(2013) 09 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 1901 of 2011

Rallis India Ltd. APPELLANT

Vs

Asstt. Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 139 FLR 1026 : (2014) 1 LLN 64 : (2014) LLR 25

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : K.M. Naik and P.V. Bansod, for the Appellant; H.N. Verma, for the Respondent

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard finally by consent of the learned Counsels appearing for the parties. By an order dated 5.11.2003, the Assistant Provident Fund Commissioner, Nagpur, has determined the liability of the petitioner u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 ("the EPF Act") to the extent of Rs. 20,84,923/. The major item of liability is in respect of the employees, said to have been engaged by the transport contractor, employed by the petitioner from 1998 to 2003, which has been calculated at the rate of 15% of the total payment made to the transport contractor. The amount comes to Rs. 15,81,280/. The application for review filed u/s 7B of the EPF Act has been rejected by the Assistant Provident Fund Commissioner by an order dated 5.3.2004. It is against this order that the appeal bearing ATA No. 342(9) of 2004 was preferred before the Employees'' Provident Fund Appellate Tribunal, New Delhi, which has been dismissed by the order dated 6.5.2004. Hence, this writ petition.

2. The petitioner has disputed the liability imposed upon it by an impugned order passed on 5.11.2003. Shri K.M Naik, the learned Senior Counsel appearing for the petitioner, has relied upon the decisions of the Apex Court in the cases of Food Corporation of India Vs. Provident Fund Commissioner and Others, Bharat Heavy Electricals Ltd. Vs. ESI Corporation, and The Managing Director, Hassan

Co-operative Milk Producer''s Society Union Limited Vs. The Assistant Regional Director Employees State Insurance Corporation, the decision of learned Single Judge of this Court in the case of Auchtel Products Ltd. v. Regional Provident Fund Commissioner, 1998 (78) FLR 900 (SC) and the order passed by the learned Single Judge in Writ Petition No. 70 of 2011 (Cable Corporation of India v. Union of India and another), decided on 7.2.2011; and the decision of the learned Single Judge in the case of Springdales School and others v. Regional Provident Fund Commissioner and another, 2006 (108) FLR 908 (Del.) and has urged that the Authority acting u/s 7A of the EPF Act has failed to exercise its power to collect evidence for determination of the amount under the said provision, particularly when it was disputed that the transport contractor employed by the petitioner never engaged any employee. According to him, the Assistant Provident Fund Commissioner is conferred with sufficient power to collect evidence, which he has failed to exercise by calling upon the transport contract concerned and examining him to find out as to whether he has employed any employee during the said period while executing the contract with the petitioner. The learned Senior Counsel has also invited my attention to the submissions, which were filed on 5.11.2003 before the Assistant Provident Fund Commissioner. He submits that the said submissions were not taken into consideration by the Assistant Provident Fund Commissioner, but on the very same day, the order was passed. According to him, though the complaint was made to the Appellate Authority, no finding is recorded on it.

3. After going through the submissions made on 5.11.2003 before the Assistant Provident Fund Commissioner and the orders impugned, it is apparent that the orders have been passed without affording an opportunity of being heard to the petitioner. The petitioner has expressed in para 7 of the submissions for issuing direction to the transport contractor to submit the list of the employees, who are said to have been engaged by him for the works entrusted to him by the petitioner along with the wages, if any, paid to them. In view of the aforesaid decisions, it was for the Assistant Provident Fund Commissioner to make an enquiry into the matter and come to a definite conclusion as to the number of employees employed by such transport contractor and then to determine the liability arising out of it. The Assistant Provident Fund Commissioner has merely taken into consideration the total payment of freight charges made by the petitioner to the transport contractor, and on the basis of 15% of the total charges, which is the component adopted towards the wages paid to the employees, the liability u/s 7A of the EPF Act has been determined. Obviously, when the petitioner is seeking to avail an opportunity to lead evidence before the Authority concerned and the Authority is also entrusted with the power to collect the material, the orders impugned should not have been passed without making a detailed enquiry. If it is possible to determine the number of employees actually employed during the said period, then there would be no question of adopting the method of labour component on the total amount paid by the petitioner to the transport contractor. In this view of the matter, the Authority

concerned is required to have a fresh look at the matter and the enquiry needs to be conducted de novo. The orders impugned cannot, therefore, be sustained and the same need to be quashed and set aside.

4. At this stage, Shri H.N. Verma, the learned Counsel appearing for the respondent No. 1, has relied upon the following decisions:

(1) P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others,

(2) Modella Woollens Limited v. Employees State Insurance Corporation

(3) Hindustan Lever Employee''s Union Vs. Regional Provident Fund Commissioner and Another,

(4) Sree Sivakami Mills Ltd. Vs. Employees'' State Insurance Corporation,

(5) Orient Paper Mills Vs. Regional Provident Fund Commissioner and Another,

(6) Bajaj Tempo Limited Vs. The Employees State Insurance Corporation,

(7) Dr. A.V. Joseph Vs. Assistant Provident Fund Commissioner and another,

(8) Saraswati Construction Company Vs. Central Board of Trustees,

(9) Decision dated 20.7.2010 rendered by the Single Judge of this Court in Writ Petition No. 1547 of 1996 and Writ Petition No. 1385 of 1997.

In view of the fact that the petitioner has been denied an opportunity of being heard in the matter, no reference is required to be made to the aforesaid cases relied upon by the learned Counsel for the respondent No. 1.

5. In the result, the petition is allowed. The impugned orders dated 5.11.2003 and 5.3.2004 passed by the Assistant Provident Fund Commissioner, Nagpur, along with the order dated 15.11.2010 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi, are hereby quashed and set aside. The matter is remanded back to the Assistant Provident Fund Commissioner, Nagpur, to conduct a de novo enquiry and to exercise the power conferred upon him to collect the material and further to provide the petitioner an opportunity to present its case. Needless to say that the amount, which has already been attached by the Assistant Provident Fund Commissioner shall remain as it is and it shall be subject to the outcome of the enquiry u/s 7A of the EPF Act. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

