(2011) 09 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 2380 of 2011

Ashok Sahakari Sakhar Karkhana, Ltd. APPELLANT

Vs

The Regional Provident Funds RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2011) 5 BomCR 723 : (2011) 131 FLR 721 : (2012) 2 LLJ 67 : (2011) 6 MhLj 687

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.N. Upadhye, for the Appellant; K.B. Choudhari, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule is made returnable forthwith. With consent of the learned respective counsels for the parties, the petition is heard finally at the stage of admission.

2. This Writ Petition is filed challenging the judgment and order dated 15.10.2010, passed by the Learned Employees Provident Funds Appellate Tribunal, New Delhi, in Appeal No. ATA No. 121[9]2010.

BACKGROUND FACTS AS DISCLOSED IN THE PETITION ARE AS UNDER:

3. Petitioner is a Cooperative Society registered under the Provisions of Maharashtra CoOperative Societies Act, 1960, having its Registered Office and works at the place mentioned above. It engages in manufacture of sugar from sugar cane and it''s allied products. It is a factory and Industrial Undertaking. The Petitioner is covered under the Employees Provident Funds (Misc. Provisions) Act, 1952 (hereinafter referred to as the "said Act") and regular in remitting the contribution payable under the said Act. Petitioner used to and had cleared PF amounts such employees employed with it. It is having a Code No. as MH/19032.

It is case of the Petitioner that Respondent on or about 23.07.2008 paid a visit to the Petitioner''s Factory and on verification of the record directed the Petitioner to submit the records. Accordingly, the Petitioner submitted the relevant records to the Respondent. Then after Respondent issued a notice to the establishment u/s 7A of the said Act, the enquiry was conducted during the period from 08.02.2008 to 04.01.2010. During the course of enquiry, Petitioner submitted vouchers in respect of contract employees for the period 200506. It was also submitted that during the period of 2004-2005 there was No. contract employees. During the course of enquiry, it was submitted specifically that unless beneficiaries of the provident fund are recognized/identified No. liability could be fastened on the Petitioner of either way i.e. Employer''s and employees contribution.

It is case of the Petitioner that Enforcement Officer Mr. Kumbhar submitted final deposition/inspection report on 14.08.2009. It is further case of the Petitioner that the copy of the report was not provided to the Petitioner and the same was provided after passing of an impugned order in Appeal. Respondent herein passed the orders against the Petitioner.

4. Being aggrieved by the order, Petitioner filed Appeal bearing Appeal No. ATA No. 121[9]2010, before Employees Provident Funds Appellate Tribunal, at New Delhi. However, the said appeal came to be dismissed, hence, this Writ Petition.

5. Learned Counsel appearing for the Petitioner submits that the copy of inspection report dated 14.08.2009 was not supplied to the Petitioner till disposal of the appeal. The Appellate Tribunal has not taken into consideration the contentions of the Petitioner and without answering issues/points raised by the Appellant, Appellate Tribunal has dismissed the Appeal. It is further submitted that point of employment of some retired employees was not at all the subject matter of the enquiry, however, Respondent incorporated the same point in the enquiry, which was not only illegal, and also No. proper opportunity was given to the Petitioner to deal with said point. It is submitted that only contract employees was the subject matter of the enquiry and unnecessarily Respondent added therein subject of retired employees.

6. Learned Counsel appearing for Petitioner invited my attention to the grounds taken in the written statement and submitted that all the points, which are incorporated in the petition were raised before the Appellate Forum, however, Appellate Forum has not properly appreciated the contentions of the Petitioner and erroneously dismissed the appeal.

7. It is further submitted that, the Respondent has not taken into consideration the points in its proper perspective. The Respondent even not summoned the contractor to put their case nor taken any pains to verify the payment of TDS. In respect of Provident Funds for retired employees, the learned Tribunal completely overlooked the factual position that, they were employed on consolidated remuneration which was more than Rs. 6500/and as such they are not covered under the Act. Learned Counsel appearing for Petitioner invited my attention to

the various judgments of the Supreme Court and also this Court, which are as follows.

A] Ram Singh and Others Vs. Union Territory, Chandigarh and Others, .

B] FCI v. Prov. Fund Commissioner 1990 CLR SC 20.

C] Sandeep Dwellers Pvt. Ltd. Nagpur v. Union of India 2006 III CLR 746 (Bombay High Court)

D] Unreported judgment between RPFC Bombay v. Syndicate Overseas P. Ltd. W.P. No. 1984 of 2011 decided on 6th July, 2011 (Hon''ble Shri Justice Mr. K.K. TATED)

Therefore, relying on the grounds taken in the petition and annexures thereto, learned Counsel appearing for Petitioner would submit that this petition deserves to be allowed.

8. On the other hand, learned Counsel appearing for Respondent submits that, Respondent authority and also the Appellate Forum has considered all the contentions of the Petitioner and thereafter by reasoned order decided the appeal, therefore, this Court may not interfere in the impugned order. Learned Counsel appearing for the Respondent placed reliance on the reported judgment of the Supreme Court in the case of S.K. Nasiruddin Beedi Merchant Ltd. Vs. Central Provident Fund Commissioner, and submitted that provisions of Employees Provident Funds and Miscellaneous Provisions Act (19 of 1952) are even applicable to home workers engaged in rolling beedis, engaged through independent contractor. In short, Provisions are applicable even to the Workers engaged through independent contractors by the employer. Therefore, according to the learned Counsel for Respondent, this Writ Petition is devoid of merits and same may be dismissed.

9. I have given due consideration to the rival submissions. Perused the Writ Petition and annexures thereto, other documents made available for perusal and the judgments cited by the respective counsels for respective parties.

10. On perusal of the order dated 15th October, 2010, passed by the Appellate Forum it would clearly emerge that such order is passed with cryptic reasoning, without dealing with the vital points raised by the Petitioner herein. From perusal of the order impugned in this petition, it is abundantly clear that Appellate Forum, even did not bother to call Record and Proceedings from Respondent for perusal. Many issues were raised by the Petitioner herein, as argued by the learned Counsel for the Petitioner. The Appellate Authority should have considered the various points raised by the Petitioner.

One of the contention, which was raised by the Petitioner, was issue of initiation of the enquiry u/s 7(A) of the said Act, against the Principal employer in respect of employees employed by the so called contractor. It was contention of the Petitioner that Tribunal should have answered the issue raised by the Petitioner regarding wages register, attendance register of contractors, after verifying the same, however, without such exercise, the Tribunal has held against the Petitioner.

It is further submitted that Tribunal even did not consider the vital contentions of the Petitioner that Respondent has concluded the enquiry without supplying copies of report of Enforcement Officer to him, on which its entire order was based. The Authority has passed the order without giving proper opportunity to the Petitioner. There are various grounds raised by the Petitioner in the petition.

11. From perusal of the impugned order, it clearly emerges that, the Appellate Authority has not considered the important issues raised by the Petitioner and passed cryptic order dismissing the appeal filed by the Petitioner herein.

While deciding the appeal of the Appellant, the Tribunal ought to have give serious thought to the reported judgment of the Supreme Court in the case of FCI v. Prov. Fund Commissioner 1990 CLR SC 20, cited supra., wherein the Hon''ble Supreme Court has held that-

the Commissioner should exercise the powers to collect the evidence and collect all material before coming to proper conclusion and that is legal duty of the commissioner. It would be failure to exercise the jurisdiction particularly when the party to the proceeding request for evidence from a particular person. In spite of these well settled principles of law, Petitioner authority failed to issue summons to the Respondents, contractor, companies on the basis of xerox copies of TDS Certificates and vouchers placed on record by the Respondent company to know the genuineness of those transactions.

Therefore, in my opinion the impugned order passed by the Appellate Court cannot be sustained. The appeal is valuable right of the party and it is expected from the Appellate Forum that it should seriously consider the points raised by the party.

12. In the instant case, as stated earlier, the relevant issues addressed by the Petitioner Appellant are not dealt with by the Appellate Authority. Therefore, in my opinion, order passed by the Appellate authority deserves to be quashed and set aside by restoring the appeal to its original file and further directing the appellate authority to decide the appeal afresh. In the result, the following order-

(i) The petition is partly allowed.

(ii) The impugned order dated 15.10.2010, passed by the learned Employees Provident Funds Appellate Tribunal, New Delhi, in Appeal ATA NO, 121[9] 2010 is quashed and set aside. The Appeal is restored to its original file.

(iii) The learned Employees Provident Funds Appellate Tribunal, New Delhi should give an opportunity of fresh hearing to the parties. If necessary call Record and Proceedings from Respondent and keeping in mind the judgments of the Supreme Court on the subject and also judgment of this Court in the case of The

Regional Provident Fund Commissioner v. Syndicate Overseas Pvt. Ltd, in Writ Petition No. 1984 of 2011 dated 06th July, 2011, shall decide the appeal afresh.

(iv) The Appellate Authority shall make endeavour to dispose of the appeal as expeditiously as possible, however, within six months from today.

(v) All questions are left open to be agitated and decided by the Appellate Authority.

(vi) The amount already deposited by the Petitioner either with Tribunal or Respondent Authority will remain with said authorities and Tribunal till appeal is finally disposed of.

(vii) This Court has not expressed any opinion on the merit s of the matter.

(vi) Rule is made absolute to the above extent accordingly,

Writ Petition Stands disposed of.

