division Bench of the High Court in Letters Patent Appeal No. 403 of 1996. The Division Bench did not agree with any of the contentions raised on behalf of the appellant and held that the appellant is liable to make payments. Thus the High Court allowed the appeal and set aside the order made by the learned Single Judge.

In this appeal the contentions urged before the High Court are reiterated before us and in support of the same strong reliance is placed on the decision of this Court in *District Exhibitors Association Muzaffarnagar & Ors.* v. *Union of India & Ors.,* [1991] 2 SCR 477.

The contention raised by the appellant is two fold. Firstly, that the Act is not applicable in respect of the beedi rollers engaged through contractors and, secondly, the contention put forth is that even if the Act is applicable, the same cannot be enforced for the period in question inasmuch as on account of various circumstances the appellant has not been able to deduct

A the employees' contribution towards the provident fund from their wages and, therefore, in terms of para 32 of the Scheme framed under the Act the appellant will not be able to recover the same and the liability under the Act is only to make payment after deduction of the contribution towards provident fund from the wages of the employees and not otherwise.

B So far as the first contention is concerned, law is clear and this Court in the two decisions in *Mangalore Ganesh Beedi Works* v. *Union of India,* AIR (1974) SC 1832 and *P.M. Patel & Sons* (supra) held that the Act would be applicable even in respect of home workers engaged through contractors and cannot be cavilled any more.

C So far as the second contention is concerned, the argument of the learned counsel proceeds on the basis that the liability was not clear in view of the various circumstances and, therefore, deduction could not be made from the wages of the employees and that circumstance leads to anomalous position making the employer to pay the employees' contribution towards D provident fund without the facility of deduction from their wages. We do not think that this argument is well founded. The applicability of the Act to any class of employees is not determined or decided by any proceeding under Section 7-A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7-A of the Act is only determination or quantification E of the same. Therefore, the contention put forth on behalf of the appellant that their liability was attracted only from the date of determination of the matter under Section 7-A of the Act does not stand to reason. Indeed, the coverage was indicated to the appellant as early as in January 1977, as already noticed by us. In fact, the Government issued a clarification that the employees' F share of contribution from pre-discovery period which has not been deducted from the wages of employees shall not be recovered and that 'pre-discovery' period is explained in the following terms :

> "(i) *Pre-discovery period* : This will include the period commencing on the date from which the Act is legally applicable to factory or G establishment and the date on which a formal notice for coverage under the Act is served on the employer by the employer by the provident fund authorities. In all such cases, the employees' share of contribution shall be payable from the first of the month following the issue of the notice for coverage under the Act.

H (ii) Period covered by general stay order given by the Supreme Court

on the application challenging the notification extending the provisions of the Act to an industry/class of establishments : A

"This will include the period from the date of extension of the Act to the date of final judgment of the Court. In all such cases, the employees' share of contribution shall be payable from the first of the month following the judgment." B

In asmuch as the appellant is protected for the period of coverage by stay order given by this Court on the applicability of the Act to the industry in question till the date of the final judgment otherwise steps would have been taken in terms of the formal notice issued to the appellant in 1977 itself. Thus in respect of period from June 1977 to September 1985 there was waiver C of the liability by reason of the clarification issued by the Government under para 78 of the Scheme. On the disposal of the matter by this Court in September 1985 the liability to deposit the employees' contribution became very clear. Though in law respondents were entitled to recover even for the period from June 1977 in view of the directions issued by the Government but D that was not demanded. For period upto September 1985 and for subsequent period there is no manner of doubt and the dispute raised by the appellant cannot be stated to be *bona fide* at all. In the circumstances, we fail to understand as to how the appellant can rely upon his own laches in not deducting the wages from 1985 onwards to enable him to make employees' contribution to the fund. E

The learned counsel relied upon the decision of this Court in *District Exhibitors Association Muzaffarnagar & Ors.* (supra) to contend that inasmuch as paragraphs 30 and 32 of the Scheme are not capable of implementation which provided for the employer in the first instant paying both the contributions by him and the employees and Para 32 enabled the employer F to recover the employees contribution that has been paid by him under Para 30 could make it clear that the liability is limited; that no such deduction can be made from any wage other than that which is paid in respect of the period of which the contribution is payable; that from that it is obvious that the employer has to pay the contribution of the employees' share but he has a G right to recover that payment by deducting the same from the wage due and payable to the employees; that no deduction can be made from the wages payable for any period but only from the wages for the period in respect of which the contribution is payable; that no deduction can be made from any other wages payable to the employees, that is, the payment of employees contribution by the employer with the corresponding right to deduct the same H

A from the wages of the employees could be only for the current period during which the employer has also to pay his contribution.

This enunciation of law was made in the context of the Scheme having been made applicable with retrospective effect to the employees concerned therein. Therefore, in that context this Court examined the scope of the B Scheme and decided the matter. But that benefit cannot be availed of by the appellant in the present case inasmuch as it was open to the appellant to avail of the benefit of para 32 of the Scheme in the year 1985 itself when their liability became clear by the declaration of law made by this Court in *P.M. Patel & Sons* case [supra]. Therefore, the appellant cannot take advantage C of this decision. The decision of the Calcutta High Court in *Mantu Biri Factory (P) Ltd.* [supra] is also in line with the decision of this Court in *District Exhibitors Association Muzaffarnagar & Ors.* case [supra] and, therefore, we are of the opinion that neither the decision of this Court in *District Exhibitors Association Muzaffarnagar & Ors.* case (supra) nor of *Calcutta High Court in Mantu Biri Factory (P) Ltd.* [supra] can be of any D assistance to the appellant.

In the circumstances, we think that the view taken by the Division Bench of the High Court appears to be correct. Accordingly, the appeal is dismissed. No costs.

E V.S.S. Appeal dismissed.