(1999) 06 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No. 16861 of 1991 and W.M.P. No. 25362 of 1991

Enfield India Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 03-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2

Citation : (2000) 85 FLR 519 : (2000) 1 LLJ 1612

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : V. Karthic, for T.S. Gopalan, for the Appellant; P. Narasimhan, for the Respondent

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition seeking for a

writ of prohibition forbearing the respondent from treating the employee of the Thor Power Systems as the employee of the petitioner and

demanding the petitioner to pay contribution in respect of those persons.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein they have narrated all the facts and circumstances that forced

them to file the present writ petition and they have requested this Court to allow the writ petition as prayed for. Per contra, on behalf of the

respondent a counter- affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have

requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by learned Counsel appearing for the parties. I have perused the contents of the affidavit and the counter-

affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration the various points raised by learned counsel appearing for the rival parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration in this case, is as to whether there are any valid

grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner, as seen from the affidavit of the petitioner, is as follows: the petitioner-company is having its

registered office at Madras and it has got a factory at Tiruvottiyur where it is manufacturing 150CC bullet motor cycles. It is also having factories at

Ranipet and at Thoraipakkam. The petitioner is an establishment covered under the Employees'' Provident Funds and Miscellaneous Provisions

Act. The respondent has allotted a separate code number for each of the petitioner''s three factories. In each of the factories materials/components

are sent to establishment of third parties for further processing and the third parties are being paid charges for the processing done in their

respective establishment. On September 9, 1988, the petitioner entered into an agreement with one Thor Power Systems having their factory at L-

16, 4th Cross Street, VSI Complex, Madras - 600 041, whereby the said Thor Power Systems agreed to assemble generator sets with materials

to be supplied by the petitioner. The said Thor Power Systems is having a separate factory licence and also covered under the Employees'' State

Insurance Act. It has got a separate SSI certificate issued by the Department of Industries and Commerce, Government of Tamil Nadu. It has also

taken out a licence under the excise rules for assembly of generator sets. It is also a dealer registered under the Tamil Nadu General Sales Tax

Act. According to the factory licence issued to Thor Power Systems, it was empowered to engage 50 workmen. As petitioner the communication

of the Employees'' State Insurance Corporation dated July 14, 1988(sic). Thor Power Systems was employing 19 workmen in its establishment

Thor Power Systems is an independent establishment with which the petitioner is in no way concerned, and there is no scope to treat the said

establishment as branch or department of the petitioner. On February 28, 1991, the Enforcement Officer attached to the respondent addressed a communication directing them to furnish the agreement entered into between themselves and Thor Power Systems with a view to consider the

question of extending the provident fund benefits to the employees of the said Thor Power Systems. The petitioner herein by its letter dated April

23, 1991, forwarded a copy of the said communication to Thor Power Systems, requesting them to furnish the registration certificate under the

Factories Act, ESI registration certificate, SSI registration certificate, etc. On April 24, 1991, Thor Power Systems sent the documents called for

by the petitioner. On the basis of these documents, on May 20, 1991, the petitioner wrote to the enforcement officer of the respondent pointing

out that Thor Power Systems was totally a different entity with which the petitioner had nothing to do, that in order to satisfy the respondent that

there was no connection between the petitioner and the Thor Power Systems, the documents received from Thor Power Systems were furnished

to the respondent and informed the respondent that if any further particulars were needed, the respondent should correspond with Thor Power

Systems. On September 20, 1991, the respondent addressed a letter to the petitioner stating that the petitioner had entered into an agreement with

Thor Power Systems for assembling generator sets on sub-contract basis for which all materials were provided by the petitioner and as such it was

having ultimate control over the assembly activities that Thor Power Systems was engaged only in the assembling of generator sets for the

petitioner and it was not carrying on any other activity, that Thor Power Systems was only a sub-contractor for the petitioner establishment that as

principal employer, the petitioner was liable to the prior implementation of the provisions of the Employees'' Provident Funds Scheme in respect of

employees of Thor Power Systems, that the employees of Thor Power Systems were liable to be covered from September 9, 1988, when the

petitioner entered into an agreement with Thor Power Systems and that, therefore, the petitioner should pay arrears of contribution in respect of all

eligible employees of Thor Power Systems. It is stated by the petitioner that the demand of the respondent has no basis in law and is totally

unjustified. It is the contention of the petitioner-company that the demand of the respondent to cover the employees of Thor Power Systems as

employees of the petitioner and holding that the petitioner is liable to pay contribution in respect of the employees of Thor Power Systems is opposed to the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act. Hence, the writ petition.

6. The impugned action of the respondent in treating the employees of Thor Power Systems as the employees of the petitioner and demanding the

petitioner to pay contribution in respect of those persons, is challenged by the petitioner on the grounds that the respondent failed to see that Thor

Power Systems being a separate factory owned by a different legal entity that there was no scope to hold that the employees of the said factory

should be treated as employees of the petitioner, that the respondent failed to take note of the documentary evidence placed before him to show

that Thor Power Systems was a separate establishment distinct and separate from that of the petitioner and also that the respondent erred in

holding that merely because Thor Power Systems undertakes assembly of generator sets for the petitioner, and has no other activities, the

relationship of principal and contractor would arise. It is also the case of the petitioner herein that Thor Power Systems is a contractor of the

petitioner, its employees can be covered as employees of the petitioner only if they work in the petitioner''s establishment. According to the

petitioner, the respondent also failed to note that the establishment of Thor Power Systems is not a branch or department of the petitioner and,

therefore, the employees of Thor Power Systems cannot be treated as employees of the petitioner. It is the categoric case of the petitioner herein

that the demand of the respondent is gross abuse of the power vested in him under the provisions of the Employees'' Provident Funds and

Miscellaneous Provisions Act and he should, therefore, be restrained from requiring the petitioner to cover the persons who are in no way

connected with its establishment.

7. Per contra, in the counter-affidavit, it is contended by the respondent that the petitioner-company herein entered into an agreement with the Thor

Power Systems, L-16, VSI Complex, Thiruvanmiyur, to do assembling work for Enfield having agreed to sub-contract the work to Thor. It is the

specific case of the respondents that the material required will be supplied by Enfield and the Enfield will have the overall control on all the

assembling process and inspection for quality control and after examining all these facts, the respondent instructed the Enfield India Limited to extend provident fund benefit to the employees engaged through contractors as the petitioner herein is the principal employer. It is the strong

contention of the respondent that the contract between the petitioner and Thor Power Systems itself makes the petitioner as principal employer and

the petitioner is liable for extending the benefits of provident fund available under the Act to the employees engaged through the contractor as

required u/s 6 of the Act and Thor Power Systems is exclusively doing the work for Enfield India Ltd. The relationship of principal employer and

contractor exists between the petitioner and Thor Power Systems, therefore, according to the respondent, the Thor Power Systems is a sole

contractor of Enfield India Ltd., and hence in terms of Section 2(f) read with paragraph 26 of the Employees'' Provident Funds Scheme, the

petitioner is liable for extending the provident fund benefits to the employees engaged through Thor Power Systems, a sole contractor for the

petitioner. It is also the case of the respondent that the separate registration under various departments, such as Income Tax, sales tax, SSI and

bank loan availed for the Thor Power Systems will not absolve the petitioner-employer of his liability of implementing the provisions of the Act.

According to the respondent, the definition of employee includes contract employees also. It is also stated by the respondent that by virtue of the

agreement entered with Thor Power Systems, the petitioner becomes the employer for the workmen engaged in the contractor firm and the

petitioner himself admit that Thor Power Systems is exclusively doing work for the petitioner. Therefore, it is contended by the respondent that

there is legal obligation on the part of the petitioner and the action of the respondent is strictly in accordance with the law and it is sustainable.

8. Having seen the entire material available on record and, in the facts and circumstances of the case, also from the claims and counter-claims

made by the rival parties, the only grievance of the petitioner herein is that the respondent is illegally demanding the petitioner should pay arrears of

contribution in respect of all eligible employees of the Thor Power Systems which, according to them, is a separate establishment distinct and

separate from that of the petitioner. Whereas it is the contention of the respondent that the petitioner entered into an agreement with the Thor

Power Systems to do assembling work for Enfield and Enfield having agreed to sub-contract the work to Thor Power Systems. The material required will be supplied by Enfield, Enfield will have the overall control on all the assembling process and inspection for quality control. It is the

categoric contention of the respondent, that after examining all these facts, the respondent instructed the Enfield India Ltd. to extend provident fund

benefit to the employees engaged through contractors as the petitioner is the principal employer. Thus, it is the case of the respondent that the Thor

Power Systems is a sole contractor of Enfield India Ltd. and hence in terms of Section 2(f) read with paragraph 26 of the Employees'' Provident

Funds Scheme, the petitioner is liable for extending the provident fund benefits to the employees engaged through Thor Power Systems a sole

contractor for the petitioner. It is significant to note that the definition of employees include contractor employees also. ""Employee"" means any

person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets

his wages directly or indirectly and includes any person:

(i) employed by or through contractor in or in connection with the work of an establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the Standing Order of the

establishment.

9. In this case, it is clear that by virtue of the agreement entered with the Thor Power Systems, the petitioner becomes the employer for the

workmen engaged in the contractor firm and the petitioner himself admits that Thor Power Systems is exclusively doing work for the petitioner.

That being so, as rightly contended by the respondent, there is legal obligation on the part of the petitioner and the action of the respondent is

strictly in accordance with the law and it is sustainable. Further, in this case, it is also significant to note that though the establishment, Thor Power

Systems, is having separate entity and its employees are appointed by the contractor, the workmen of the said establishment are exclusively doing

work for the petitioner and hence they are entitled to provident fund benefits on par with employees of the petitioner since the petitioner is the

principal employer. Therefore, from all the above, I am of the view that the respondent rightly held that the employees of the contractor firm are

employees of the petitioner only as per the definition, since they were doing the work of the petitioner. Therefore, it is a clear case where the

position of the employees engaged by the Thor Power Systems are squarely falling within the ambit of Section 2(f) of the Act and termed as

employees of the petitioner- establishment. Thus, it is the strong contention of the respondent that the order of the respondent is strictly in

accordance with the Act and it is maintainable. It is also contended by the respondent that the petitioner has an alternative remedy u/s 26-B of the

Scheme of 1952 and without exhausting the same the petitioner has approached this Court. In the facts and circumstances of the case, I am of the

clear view that there is every force in the above contentions made by the respondent.

10. Further, in support of the case of the petitioner herein, learned counsel appearing for the petitioner relied on the following two decisions:

(1) Gujchem Distillers India Ltd. Vs. Regional Provident Fund Commissioner, and (2) Metazinc P. Ltd. v. Regional Provident Fund

Commissioner, (1992) II LLJ 647 (Guj) . On a perusal of the above two decisions, I am of the clear view that factually those two cases are

distinguishable and that, therefore, in the facts and circumstances of the case on hand, those two decisions are not helpful to the petitioner in any

way advancing their case.

11. Therefore, for all the aforesaid reasons and in the facts and circumstances of the case and also in view of my above discussions with regard to

the various aspects of the case, I am of the clear view that the petitioner herein has failed to make out any case in his favour and that, therefore,

there is no need for any interference with the action of the respondent impugned in this writ petition. Thus, the writ petition fails and the same is

liable to be dismissed for want of merits.

12. In the result, the writ petition is dismissed. No costs. Consequently W.M.P. No. 25362 of 1991 also is dismissed.

