

(2006) 01 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 5623 of 2001

Chennai Petroleum Corporation Ltd.

APPELLANT

Vs

Assistant Provident Fund Commissioner (Exemp)

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

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

Citation : (2006) 109 FLR 1195

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

**Advocate : Sanjay Mohan, for Ramasubramaniam Associates, for the Appellant;
V. Vibishanan, for the Respondent**

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—This writ petition has been filed by the petitioner for issuance of a writ of certiorari calling for the records pertaining

to the order Ref.No. C4/TN/CNI/4683/Exem/Regl/2001, dated March 1, 2001 and to quash the same.

2. The facts in-brief leading to the filing of this writ petition are as follows:

(a) The petitioner-Corporation is a public sector company having its factory at Manali, where it is manufacturing Petroleum Products by employing

1700 permanent workmen and that apart, it engages contractors.

(b) While so, a notice, dated October 16, 2000, was issued by the respondent directing the petitioner to produce attendance register and other

documents in respect of the employees employed by the contractors from January 1, 1967 onwards.

(c) The petitioner filed a preliminary counter statement, dated January 5, 2001, stating that it is not possible for the company to produce the

documents in respect of the employees employed by the contractors for the period from 1967 as the records are available with the contractors concerned.

(d) Further, the petitioner-company filed a petition, dated February 2, 2001, requesting the respondent to implead the contractors as parties for the year 1990-91 to 1998-1999 to make an enquiry u/s 7-A of the Act.

(e) Without considering the said petition, the respondent passed an order, dated February 1, 2001, directing to pay the contributions to the workmen employed by the contractors.

3. Aggrieved by the order of the respondent, the petitioner has come forward with this writ petition.

4. Denying the averments made in the affidavit of the petitioner; the respondent filed a counter stating that though the details may not be readily

available with the petitioner the responsibility to procure the records from the contractors lies with the principal-employer as per Para 30(3) of the

Employees' Provident Funds Scheme, 1952 and therefore, it is not appropriate to call for the records from the contractors directly as the matter

solely lies with the principal-employer.

5. Further, it is stated that the letter, dated March 1, 2001, issued by the respondent is not an order u/s 7-A but it is a reply to the petition, dated

February 2, 2001, submitted by the petitioner.

6. Heard both sides.

7. The learned Counsel for the petitioner would contend that the order impugned in this writ petition is in violation of principles of natural justice for

the reason that though the claim for payment of contribution of employees employed by the contractors from the year 1967, notice was issued only

on October 16, 2000 directing the petitioner to pay the contribution and therefore, the issuing of notice after a lapse of three decades is against the

1 principles of natural justice.

8. Further, the learned Counsel would contend that though the petitioner gave a petition, dated February 2, 2001, furnishing the addresses of the

contractor from the year 1990 to 1999, for which period only the records are available with the petitioner, to implead the contractors as parties

as they are in possession of the relevant documents of the employees employed

by them and the petitioner has no power to call upon the contractors to produce those documents, the respondent without considering it, passed the impugned order and therefore, the same is liable to be set aside.

9. Further, it is contended that when the law is well settled that for adjudication necessary parties to be impleaded otherwise it would be treated as

failure to exercise jurisdiction, the way in which the respondent proceeding further is against such well settled law and in support of his contention,

he relied on the following decisions:

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

(b) Madras Gymkhana Club (represented by its Honorary Secretary), Madras v. Employees" State Insurance Corporation (represented by its

Regional Director) Madras 1992 I LLJ 580 (Mad).

(c) Ashok Leyland Ltd. Vs. Employees" State Insurance Corporation, .

10. Per contra the learned Counsel appearing for the respondent would contend that as per Para. 30(3) of the Employees" Provident Funds

Scheme, 1952, though the details may not be available with the petitioner, the responsibility to procure the records from the contractors lies with

the petitioner and therefore, there is no necessity to implead the contractors as parties as the principal employer is liable to pay contribution and

therefore, the proceedings impugned in this petition is sustainable in law.

11. Further, he would vehemently contend that what is impugned in this writ petition is not an order passed u/s 7-A but it is a reply to the petition,

dated February 2, 2001, and therefore, the writ petition itself is not maintainable and is liable to be dismissed.

12. It is not in dispute that the petitioner engages contractors. It is also not in dispute for the payment of contribution of the employees employed

by the contractors from January 1, 1967 onwards, the respondent issued a notice, dated October 16, 2000 to the petitioner demanding payment.

13. No doubt, as contended by the learned Counsel for the respondent, the petitioner, being the principal-employer, is liable to pay the

contribution even for the employees employed by the contractors as per Para 30(3) of the Employees" Provident Funds Scheme, 1952.

14. The petitioner in his preliminary counter statement has stated that the

documents are in the custody of the contractors, it is virtually impossible for the petitioner to produce those documents since it has no power to call upon the contractors to produce documents after a lapse of more than three decades.

15. Further, the petitioner by filing a petition, dated February 2, 2001, furnished the details of the contractors from that available records for the period from 1990-1991 to 1998-1999 to implead them as parties to the proceedings. In this case, while the petitioner relies on Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the respondent relies on Para. 30(3) , of the Employees' Provident Funds Scheme, 1952.

16. At this juncture, it is pertinent to see what the well settled law says.

17. The decision relied on by the petitioner in Food Corporation of India Vs. Provident Fund Commissioner and Others, , the Apex Court held as follows:

6. ...Though the employer and contractors are both liable to maintain registers in respect of the workers employed but the question is not whether one has failed to produce evidence.

7. ...The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act...

8. ...the Commissioner while conducting an inquiry u/s 7-A has the same powers as are vested in a Court under the CPC for trying a suit.

9. ...The power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

18. The above principle was followed in the decisions of this Court in 1992 I LLJ 580 (Mad) (supra) and Ashok Leyland Ltd. Vs. Employees' State Insurance Corporation, .

19. From the above principle, it is clear that the respondent shall conduct an inquiry after impleading the necessary parties to the proceedings and

the Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion.

20. It is submitted by the learned Counsel for the respondent that the respondent wants to determine the quantum of provident fund contribution as

per the provision of the Act for the last 30 years. Further contention of the respondent is that the petition has been filed only to implead the

contractors of the petitioners from 1990 to 1999 whereas, the demand is from the year 1967. Therefore, the petitioner should have given the entire

list of contractors from the year 1967. Therefore, it cannot be severable. On the other hand, learned Counsel for the petitioner submitted that

though the demand was made from the year 1967 but as per the records available, the petitioner filed a petition to implead the contractors who are

liable to pay the contributions from the year 1990 to 1999 and if the contractors are directed to pay the contribution then the petitioner's burden of

payment towards contribution for 1990 to 1999 will be reduced. However, if for any reason, the respondent determines that the petitioner is liable

to pay contribution for the year 1967 to 1990 the petitioner would pay the same.

21. Therefore, as per the principles laid down in the decisions cited supra, when it is brought to the notice of the respondent the available details of

the contractors, the respondent should have impleaded the contractors and proceeded against them for determining the quantum of provident fund

contribution payable by them as per the provisions of the Act. Therefore, the respondent has committed an illegality in not considering the petition

filed by the petitioner for impleading the contractors. Therefore, the impugned order is liable to be set aside.

22. Further, the respondent Commissioner is directed to implead the contractors as parties to the proceedings as stated in the petition, dated

February 2, 2001, and decide the matter for the period from 1990 onwards on merits and in accordance with law within three months from, the

date of receipt of a copy of this order.

23. With the above direction, the writ petition is allowed. No costs.