

M/S. LONGIA BIRI COMPANY THROUGH MD. ZIRAZUDDIN A

v.

UNION OF INDIA AND ORS.

NOVEMBER 2, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Provident Fund Miscellaneous Provisions Act, 1952 :

Liability of Provident Fund and damages—Computation of employee's share—Waiver by Provident Fund Commissioner—Except amount not indicated—Directions for indicating the amount and payment of the balance liability—Issued. C

In this appeal against the Patna High Court judgment, the appellant contended that he had not been given any opportunity before computing the liability of provident fund and the damages under the Provident Fund Miscellaneous Provisions Act, 1952. D

Disposing of the appeal, this Court

HELD : 1. On a representation from the appellant the Provident Fund Commissioner waived the payment of the liability of the employee's share of the provident fund contribution from June, 1977 to September 1985 and therefore the appellant was relieved of the liability to deposit the said amount. Since no amount was indicated he is directed to indicate by separate letter as to what was the amount due and payable by the appellant for the said period towards the payment of employee's share of the Provident Fund. After deduction of the said amount the appellant shall provisionally pay a further sum of Rs. 10 lakhs in addition to the sum of Rs. 8 lakhs which had already been paid. [744-G-H, 745-A] E F

2. This case is remanded to the Regional Provident Fund Commissioner to follow the directions issued on May 3, 1993 in similar matters and compute the liability of the appellant afresh. In case the liability falls short of the amount already deposited then the appellant shall pay the shortfall within a period to be specified by the Provident Fund Commissioner. In case it is found to be in excess, the Regional Provident Fund Commissioner would refund the amount. [745-E] G H

A CIVIL APPELLANT JURISDICTION : Civil Appeal No. 10273 of 1995.

From the Judgment and Order dated 1.11.89 of the Patna High Court in C.W.J.C. No. 1904 of 1989.

B Pramod Swarup for the Appellant.

Hemant Sharma and C.V.S. Rao for the Respondents.

The following Order of the Court was delivered :

C Leave granted.

D This appeal by special leave arises from the order dated November 1, 1989 of the Division Bench of the Patna High Court in C.W.J.C. No. 1904 of 1989, dismissing the writ petition of the appellant. Learned counsel for the appellant contended that the appellant had not been given any opportunity before computing the liability of provident fund and the damages under the Provident Fund Miscellaneous Provisions Act, 1952. On a representation made by the appellant the Regional Provident Fund Commissioner, Bihar at Patna in his letter dated 21st September, 1993 stated thus :

E "Please refer to your representation dated 27.8.93 on the subject cited above.

F The point raised by you in the aforesaid petition is required to be examined in detail *vis-a-vis* statutory provisions, pending decision in the matter, you are hereby communicated the decision the extent that the payment of employees share of P.F. contribution is waived for the period 6/77 to 9/85 in accordance with the existing directions. It is, however, made clear that as regards other points, the petition will remain as before."

G In view of the waiver of the payment of the liability of the employee's share of the provident fund contribution for the period commencing from June 1977 to September 1985, the appellant is relieved of the liability to deposit the said amount. The amount due on that account was not indicated in the letter. Therefore, the Regional Provident Fund Commissioner
H is directed to indicate by separate letter as to what was the amount due

and payable by the appellant for the said period towards the payment of the employee's share of the provident fund. After deduction of the said amount, the appellant shall provisionally pay a further sum of Rs. 10 lakhs in addition to the sum of Rs. 8 lakhs which had already been paid. This Court on May 3, 1993 passed the following order in similar matters :

"The SLPs are dismissed. It is open for the petitioner to collect the names of the Bidi Workers who work for them through their contractor and furnish the names of all the workers to the Provident Fund Commissioner. The Provident Fund Commissioner thereafter will verify these names and calculated 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."

In this view of the matter, the case is remanded to the Regional Provident Fund Commissioner to follow the above directions and compute the liability of the appellant afresh. In case the liability falls short of the amount already deposited then the appellant shall pay the shortfall within a period to be specified by the Provident Fund Commissioner. In case it is found to be in excess, the Regional Provident Fund Commissioner would refund the amount.

The appeal is disposed of accordingly. No costs.

G.N.

Appeal disposed.