(2014) 12 CHH CK 0031

In the Chhattisgarh High Court

Case No : Writ Petition (L) No. 2326 of 2010

Employees'' Provident Fund Organisation (Regional Office) APPELLANT

Vs

Raipur Development Authority RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)(b), 16(1), 16(1)(c), 7-A, 7-A(1)

Citation : (2015) 144 FLR 1069 : (2015) 2 LLJ 300

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Pradeep Saxena, Advocates for the Appellant; Ashish Shrivastava and Somya Roy, Advocates for the Respondent

Judgement

Sanjay K. Agrawal, J.—The climactic issue that falls for consideration in this writ petition is whether Raipur Development Authority-Respondent herein is exempted from the provisions contained in Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 by virtue of section 16(1)(c) of that Act. Employees Provident Fund Organization established under the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (henceforth the "EPF Act, 1952") is a petitioner herein calls in question the legality, validity and correctness of the impugned order dated 9.2.2010 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi (for short ''the EPF Appellate Tribunal'') in Appeal No. ATA/113(8)/08 holding that by virtue of provisions contained in section 16(1)(c) of the EPF Act, 1952 respondent-Raipur Development Authority (for short RDA'') is exempted from the operation of EPF Act, 1952.

2. Imperative facts necessary for judging the legality, validity and correctness of the impugned order and in order to find out as to whether the petitioner is entitled for the reliefs claimed in the writ petition are as under:--

2.1 The petitioner herein is an Organization established and constituted by the Central Government in accordance with the provisions of EPF Act, 1952 for the effective administration of the pension and insurance scheme.

2.2 The respondent - M/s. Raipur Development Authority is a Development Authority, established and constituted by the State Government in exercise of power conferred under sections 38 and 40 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (henceforth ''Adhiniyam, 1973'') vide notification dated 7.4.1977 published in Rajpatra (Extraordinary) on 29.4.1977. The Adhiniyam, 1973 has been enacted making provision for planning and development and use of land; and to make better provision for the preparation of development plans and zoning plans.

2.3 Petitioner herein issued notice on 31.1.1995 vide Annexure P-2 to the respondent herein stating that establishment of respondent is engaged in Building and Construction activity, which was notified under section 1(3)(b) of the EPF Act, 1952 and the respondent-RDA is covered by that notification and since the establishment has failed to comply with the mandatory provisions of the Act, 1952, why proceedings for enquiry be not initiated under section 7-A of the Act, 1952 and amount of E.P.F. be determined.

2.4 The respondent herein filed its reply stating inter alia that the respondent is an authority constituted under the Adhiniyam, 1973 and governed by the Rules framed under section 76-B of the Adhiniyam, 1973 i.e. called as M.P./C.G. Development Authority (Officers and Ministerial) Recruitment Rules, 1987 (henceforth ''Rules, 1987''). It was further pleaded that Rule 27 of the Rules, 1987 deals with Contributory Provident Fund for the employees of the Authorities constituted under the Adhiniyam, 1973 and the employees of the Raipur Development Authority are governed by the said Rule i.e. called M.P. Contributory Provident Fund Rules, 1955 (henceforth ''the Rules, 1955'') and in accordance with the Rules of 1955, CPF of the employees of the respondent/RDA are being deducted and deposited regularly in Bank and, as such, by virtue of provision contained in section 16(1)(c) of the EPF Act, 1952, the provision of EPF Act, 1952 shall not apply to the respondent/Establishment and, therefore, the proceedings initiated under the EPF Act of 1952 be dropped.

2.5 The petitioner herein considered the plea raised by respondent herein and passed final order of assessment under section under section 7-A of the EPF Act, 1952 on 2.11.2007 and under section 7-A(1) read with section 7-A(3-A) of the Act determining the Dues payable by Raipur Development Authority amounting to Rs. 8,46,80,024/- and held as under:--

(i) That, respondent--Raipur Development Authority is an Authority, which is established and controlled by the State Government.

(ii) That, the Raipur Development Authority is not entitled to be exempted from the operation of the EPF Act, 1952.

(iii) Thereafter, the said amount of Rs. 8,46,80,024/- was recovered by the petitioner from the respondent by adopting coercive means on 13.11.2007.

2.6 Respondent herein directly filed writ petition No. 7036/2007 against the order dated 2.11.2007 determining the amount of E.P.F., the said writ petition was dismissed by this Court giving liberty to the respondent herein to approach the Employees'' Provident Appellate Tribunal constituted under the EPF Act, 1952.

2.7 The respondent herein preferred an appeal under section 7-I of the EPF Act, 1952 before the Employees Provident Funds Appellate Tribunal, New Delhi along with application under section 7-O of the EPF Act, 1952 claiming waiver of deposit of security amount, which was disposed of by the EPF Appellate Tribunal with a direction to deposit 25% of the assessed amount and the Bank Guarantee of 50% of the balance amount by order dated 19.3.2008.

2.8 The petitioner herein filed a writ petition (L) No. 4430/2008 questioning the order dated 19.3.2008 against the waiver of deposit, which was disposed pit by this Court by order dated 19.08.2009 directing the EPF Appellate Tribunal to decide the pending appeal within a period of two months.

2.9 Ultimately, by the impugned order dated 9.2.2010 passed in A.T.A. No. 113(8)/2008 (Annexure P-1), the EPF Appellate Tribunal has allowed the appeal preferred by the respondent herein holding that employees of the RDA are governed by MP. Contributory Provident Fund Rules and are getting the benefit of contributory provident fund and, as such, by virtue of section 16(1)(c) of the EPF Act, 1952 respondent RDA is exempted from the operation of the EPF Act, 1952. The finding of the EPF Appellate Tribunal stands as under:--

"7. To attract section 16(1)(c) has to be shown that the establishment is set up by Central or State Government and the employees are entitled to be benefit of contributory P.R. or old age pension. It is not disputed that the appellant was constituted by the Act of the State. The order passed by the authority also revealed that the establishment was formed under the Act but it was held that there was no material to show the employees are covered under any Scheme.

8. The appellant filed the MP contributory P.F. Rule which governs the establishment. The document filed shows that the members are governed by the scheme and are getting the benefit of contributory P.F. The material on the record fulfills both the conditions of section 16(1)(c). So the establishment is the excluded establishment."

2.10 Questioning the legality and validity of the above stated impugned order passed by EPF Appellate Tribunal, instant writ petition has been filed by the petitioner herein.

2.11 Invoking the extraordinary jurisdiction of this Court, under Article 226/227 of the Constitution of India, the petitioner filed writ petition stating inter alia that the respondent No. 1 is an establishment engaged in ''Building and Construction'' carrying on the activities of Development of Plots & Construction of Houses/

commercial buildings and as such is an establishment notified tinder section 1(3) (b) of the Act of 1952 and Item No. 82 of Annexure-I of Schedule L It was further pleaded that as the respondent-Establishment did not comply with the mandatory provisions of the Act, 1952, an enquiry was conducted under section 7-A of the EPF Act of 1952 against the respondent-Raipur Development Authority by the Assistant Provident Fund Commissioner; and the order was passed on 2.11.2007 determining the dues payable by respondent authority amounting to Rs. 8,46,80,024/- and the said amount has been recovered from the respondent/ Raipur Development Authority on 13.11.2007. It was the case of the petitioner herein that the appeal filed by respondent authority was allowed by the EPF Tribunal contrary to the facts and law available on the record as the E.P.F. Act, 1952 fully applies to the respondent authority and, therefore, the order of EPF Appellate Tribunal deserves to be set aside.

2.12 On rule being issued, respondent No. 1 filed its counter affidavit stating inter alia that Raipur Development Authority established and constituted under the provisions of sections 38 and 40 of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and in exercise of power conferred under section 85 read with section 76(b)(2) of the Act, 1973, the State Government framed rules known as M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1988 and by virtue of Rule 27 of the said Rules, Contributory Provident Fund, which is applicable to the Government servant has been made applicable to the authority employees and the necessary deduction are being made from the salary of the employees of the respondent Authority and accordingly the same is being deducted and deposited in shape of fixed deposit receipts in Union Bank of India, Raipur and in view of section 16(1)(c) of the Act, 1952, provisions of E.P.F. Act, 1952 do not apply to the respondent RDA as the employees of the Raipur Development Authority are entitled to be benefits of contributory provident fund and respondent-Raipur Development Authority is exempted from the provisions of EPF Act, 1952.

2.13 Thereafter, the petitioner by order dated 27.10.2014 amended the writ petition inserting paragraph 9.6 in the petition stating inter alia that State of Chhattisgarh has framed the Chhattisgarh Development Authority Services (Officers and Employees) Recruitment Rules, 2013 and by virtue of Rule 31, earlier corresponding rules has been repealed. Thereafter, respondent has filed application for taking documents on record and the copy of Recruitment Rules, 2013, details of FDR of RDA employees (including regular Estt., contingency paid Estt. & work charge Estt.) of the month of August, 2014 have been brought on record. The said application was taken on record by order dated 27.10.2014.

3. Appearing for the petitioner, Shri Pradeep Saxena, learned Counsel would submit that Establishment of the respondent-RDA is not entitled to be exempted from the operation of the EPF Act, 1952 as the respondent-RDA has failed to fulfill the requirement of provisions contained in section 16(1)(c) of the EPF Act, 1952, which provides that the EPF Act, 1952 would not apply to those

establishment, whose employees are entitled to the benefit of Contributory Provident Fund in accordance with the Scheme or Rules framed under that Act governing such benefits. Shri Saxena would further submit that applicability of M.P./C.G. Contributory Provident Fund Rules, 1955 was never raised before any of the authorities including EPF Appellate Tribunal and the said Rules are also not enacted under the Adhiniyam, 1973 and for the first time,'' Chhattisgarh Development Authority Service (Officers and Servant) Recruitment Rules, 2013 provides for applicability of M.P. Contributory Provident Fund Rules, 1952, Rule 19 of Rule 2013 provides that Contributory Provident Fund Rules, 1955 as prescribed by the Government and as amended from time to time shall be applicable to the employees of the authorities. He would alternatively submits that the manner in which, the CPF is said to have been deducted and deposited, it cannot be said that respondent/RDA is entitled to be exempted by virtue of section 16(1)(c) of the EPF Act, 1952 and, as such, the order of EPF Appellate Tribunal is clearly unsustainable and contrary to law, which deserves to be set aside.

4. Appearing for the respondent-RDA, Shri Ashish Shrivastava, learned Counsel would submit that the RDA is an authority constituted under the Adhiniyam, 1973 and by virtue of section 72 of the Adhiniyam, 1973, the State Government has a power of superintendence and control over the acts and proceedings of the officers appointed under the Adhiniyam, 1973; and by virtue of section 73 of the said Adhiniyam, the State Government has also power to give directions and the authorities constituted under this Act shall be bound by such directions on matters of policy as may be given to them by the State Government. He would further submit that in exercise of power under section 76-B of the Adhiniyam, 1973, Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987 has been framed. He would also submit that Rule 27 clearly provides that the Chhattisgarh Contributory Provident Fund Rules, 1955 as prescribed by the Government and amended from time to time, shall be applicable to the respondent''s employees; and by virtue of such rules, Contributory Provident Fund is being deducted and deposited as per Chhattisgarh Contributory Provident Fund Rules, 1955 and, therefore, the respondent-RDA is exempted from the operation of the EPF Act, 1952 as contained in section 16(1)(c) of EPF Act, 1952.

5. I have heard learned Counsel appearing for the parties and given thoughtful consideration to the rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. In order to consider to rival submission made at bar, questioning the impugned order, it would be proper to have quick survey of the relevant statutory provisions.

7. The Employees'' Provident Funds and Miscellaneous Provisions Act case into force in the year 1952. Further in 1988, clause (b) of section 16(1) of the EPF Act, 1952 was substituted by new clauses (b), (c) and (d). Amended provision of

section 16(1)(c) provides as under:--

"16. Act not to apply to certain establishments.--

(1) This Act shall not apply--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits."

8. In order to be covered under the exception to the EPF Act, 1952 stated above, following two conditions have to be satisfied by the establishment seeking to be exempted from the provisions of the EPF Act, 1952:

(i) It must be an establishment belonging to or under the control of the Central Government or a State Government.

(ii) It must be an establishment whose employees are entitled to be benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.

9. The question of law involved and formulated in opening paragraph of this judgment is divided in following two questions for sake of convenience:--

(i) As to whether the respondent-establishment "belonging to" or under the "control" of State Government?

(ii) Whether respondent/Raipur Development Authority is an establishment whose employees are entitled to the benefit of contributory provident fund in accordance with the Act of 1973 and rules made thereunder?

Answer to Question No. 1.

10. Respondent-RDA is an establishment and constituted by State Government in exercise of power conferred under sections 38 and 40 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 vide notification dated 21.04.1977.

11. Chapter IX of the Adhiniyam, 1973 deals with control over the authorities constituted under the said Adhiniyam.

12. Section 72 of the Adhiniyam, 1973 deals with State Government''s power of superintendence and control over the authorities constituted under the Act.

13. Section 73 of the Adhiniyam, 1973 deals with power of the State Government to give directions and the authorities constituted under this Act shall be bound by such directions on matters of policy; and in case of any dispute arises between

the State Government and Authorities, the decision of the State Government shall be final.

14. Section 74 of the Adhiniyam, 1973 deals with the power of Government to review plans for ensuring conformity and section 76 deals with dissolution of Authorities, which provides that whenever in the opinion of the State Government the continued existence of any authority constituted under this Act is unnecessary or undesirable, the State Government may, by notification, declare, that such authority shall be dissolved from the date specified therein.

15. Thus, Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 is a complete Code in itself and the State Government exercises substantive control over the respondent-RDA even though the Raipur Development Authority is not "owned" by the State Government. The word "Control" has not been defined under the EPF Act, 1952, but their Lordships of Supreme Court in case of The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya, has occasion to consider the meaning of the word "Control" and it has been held as under:--

"The word "control", is synonymous with superintendence, management or authority to direct, restrict or regulate."

16. Further, their Lordship of Supreme Court in case of State of Mysore Vs. Allum Karibasappa and Others, , has defined the word "Control" as under:--

"The word "Control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action."

17. Thus, on the basis of above analysis, it is held that the respondent-RDA is an authority constituted under the Adhiniyam, 1973, under which, the State Government exercises substantive control over respondent the Raipur Development Authority and also having power of superintendence over it and, therefore, it is held that respondent-RDA is an establishment, which is constituted by the State Government within the meaning of section 16(1)(c) of the EPF Act, 1952, therefore, the finding recorded by the Assistant Regional Provident Fund Commissioner holding that Raipur Development Authority is an establishment under the "control" of State Government is in accordance with law. The first question is answered accordingly.

Answer to Question No. 2

18. Determination of the first question that respondent-RDA is an; establishment under the substantive control of the State Government leads me to the next question to be addressed, "whether the employees of the respondent-RDA are entitled to the benefit of Contributory Provident Fund in accordance with the Scheme or Rules framed under the Act of 1973 governing such benefits".

19. The consequent question for consideration is whether the CPF deducted by the respondent-RDA can be said to be Contributory Provident Fund under the Rules framed under the Adhiniyam, 1973.

20. It has already been held in foregoing paragraphs that respondent RDA is an authority constituted under the Act of 1973 and in exercise of power conferred under section 76-B(2) read with section 85 of the Adhiniyam, 1973, the State Government has made rules known as Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987. Rule 27 of the said Rules provides as under:--

"Contributory Provident Fund.--Contributory Provident Fund Rules, as prescribed by the Government and as amended from time to time shall be applicable to Authority employees but those employees of the Authority who are at present governed by the pension rules shall continue to get pension benefits."

21. The above quoted Rule framed under the Act of 1987 clearly provides that Contributory Provident Fund Rules, prescribed by the State Government as amended from time to time shall be applicable to the Authority-employees (RDA employee).

22. The Madhya Pradesh Contributory Provident Fund Rules, 1955 came into force with effect from 1st April, 1955 and made applicable to the Government servant.

23. Thus, it is quite vivid that Rules of 1987 has been framed under the Adhiniyam, 1973, under which the respondent-RDA has been constituted and the Rule 27 framed under the Adhiniyam, 1973 clearly provides that the employees of respondent-RDA are entitled to the benefit of Contributory Provident Fund under the Rules.

24. It is the case of the respondent herein that by virtue of Rule 27 of Rules 1987, M.P. Contributory Provident Fund Rules, 1955 are fully applicable to the employees of the RDA; and accordingly, the EPF is being deducted and deposited in the FDR account of the employees vide Annexure R-1. From the perusal of Annexure R-1 filed along with counter affidavit of the respondent, statement of CPF deducted as on 1.12.2007, it is apparent that Respondent-RDA has deducted Contributory Provident Fund of 2568 employees working in his establishment, which comes to Rs. 3,44,45,160.00 (renewed amount Rs. 3,73,44,151.00), which is lying deposited in the Union Bank of India in shape of fixed deposit receipt. The respondent has also brought on record documents showing the details of CPF in shape of FDR of RDA employees of the month of August, 2014. Thus, it is held that MP. Contributory Provident Fund Rules, 1955 is not only applicable to the authority employees, but Contributory Provident Fund of RDA employees is being deducted and deposited under the said Rules of 1955.

25. Submission of learned Counsel for the petitioner that applicability of M.P. Contributory Provident Fund Rules, 1955 was not pleaded by the respondent before the Assistant Provident Fund Commissioner sans merit as in the reply filed by the respondent herein, brought in the record as Annexure R-3, the respondent-Authority has clearly averred that in accordance with the Rule 27 of M.P. Development Authority Services (Officers and Servants) Recruitment Rules,

1987, provisions of EPF Act, 1952 is not applicable to the employees of the authorities, not only this, in the subsequent reply filed on 15.7.2010, the respondent has reiterated the applicability of M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1987 by stating that Rule 27 of M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1987 makes M.P. Contributory Provident Fund Rules, 1955 applicable to the authorities employees. The Assistant Provident Fund Commissioner has also referred the plea of the respondent herein in this regard in his order dated 2.11.2007, but omitted to consider the said plea holding that Rules of 1987 has not been produced before him. Thus, it cannot be concluded that the respondent-Raipur Development Authority has raised the plea of applicability of CPF Rules, 1955 to the authority employees for the first time before the EPF Appellate Tribunal. The Chhattisgarh Development Authority Services (Officers and employees) Recruitment Rules, 2013, has also made the M.P. Contributory Provident Fund Rules, 1952 applicable to the authority-employee (Kindly see Rule 19) and it cannot be held that by the Rules of 2013 for the first time Rules of 1955 has been made applicable to the authority employees.

26. Thus, on the basis of aforesaid analysis, it is held that the employees of the RDA are entitled for the benefit of Contributory Provident Fund under the M.P. Contributory Provident Fund Rules, 1955 by virtue of Rule 27 of the Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987.

27. Accordingly, the respondent-RDA is fulfilling both the requirements for exemption under section 16(1)(c) of the EPF Act, 1952 and, therefore, provision of the EPF Act, 1952 would not be applicable to the respondent herein. Thus, it is held that EPF Appellate Tribunal, New Delhi has not committed any illegality in holding that respondent-RDA is exempted from the operation of the EPF Act, 1952 and absolutely justified in granting the appeal filed by respondent authority by setting aside the order passed by the Assistant Regional Provident Fund Commissioner holding the EPF Act applicable to the respondent/RDA.

28. As a fall out and the consequence of the aforesaid discussion, the writ petition is held to be devoid of merit and required to be dismissed, and is, therefore, dismissed.

29. At this stage, it is also necessary for this Court to determine the consequence of dismissal of the writ petition as the petitioner has undisputably recovered the amount of Rs. 8,46,80,024/- from the respondent herein on 13.11.2007 and, thereafter, EPF Appellate Tribunal by its order dated 9.2.2010 allowed the appeal, by which, respondent became entitled to recover back the aforesaid amount from the petitioner. Since this Court has entertained the writ petition filed by the petitioner and passed interim order on 6.5.2010 staying the effect and operation of the order passed by EPF Appellate Tribunal dated 9.2.2010, the petitioner could not recover the amount in question. Since writ petition has been dismissed affirming the order of EPF Tribunal, in the interest of justice, it is directed that

the petitioner shall refund to the respondent-Raipur Development Authority the amount of Rs. 8,46,80,024/- along with interest @ 6% per annum from the date of recovery till the date of actual payment within 45 days from today. In the facts and circumstances of the case, respondent is entitled for the cost quantified as 10,000/- from the petitioner.