

(2016) 06 AP CK 0062

In the Andhra Pradesh High Court

Case No : WVMP No. 3752 of 2012 and in WP No. 20320 of 2011

Assistant Provident Fund Commissioner

APPELLANT

Vs

K.M.R. Explosives Pvt. Ltd.

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Citation : (2017) 2 AndhLD 629

Hon'ble Judges : M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : R.K. Sun, Advocate, for the Petitioner in both the cases; G. Ratna Sudhakar (SC for EPFO), for the Respondent in both the cases

Final Decision : Disposed Off

Judgement

M.S. Ramachandra Rao, J.—This writ petition is filed challenging the order dated 16.9.2010 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No. 439(1)2005, and also the proceedings dated 24.3.2005 in Ref.No. AP/ 23015/ R.CELL/ Rc. No. 141 / 04/ 1451 issued by 1st respondent; and the consequential proceedings initiated by 2nd respondent in Ref.No. AP/23015/ Recovery Cell/2005 dated 4.3.2005.

2. The petitioner is a company incorporated under the Companies Act, 1956 in 2001 and was engaged in manufacturing of material used in mining operations.

3. The petitioner contends that the company did not do any activity from the date of its commencement till its closure on 13.5.2002 due to various reasons; that it did not even mobilize funds of Rs.1 lakh from the date of its incorporation; that it became defunct and was closed with effect from 13.5.2002; that five persons were employed on ad hoc basis and were terminated within one year, since there was no activity in the unit; that on 4.3.2005, the 2nd respondent issued a show-cause notice stating that a notice dated 31.7.2003 under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the Act") was earlier issued by 1st respondent demanding amounts under

the Act; that petitioner submitted explanations stating that no such notice dated 31.7.2003 was given to petitioner; that the said proceeding was issued ex parte without giving any opportunity to petitioner; that the proceedings issued under the Act had been initiated without proper verification of the records by respondents, and without service of notice before issuing proceedings under Section 7-A of the Act; and that he came to know about these proceedings only when the show-cause notice dated 4.3.2005 was served on petitioner.

4. The petitioner had made a payment of Rs. 2 lakhs by way of Demand Draft dated 21.7.2003 and another payment of Rs.49,000/- by pay order dated 27.8.2003 towards full and final settlement of dues under the above Act. These amounts were credited and adjusted and the earlier amount due of Rs.8,49,238/- was reduced to Rs.6,35,506/- and proceedings dated 24.3.2005 was issued by 1st respondent.

5. The order dated 24.3.2005 was assailed by petitioner in Writ Petition No. 7360 of 2005 before this Court, but the same was withdrawn on 12.4.2005 with liberty to prefer an appeal against the order dated 31.7.2003 before the Appellate Authority constituted under the said Act within a period of four (04) weeks. This Court also granted interim stay of all further proceedings pursuant to the order dated 31.7.2003 subject to the condition that petitioner deposited 50 percent of the amount demanded in the said order within a period of six (06) weeks from that day.

6. Thereafter, petitioner preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 439(I)2005.

7. The said appeal was dismissed on 16.9.2010 on the ground that number of opportunities was granted to petitioner to place its case and petitioner had not participated in the proceedings before the original authority. It was also observed "no argument was advanced by the appellant and the matter was reserved for orders as per Rule 15 after hearing the Counsel respondent".

8. Challenging the same, the preset writ petition is filed.

9. Heard Sri R.K. Suri, Counsel for petitioner, and Sri G. Ratna Sudhakari learned Standing Counsel for Employees Provident Fund Organization, for respondent

10. The Counsel for petitions contended that neither the original authority nor the appellate authority had given any notice to petitioner and the original authority passed order under Section 7-A of the Act without serving any notice of the said proceeding on petitioner, and the appellate authority also had not given any notice of hearing of the said appeal to petitioner or to his Counsel, and thus there has been violation of principles of natural justice.

11. Sri G. Ratna Sudhakar, learned Standing Counsel appearing for respondents, stated that the original authority had passed orders against petitioner because petitioner remained ex parte in spite of service of notices; and the appellate authority passed the order because petitioner failed to attend the enquiry and did

not produce any evidence and had remained ex parte.

12. From the facts narrated above, it is clear that proceedings were initiated under Section 7-A of the Act against petitioner for not making contributions and paying administrative charges for the period July, 1996 to February, 2002.

13. The order dated 31.7.2003 passed by 1st respondent under Section 7-A of the Act records that enquiry under Section 7-A of the Act for determination of Provident Fund dues was considered necessary; that the same was posted to 30.9.2002 after due intimation to petitioner vide summons dated 12.9.2002, but none appeared; thereafter, the matter underwent certain adjournments and since nobody appeared on any adjournment, liability to the tune of Rs.8,49,238/- was fixed on petitioner.

14. The said order does not record anywhere that summons dated 12.9.2002 was served on petitioner. Though, in the counter-affidavit filed by respondents, it is stated that petitioner was served summons by 1st respondent, no proof of such service of summons to the petitioner is tiled.

15. Thereafter, order dated 24.3.2005 was passed against petitioner relying on the order dated 31.7.2003 passed under Section 7-A of the Act.

16. Admittedly, the petitioner challenged this order before the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 439(1)2005.

17. In Para No. 4 of the said order, the said Tribunal records that no argument was advanced by petitioner, and the matter was reserved for orders as per Rule 15 after hearing Counsel for respondent.

18. Even this order does not state that notice of hearing of the appeal was given to either the petitioner or his Counsel. It is not known how the Appellate Tribunal at New Delhi, constituted under the Provisions of the Act, could expect a party based in Secunderabad such as the petitioner to know about the date of hearing of the appeal without a notice of the hearing of the appeal being served either on petitioner or its Counsel.

19. There being a gross violation of principles of natural justice, both by 1st respondent as well as the Appellate Tribunal, viz., Employees Provident Fund Appellate Tribunal, New Delhi, the writ petition is allowed; the order passed by 1st respondent in Ref.No. AP/ 23015/ ENF.C.II/ Z-II/ 2003/ 1165, dated 31.7.2003, the order dated 16.9.2010 in ATA No. 439(1)2005 by the Appellate Tribunal and recovery proceedings dated 4.3.2005 initiated by 2nd respondent as well as proceedings dated 24.3.2005 issued by 1st respondent are all set aside. Consequently, WVMP No. 3752 of 2012 is dismissed.

20. The 1st respondent is at liberty to take up the enquiry afresh by serving notice on petitioner and informing a specific date of hearing to petitioner. He shall also give opportunity to petitioner to file an explanation and then pass a reasoned order and communicate the same to petitioner.

21. This exercise shall be completed within a period of three (03) months from the date of receipt of a copy of this order. Any payment already made by petitioner to respondents will abide by the result of the order which may be passed by 1st respondent.

22. If no action is initiated by respondents within the aforesaid period, the amount paid by petitioner shall be refunded to petitioner with interest at the rate of 9 per cent per annum.

23. Accordingly, the writ petition is allowed as above. No order as to costs.

24. As a sequel, miscellaneous petitions pending if any in this writ petition, shall stand closed.