
(2012) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No: 18104 of 2012

M/s. Aparna Constructions and Estates Pvt. Ltd.

APPELLANT

Vs

Regional P.F. Commissioner-II (C and R) and Employees
Provident Funds Organisation And Sri E. Purna Chandra Rao

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A,
7A(1), 7A(4), 7B

Citation : (2012) 6 ALT 72 : (2013) 136 FLR 633 : (2013) LLR 150

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : G. Vidyasagar, for the Appellant; R.N. Reddy (Sc for EPF), for the Respondent

Judgement

L. Narasimha Reddy

1. The respondents initiated proceedings against the petitioner as regards contribution of provident fund for contract employees engaged by it. On receiving the notice, the petitioner submitted its representation stating that the contract labour were supplied by various employers and unless it is found that the contribution of provident fund was deducted from the salaries of the employees by their employers, the petitioner cannot be required to deposit the same. Respondent No. 1 passed an order, dated 27.10.2011, holding that the petitioner is liable to deposit a sum of Rs. 1,26,08,436/-. The petitioner filed WP. No. 29797 of 2011 pleading inter alia that the order, dated 27.10.2011, u/s 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short "the Act") was passed on the basis of a report, dated 05.10.2011, submitted by the Enforcement Officers, but the copy thereof was not furnished to it at all. This Court disposed of the writ petition on 09.11.2011, leaving it open to the petitioner to avail the remedy under Sections 7A (4) and 7B of the Act. After such remand, respondent No. 1 passed orders, dated 01.06.2012, rejecting the

application of the petitioner for setting aside the order, dated 27.10.2011. Hence, this writ petition.

2. Sri G. Vidyasagar, learned counsel for the petitioner, submits that the main ground urged on behalf of the petitioner was that the order, dated 27.10.2011, is ex parte in nature inasmuch as the report, dated 05.10.2011, submitted by the Enforcement Officers, though relied upon while passing the order, dated 27.10.2011, was not furnished to the petitioner at all. He further submits that furnishing the copy of the report in the proceedings instituted u/s 7A (4) of the Act does not cure the serious defect.

3. Sri R.N. Reddy, learned Standing Counsel for the respondents, on the other hand, submits that this Court refused to set aside the order, dated 27.10.2011, but left it open to the petitioner to avail the remedy u/s 7A (4) of the Act and that respondent No. 1 has dealt with the matter in detail that too after furnishing the report submitted by the Enforcement Officers. He contends that whatever may have been the grievance of the petitioner on account of non-furnishing of the report in the earlier round of proceedings, it cannot plead the same ground once the report was furnished.

4. The petitioner suffered an order, dated 27.10.2011, where under the obligation to pay a sum of Rs. 1,26,08,436/- was fastened upon it. It may be true that the said order was passed after issuing notice to the petitioner. The fact, however, remains that though extensive reference was made to a report, dated 05.10.2011, submitted by the Enforcement Officers, copy thereof was not furnished to it and ventilating the said grievance, a writ petition was filed. Normally, in such cases, the orders are set aside by this Court and matters are remanded to the primary authority for fresh consideration. However, since there existed a remedy u/s 7A (4) of the Act, which is similar to the one under Order 9 Rule 13 C.P.C., it was left open to the petitioner to avail the same. Accordingly, the petitioner submitted application u/s 7A (4) of the Act before respondent No. 1.

5. Since the ground urged by the petitioner is that the order, dated 27.10.2011, was passed on the basis of the report, dated 15.10.2011, and the copy of the report was not furnished to the petitioner, the only course open to respondent No. 2 was to set aside the order, dated 27.10.2011, and to take up hearing of the matter afresh. Instead, he tried to justify and uphold the order, dated 27.10.2010, by furnishing a copy of the report, dated 15.10.2011, to the petitioner while hearing the application filed u/s 7A (4) of the Act. Such a course is contrary to the very spirit of the said provisions of law. Though the authority which passed the order, dated 27.10.2011, and the one which is required to pass orders afresh is one and the same, the effective adjudication cannot be said to have taken place unless the orders, dated 01.06.2012 and 27.10.2011, are set aside. Hence, the writ petition is allowed and the impugned order as well as the one dated 27.10.2011, passed by respondent No. 1 are set aside. Now that the report, dated 15.10.2011, is furnished to the petitioner, the matter shall be

heard afresh and respondent No. 1 shall pass orders u/s 7A (1) of the Act after giving an opportunity of being heard to the petitioner. It is needless to mention that he shall decide the matter uninfluenced by any observations made in the two orders that were set aside. There shall be no order as to costs.

The miscellaneous petition filed in this writ petition also stands disposed of.