

(1974) 08 MP CK 0002
In the Madhya Pradesh High Court

Malwa Vanaspati and Chemical Co. Limited	APPELLANT
Vs	
Regional Provident Fund Commissioner, M.P. Region and Others	RESPONDENT

Date of Decision : 07-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 69
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 8A

Citation : (1976) 1 LLJ 307 : (1975) 20 MPLJ 776

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Judgement

G.L. Oza, J.

This is a petition filed under Article 226 of the Constitution for quashing of the order passed by respondent No. 1, Regional Provident Fund Commissioner, holding the petitioner responsible for contribution of the provident fund in regard to workers employed through contractors.

Facts relevant for the decision of this petition are that the petitioner is employing more than twenty workers and therefore, is covered under the Employees' Provident Funds Act, 1952 and it is alleged that, therefore, the petitioner is performing its obligation under that Act. According to the petitioner, the respondent No. 1 started proceedings to cover the labour employed through contractors and the petitioner was informed about it. Thereafter the petitioner represented to the respondent No. 1 that in view of the legal position no liability could be fastened against the petitioner in regard to the employees employed through contractors, under the Act. But respondent No. 1 ruled in the impugned order that the contract-labour will be covered by the provisions of the Act and the Scheme thereunder. Consequently, the petitioner has submitted this petition.

Learned Counsel appearing for the petitioner contended that under the Scheme of the Act the petitioner is expected to deduct from the wages of the workers

their part of the contribution to the provident fund scheme and pay it to the respondent No. 1. But according to petitioner, when the worker is employed through a contractor the liability to pay wages is not that of the employer, that is the petitioner. Consequently, he has no authority to deduct the contribution of the provident fund and, therefore, no liability could be fastened against him for payment of that part of the contribution under the provident fund scheme to the respondent No. 1. In support of the contention learned Counsel placed reliance on the decision reported in Orissa Cement Ltd. Vs. Union of India (UOI), . Learned Counsel for the respondent, on the other hand, contended that after the decision in Orissa Cement Ltd. and Ors. v. Union of India and Ors. the Act and the Scheme under the Act have been amended. The contention that was raised before their Lordships of the Supreme Court has now been specifically met by an amendment and in insertion of a new Section 8A in the Act. At the same time, the Scheme as also been amended and the labourers employed through contractors have also been specifically covered under the Scheme under the Act. Learned Counsel also contended that on inquiry it was found that those who were actually labourers, or some of them, have been categorized as " contractors " with the only purpose to defeat the provisions of the Act, He also contended that in the decision reported in Nazeena Traders (P) Ltd. v. Regional Provident Fund Commissioner, Hyderabad 1966 I L.L.J. 334, similar contention were advanced and were negatived. Consequently, according to learned Counsel, there is no substance in this petition.

Admittedly, the relevant paragraphs of the Scheme which deserve to be considered are paragraphs 30 and 32. Paragraph 30 reads thus:

30. Payment of contribution-(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on. behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges,

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

This paragraph 30 of the Scheme has been substituted by a Notification, dated 28-11-1963. It is, therefore, clear from the perusal of this paragraph of the Scheme that after the decision of the Supreme Court this paragraph has been

redrafted to cover the employees employed directly or by or through a contractor. Sub-paragraph (2) of the paragraph provided that it is the responsibility of the contractor to recover the contribution payable by such employee in this Scheme and it is also the responsibility of the contractor to pay it to the employer. And, therefore, it cannot now be said that as the contractor has no responsibility to deduct the contribution from the wages of the employee and has also no responsibility to pay to the principal, that is the employer, the employer cannot be fastened with the responsibility to pay this contribution towards the Scheme.

Paragraph 32 of the Scheme has also been modified and now runs thus -

32. Recovery of a member's share of contribution-(1) The amount of a member's contribution paid by the employer or a contractor, shall notwithstanding the provisions in this Scheme or any law for the time being in force or any contract to the contrary be recoverable by means of deduction from the wages of the member and not otherwise:

Provided that no such deduction may be made from any wage other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable ;

Provided further that the employer or a contractor shall be entitled to recover the employee's share from a wage other than that which is paid in respect of the period for which the contribution has been paid or is payable where the employee has in writing given a false declaration at the time of joining service with the said employer or a contractor that he was not already a member of the Fund:

Provided further that where no such deduction has been made on account of an accidental mistake or a clerical error, such deduction may, with the consent in writing of the Inspector, be made from the subsequent wages.

(2) Deduction made from the wages of a member paid on daily, weekly or fortnightly basis should be totalled up to indicate the monthly deductions.

(3) Any sum deducted by an employer or a contractor from the wage of an employee under this Scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

This paragraph also has been modified by Notification dated 28-11-1963, apparently after the judgment of their Lordships of the Supreme Court in the case referred to by learned Counsel for the petitioner. This paragraph also makes it clear that the amount of member's contribution is paid by the employer or a contractor, therefore, the contractor has also been introduced with the employer. The proviso to this paragraph also provides that the employer or contractor shall be entitled to recover the employer employee's share from the wages. All these modifications in this Scheme in the relevant paragraphs referred to above go to show that after the judgment of the Supreme Court the Scheme has been so modified that no difficulty can now be raised by the petitioner about the

collection of the provident fund contribution from the workers.

Apart from the Scheme, Section 8A has been added by Act 28 of 1983. It reads-

8A. Recovery of moneys by employers and contractors-(1) The amount of contribution (that is to say the employer's contributions well as the employee's contribution) and any charges on the basis of such contribution for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in Sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee, the employee's contribution by deduction from the basis wages, dearness allowance and retaining allowance (if any), payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in Sub-section (1) from the basis wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

The section clearly empowers the employer to recover the contributions from the contractor either from the amount payable to the contractor or under any contract as a debt payable by the contractor. It is, therefore, clear that the employer has now been empowered by this provision to recover the amount from the contractor either from the moneys payable to the contractor or even as a debt, and therefore, an employer cannot now raise any difficulty on the ground that he cannot realise the amount from the contractor and as he does not pay wages directly to the workers he cannot deduct it from their wages either. Sub-section (2) of this section also empowers the contractor to collect these contributions from the wages of the employees employed through the contractor. Consequently, the difficulties raised by the petitioner have completely been met by the modification of the Scheme as well as by enacting Section 8A of the Act.

In *M/s. Orissa Cement Ltd. v. Union of India*, (supra) their Lordships of the Supreme Court observed -

A more serious objection to the extension of the Scheme of 1952 to workmen employed through contractors is that the right given to the principal employer under para 32 is incapable of exercise as against them. Under para 30 the whole of the provident fund being 12 1/2 % of the wages and dearness allowance has to be paid in the first instance by the employer and under para. 32 he is to deduct half of it, being the employee's share of the contribution from his wages. As already pointed out, this contemplates that the hand which has to pay the provident fund under para. 30 is also the hand that has to pay wages to the

workman under para. 32. But that is not the position in the case of contract labour. It is the contractor who pays the wages of workmen employed through him, but the obligation to pay the provident fund is cast on the principal employer. Now the complaint of the petitioners is that the Scheme works " with an evil eye and an unequal hand " with reference to an employer who engages contract labour, in that while an obligation to pay the entire provident fund, including the share of his employee, is laid on him, he is not given the correlative right of recouping himself to the extent of that share, by deducting it out of his wages.

In this paragraph clearly their Lordships expressed the difficulty that the persons who pay wages alone can deduct the contribution of the employees. But when a contractor is employed, the employer cannot deduct the contribution from the wages and still an obligation is cast on him to pay that contribution towards the Scheme. Their Lordships further observed that the employer cannot recover from the contractor contribution of the employees even u/s 69 of the Contract Act except by filing a suit. But their Lordships expressed that para. 32 provides that the amount has to be deducted from the wages and it was for this reason that the learned Counsel for the petitioner laid much emphasis on the observation in paragraphs 9 and 10 of this decision. But as stated earlier Section 8A is a complete answer to the difficulties considered by their Lordships as by that specific provision, as discussed above responsibility has been cast on the contractor to deduct from the wages of the workers employed by him their contribution towards provident fund and the contractor is responsible to pay it to the employer. The amended provisions have also conferred a right on the employer to recover from the contractor the contributions even by deducting from the moneys paid under the contract. This, it appears, has been specially enacted to avoid the difficulties in a suit u/s 69 of the Contract Act which were considered by their Lordships in the decision quoted above. Consequently, in our opinion, after the amendment of the Act and modification of the Scheme the contentions raised by learned Counsel for the petitioner cannot be accepted.

It was contended by learned Counsel that the charging section throws a responsibility on the employer for the contribution of the employee employed by him and therefore, when there is no relationship of master and servant between the workers employed through the contractor and the employer, no liability can be fastened against him.

The word " employee " has been defined in Section 2(f) of the Employees' Provident Funds Act, 1952 :

2(f) " 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 from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment.

This definition is comprehensive enough to cover the workers employed directly or indirectly and they have specifically introduced a phrase in this definition about a person employed by or through a contractor. Therefore, wherever in the Act the word " employee" is used it has to be understood within the meaning of this definition. So, this contention of learned Counsel cannot be accepted. Similar contentions were considered in the decision reported in Nazeena Traders Ltd. v. Regional Provident Fund Commissioner, (supra).

Consequently, in our opinion, there is no substance in this petition. It is, therefore, dismissed. The respondent No. 1 shall be entitled to costs of this petition. Counsel fee Rs. 100 (one hundred) if certified. Balance of the security deposit be refunded to the petitioner after verification.