

Before the Hon. Regional Provident Fund Commissioner Gujarat State,  
Ahmedabad.

In the matter of enquiry under section 7A of the Employees' Provident  
Funds and Miscellaneous Provisions Act, 1952

And

In the matter of determination of PF dues in respect of

M/s Patel Jivrajbhai Bidi Works.

The SEWA has filed application dated 28-10-1999 in the present proceeding requesting for determining PF dues on the basis of Minimum Wages applicable at the relevant time. The Establishment begs to file its reply to the said application as follows:

2. With reference to Para 2 of the application, it is submitted that no adverse inference deserves to be drawn against the Establishment for its inability to produce records between 1977 to 1982 since the said record is not available for production. It may be stated that the present proceeding at the instance SEWA for PF benefit commence in the year 1984. The learned RPFC by its order dated 18-8-1989 decided that the relation between the parties are that of vendor and purchaser and the PF Act is not applicable. Under the circumstances, the Establishment cannot be expected to maintain and preserve old records of 1977 to 1982. It is, therefore, submitted that no adverse inference deserves to be drawn against the Establishment for its inability to produce very old records prior to 1982.

3. With reference to Para 3 of the application, the Establishment denies the correctness of the submissions made therein. It is submitted that making of a reference by the State Government under the Section 10 of the Industrial Disputes

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Act 1947 does not establish that there are employer-employee relationship between the parties. The State Government has extremely limited role while making reference to the Tribunal. It cannot decide the status of the party. Whether the concerned person in reference are "workmen" or not or whether there are employer-employee relationship is a matter to be decided by the Tribunal. In the said proceedings the Establishment had filed reply (Written Statement) contending that there are <sup>no</sup> master-servant relationship. However, compromise was arrived at in the said proceedings under which the Establishment agreed to increase purchase price by Rs.3/-. It is not correct to suggest and content on the part of the SEWA that the Establishment had agreed to increase the remuneration by Rs.3/- The Establishment also agreed to pay lumpsum ex-gratia payment to the persons concerned in reference but that was not by way of difference of wages or not on the basis or premise that the concerned persons are workmen of the establishment. The reference was withdrawn by SCWA. There was, therefore, no adjudication by the Tribunal about the status of the persons selling bidis to the Establishment. In fact, the Hon'ble High Court has admitted SCA No.1378/99 against the order of EPF Tribunal holding bidi <sup>Roller</sup> holder as employees and thus, the issue regarding Master-Servant relationship is pending consideration before the Hon'ble High Court. It is, therefore, submitted that the contention raised in Para 3, on the basis of compromise between the party is wholly misplaced and untenable.

4. With reference to Para 4, it is submitted that P.F. dues cannot be determined notionally on the basis of minimum wages applicable at the relevant time. Under Section 6A, 6C of P.F.Act and Para 29 and other relevant paragraphs of the Scheme framed under the Act, the contributions are payable on the wages actually paid and there is no question of determining PF dues on the basis of notional wages payable to the employee. That the case of the Establishment is that there are no employer-employee relationship, and therefore, there is no question of treating the bidi seller as employee and determine PF dues on the basis of notional wages payable as per Minimum Wages Notification. The dispute as to entitlement to minimum wages is wholly foreign to the present proceeding and cannot be decided

(3)

in the proceedings under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

The reliance placed on the Judgment of Hon'ble Supreme Court in the case of P.M.Patel and Sons, is not relevant since whether there are employer-employee relationship between the parties or not is a matter to be examined and decided by Hon'ble High Court in SPA No.1378/99 filed by the Establishment and which has been admitted by the Hon'ble High Court.

In view of the above, it is submitted that the request of SEWA for determining PF dues on the basis of minimum wages is untenable and the application filed by the ACWA deserves to be rejected.

Ahmedabad,  
16-11-1999.

Patel Jivrajbhai Bidi Works.

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