

(2014) 04 BOM CK 0247
In the Bombay High Court
Case No : Writ Petition No. 659 of 2013

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Regional Provident

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(f), 7A

Citation : (2014) 6 ABR 458 : (2014) 5 ALLMR 818 : (2014) 5 BomCR 191 :
(2014) 143 FLR 743 : (2014) 4 LLN 619 : (2014) 5 MhLj 579

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : Jose Filip Melo, Advocate for the Appellant; Y.V. Nadkarni and R. Shirodkar, Advocate for the Respondent

Judgement

S.B. Shukre, J.—By this petition, the legality and correctness of the order passed on 1.7.2013 by Employees Provident Fund, Appellate Tribunal, New Delhi has been challenged. In an inquiry initiated under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("the PF Act" for short) upon a complaint that there was no compliance being made in terms of the PF Act in respect of the workers engaged by the petitioner through contractors, the Regional Provident Fund Commissioner ("the Commissioner" for short), found that workers engaged by contractors in connection with the work of the petitioner were eligible for provident fund benefits as the workers were covered by the definition of "employee" under section 2(f) of the said Act. The Commissioner in the said inquiry, identified the number of eligible employees and also determined the sum of Rs. 1,06,00,537/- (Rupees One Crore Six Lakhs five hundred and thirty seven only) as payable by the petitioner towards the contribution of provident fund dues for the period from October, 2000 to August 2008 in respect of 261 employees. Since, this amount was found to be not paid by the contractors, the Commissioner, directed the petitioner, being principal employer in terms of para 30 of the Employees Provident Fund Scheme, 1952, to pay the said amount within a period of seven days from the date of issuance of

the order dated 9.11.2009. Being aggrieved by the order dated 9.11.2009 passed by the Commissioner, the petitioner preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi. After hearing both sides, the appeal was dismissed by the learned Presiding Officer of the Tribunal by his order passed on 1.7.2013. It is this order which is challenged in the present writ petition.

2. I have heard learned Counsel for the petitioner and learned Counsel for the respondents. With their assistance, I have carefully gone through the impugned order as well as the order passed by the Commissioner and also paper book of the petition.

3. Now, the only point which arises for determination is:-

"Whether the order dated 1.7.2013 passed by Employees Provident Fund Appellate Tribunal and also order dated 9.11.2009 passed by Regional Provident Fund Commissioner-II, Regional Office, Goa suffer from vices of arbitrariness and unreasonableness?"

4. Learned Counsel for the petitioner has submitted that the workers were not employed by the petitioner and that they were engaged by various contractors to whom the jobs of execution of works in connection with the business of the petitioner were entrusted. He has submitted that it was for this reason that the petitioner was not aware of the names, number and other details of all the workers and therefore, the petitioner had all the while stated before the Commissioner that the contractors should be made parties and that the workers should be properly identified so that liability of the petitioner could be ascertained in a precise manner. He submits that under section 7-A sub-section (2) of the PF Act, the Inquiry Officer is conferred with the powers of Civil Court to enforce attendance of witnesses. He further submits that the Inquiry Officer, however, in this regard did not exercise effectively this power and therefore, no evidence establishing the identity and number of workers could be brought on record. He therefore, submits that inquiry conducted by the Commissioner was not in accordance with the procedure prescribed by law and it was vitiated on this ground also. He submits that these aspects were not at all considered by the Tribunal and by a very cryptic order, it dismissed the appeal. He submits that it is a non-speaking order. He therefore, urges that the impugned order is liable to be quashed and set.

5. In support of his above said contentions the learned Counsel has referred to me following cases:-

"(i) M/s. Guala Closures (India) Pvt. Ltd. Vs. Regional P.F. Commissioner, Bhavishya Nidhi Bhavan, ?

(ii) Ranisati Ginning Factory Vs. Regional P.F. Commissioner and another, ."

6. According to the learned Counsel for the respondents, the impugned order is a speaking order and the Tribunal has independently considered the material

available on record and has recorded its findings supported by reasons. He submits that it is not the law that when an Appellate Authority decides to affirm the findings recorded by the Court below, the Appellate Authority must embark upon a process of detailed examination of the evidence and give elaborate reasons for reaching its conclusions. He further submits that elaborate reasons are necessary when there is an order of reversal. He also submits that the Commissioner has properly followed the procedure required for ascertaining the number of beneficiaries and identifying them and that the order passed by Commissioner also shows as to how effectively the power under sub-section (2-A) of section 7-A of the PF Act has been exercised by the Commissioner. He also submits that Commissioner in fact gave several opportunities to the petitioner to produce some material to rebut the claim of the workers Union made in its affidavit with regard to number of beneficiaries and their identification. He points out that even the prayer of the petitioner to add the concerned contractors as parties was allowed and statements of the contractors produced by the petitioner before the Commissioner were taken on record. Therefore, according to him, no perversity nor arbitrariness could be seen in the impugned orders.

7. In support of the contention that an order of affirmation requires no elaborate reason, learned Counsel for the respondent has referred to me the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, .

8. We will first take up the contention canvassed on behalf of the petitioner that the order of the Tribunal is non-speaking and so is arbitrary.

9. The order of the Tribunal impugned herein affirms the Commissioner's Order. It is now well settled, as held by Hon'ble Apex Court in the case of Chairman, Disciplinary Authority (supra) that an order of affirmation passed by Appellate Authority need not contain as elaborate reasons as an order of reversal and that it should show application of mind by disclosing brief reasons which must be mentioned in the order. In the case of M/s. Guala Closures (supra), learned Single Judge of this Court has held that the Appellate Tribunal must independently scrutinize the material and contentions of the parties to form an independent opinion. In the case of Ranisati (supra) this High Court has held that since the PF Act applies to an employee, the authorities must record a finding as regards the number of employees to whom the PF Act would apply.

10. On careful perusal of the order of the Tribunal dated 1.7.2013 one can see that by and large it follows the principles laid down in the cases of Chairman, Disciplinary Authority, M/s. Guala Closures and Ranisati (supra) and summarised in earlier paragraph. The Tribunal's order states reasons, though in brief. It also shows that the Tribunal has independently considered the material available on record and has come to the same conclusion as reached by the Commissioner. Therefore, it cannot be said that the Tribunal has not followed the well established principles of law in deciding an appeal.

11. Learned Counsel for the petitioner has argued that a bare perusal of the said order would show that there was complete non-application of mind on the part of the Tribunal and the Tribunal has only re-produced some of the reasons mentioned in the order of the Commissioner. Upon a close scrutiny of this order, I do not think that it is possible to agree with the said contention. The Tribunal has upheld the order of the Commissioner by giving some brief reasons. When an order is affirmed, there is bound to occur reproduction of some observations and giving of some reasons, especially when they arise logically from the facts of the case. Therefore, giving of some reasons cannot be understood to mean that there is no independent assessment of material available on record or any non-application of mind. The only requirement of law in case of an appellate order affirming lower authority's order is to make an independent abatement and record reasons which may be in brief, so that the order reflects application of mind to the facts of the case and law applicable to it and allows parties to ascertain from the order the considerations that weighed with the Appellate Authority. These are the principles of rule of law and natural justice firmly rooted in our legal system. These principles have been followed by the Tribunal in this case and therefore, I am of the view that this order cannot be found to be erroneous on the ground so urged before me on behalf of the petitioner.

12. Second limb of argument of learned Counsel for the petitioner pertains to the procedural aspect of the matter. According to him, neither proper procedure was followed nor power conferred upon the Commissioner under section 7-A was effectively exercised in ascertaining the number of beneficiaries and their identities. According to learned Counsel for respondent, proper procedure has been followed.

13. The order of Commissioner dated 9.11.2009 makes an elaborate discussion of the matter and also reflects upon the procedure followed by it while holding an inquiry under section 7-A of the PF Act. It laments how several opportunities granted to the petitioner to produce on record relevant material were wasted by the petitioner. It also discusses the statements of contractors who denied the averment that no contributions towards provident fund dues were remitted. The order further shows that the request of the petitioner to make contractors parties to the inquiry was also granted by the Commissioner on 16.9.2008 and that thereafter the petitioner was directed to submit the record from the year 1997 together with financial statements, payments made to contract employees and unit wise payments made to contract employee with attendance and wage register.

14. The order of the Commissioner further shows that Enforcement Officers were directed to visit some exchanges of petitioner to ascertain the number of contract workers working there. The order notes not so happy state of affairs at the exchanges of the petitioner when it says that it was reported by the Enforcement Officers after paying visits that incharge of Miramar and Panaji exchanges did not give any information and that they found seven persons to be working there who

were apparently contract workers. The Commissioner has further noted that even though the contractors denied the allegation, the contractors did not support their denial with documentary proof such as financial statements and so on.

15. On the other hand, as seen from the order of the Commissioner, Workers Union submitted individual affidavit of 172 workers disclosing details of their engagement for carrying out the works in connection with the business of the petitioner.

16. This would only show that the Commissioner has made reasonable efforts to establish the number and identity of the workers and has also given reasonable opportunity to the petitioner to rebut the evidence produced on record by the complainant Goa Trade and Workers Union. It also shows that power conferred upon the Commissioner under section 7-A of the Act was properly exercised by the Commissioner. Therefore, I find that the Commissioner has followed the proper procedure in establishing the number and identity of the beneficiaries of the Regional Provident Fund Scheme.

17. Once it is found that there was no flaw in the procedure adopted by the Commissioner in identifying the beneficiaries and their total number, very little scope would be there in writ jurisdiction of this Court to interfere with the findings recorded by the Commissioner and confirmed by the Appellate Tribunal. These findings have not been shown to be not based upon the evidence available on record or as being the result of non-consideration of material evidence available on record. Upon perusal of the order of the Commissioner, I do not see any reason to hold that the findings recorded by the Commissioner are perverse or as not based upon any evidence or being the result of the non consideration of the material evidence. Thus, there being no perversity found in the order of the Commissioner, the order of the Appellate Tribunal can also be found to be not illegal or perverse.

18. Learned Counsel for the petitioner has referred to me some more cases which are:-

"(i) Regional Provident Fund Commissioner Vs. Assam Biri Factories (P) Ltd. and Others, .

(ii) Food Corporation of India Vs. Provident Fund Commissioner and Others, ."

19. In the case of Assam Biri Factories (supra), the Single Judge of Calcutta High Court has held that since the workers are actually employees of the contractors, who are changed by the contractors each and every year, the contractors must be summoned and called upon to place before Commissioner relevant material so as to ascertain the number and identification of the employees. It is also held that principal employer becomes responsible and liable to pay dues of the employees only when contractors fail to pay the employees their dues. These principles of law are not in dispute. I have already found that while making inquiry under section 7-A of the Provident Fund Act, 1952, the Commissioner has

made reasonable efforts to collect the evidence and has properly followed the procedure under section 7-A of the Act. There is also no dispute about the fact that in the instant case contributions of the provident fund dues were not made by the contractors and therefore, in terms of para 30 of the Provident Fund Scheme 1952, the responsibility to pay provident fund dues of the workers fell upon the principal employer, i.e. the petitioner. So, these principles of law have already been followed by the authorities below.

20. In the case of Food Corporation India (supra), the Hon''ble Apex Court has held that the Commissioner should exercise all his powers to collect necessary evidence and collate all material before coming to a proper conclusion and it is the legal duty of the Commissioner. It is also held that any failure to perform the legal duty, would amount to failure to exercise jurisdiction vested in the Commissioner. It could be seen from the discussion made earlier that these principles of law have also been followed by the Commissioner in conducting the inquiry under section 7-A of the Act.

21. In view of above, I find that the order of the Appellate Tribunal passed on 1.7.2013 is sustainable in law and so is the order of the Commissioner passed on 9.11.2009 and that these orders do not suffer from any vices of arbitrariness and unreasonableness. The point is answered accordingly. The writ petition therefore, deserves to be dismissed.

22. In the result, the writ petition stands dismissed. Parties to bear their own costs. Rule is discharged.