(2011) 07 BOM CK 0224

In the Bombay High Court

Case No : Writ Petition No. 167 of 2011

Ranisati Ginning Factory APPELLANT

Vs

Regional P.F. Commissioner and another RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 13, 7A

Citation : (2012) 2 BomCR 816 : (2012) 132 FLR 31 : (2011) 6 MhLj 132

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : A.R. Deshpande, for the Appellant; Anoop Parihar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 7.10.2010 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi, by which the appeal filed by the petitioner came to be rejected. The petition also takes exception to the order dated 4.7.1998 passed by the Regional Provident Fund Commissioner, Nagpur, by which order the applicability of the Provident Fund Act as also the dues under the said Act are computed and the liability of the petitioner has been fixed.

2. The petitioner is a proprietorship establishment engaged in the business of processing of cotton. It is the claim of the petitioner that it has not been in operation since last two years. The respondents herein are the authorities exercising powers under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for the brevity sake referred to as ''said Act'').

3. It is the case of the petitioner that it is a seasonal Unit and the entire process depends upon the season and also depends upon the raw cotton produce and practically the workers work for only 4-5 months in a year i.e. from November to March. It is, therefore, the case of the petitioner that the workmen employed by it are only seasonal workers and they work intermittently in the said 4-5 months. It appears that an enquiry was conducted in respect of the remittance to be made under the said Act and the administrative charges for the period 11/93 to 8/97. Pursuant to the said enquiry, a summons came to be issued u/s 7-A of the said Act to the petitioner, which was dated 22.11.1996, to appear before the Regional Provident Fund Commissioner, Nagpur on 4.12.1996. By the said summons the petitioner was called upon to produce the relevant record. The proceedings were adjourned from time to time from 3.1.1997 till 19.6.1998, on as many as about 12 to 13 occasions which find place in the order dated 4.7.1998. It was made clear to the petitioner that if it failed to attend the enquiry to represent its case, the matter would be decided ex parte. From the record it appears that though the representative of the petitioner had appeared on a few occasions, ultimately on the day when the 7-A proceedings were to be heard i.e. on 9.1.1998 and 19.6.1998 the petitioner was unrepresented. The authority therefore concluded the said 7-A proceedings by passing the impugned order dated 4.7.1998. The authority, as can be seen from a reading of the said order and more especially paragraph-3 thereof, has solely relied upon the deposition of the Enforcement Officer appointed u/s 13(i) of the said Act. The authority has thereafter by merely observing that though summons were issued, the petitioner did not remain present, concluded the said proceedings and determined the sums payable by the petitioner for the period 11/93 to 8/97, which find place in paragraph - 6 of the said order.

4. The petitioner aggrieved by the order dated 4.7.1998 filed a statutory appeal before the Employees'' Provident Fund Appellate Tribunal, New Delhi. The said appeal came to be numbered as ATA No. 179 (9) of 2001. Before the Appellate Authority the petitioner had raised a specific ground as regards the applicability of the said Act in the context of the fact that the persons engaged by it are seasonal workers and are working only during the period of 4-5 months. The petitioner had also challenged the order on the ground that no proper opportunity was given to the petitioner to produce the record. The Appellate Authority, as can be seen, without dealing with the said issues, however, by relying upon certain judgments, which have been reproduced in paragraph 6 of its order, has dismissed the said Appeal. This is how the petitioner is before the Court by way of the above petition.

5. Heard the learned Counsel for the parties.

6. On behalf of the petitioner, the principal contention is that the Regional Provident Fund Commissioner, Nagpur who has adjudicated upon the 7-A proceedings, has not recorded a finding as to why the said Act is applicable to the petitioner, more so in view of the objections of the petitioner that the said Act

was not applicable to it, as the workers employed by it were seasonal. The learned Counsel for the petitioner further contended that how the dues have been assessed has also not been disclosed and by merely putting the figures, which are mentioned in paragraph 6, without mentioning the number of employees in respect of which the amount was due, a total amount of Rs. 1,28,296/-has been fixed. The learned Counsel further contended that if an opportunity is given to the petitioner, the petitioner would be in a position to demonstrate how the said Act is not applicable and how no amount is due from the petitioner under the said Act.

7. Per contra, it is submitted by the learned Counsel appearing for the Provident Fund Authority that since the petitioner did not appear and since no record was produced by the petitioner, the authorities have proceeded on the basis of the report of the Enforcement Officer, which report has been prepared on the basis of the record of the petitioner that has been seen by the Enforcement Officer. The learned Counsel further contended that the reasons why the Act is applicable to the petitioner has been decided on the basis of the report of the Enforcement Officer which have been prepared on the basis of the record so made available to him by the petitioner. The learned Counsel further contended that in so far as the appellate order is concerned, the Appellate Tribunal has in terms held that since the petitioner did not appear on numerous occasions though opportunities were granted, no interference was called for with the order of the Regional Provident Fund Commissioner u/s 7-A of the said Act.

8. Having heard the learned Counsel for the parties, I have given my anxious consideration to the rival contentions.

9. Though it is true that in spite of summons to the petitioner, the petitioner did not appear and the matter being adjourned on numerous occasions, it does not absolve the authorities from recording a finding as to how the Act is applicable to the petitioner. This was all the more necessary in view of the fact that the petitioner had objected to the applicability of the Act on the ground that workers engaged by it were seasonal workers engaged only for a few months during the season. However, a reading of the order u/s 7-A of the said Act passed by the Regional Provident Fund Commissioner does not disclose any finding as regards the applicability of the said Act. In fact, the Regional Provident Fund Commissioner, as the order ex facie discloses, has merely relied upon the report of the Enforcement Officer, though the authority can call for the report of the Enforcement Officer and rely upon it. The proceedings u/s 7-A being in the nature of quasi judicial proceedings, it was incumbent on the part of the Enforcement Officer to record a specific finding as regards the applicability of the said Act to the petitioner.

10. The matter does not end there. Insofar as the dues are concerned, there is absolutely no material reflected in the order on the basis of which the dues, as mentioned in paragraph - 6 of the said order dated 4.7.1998, have been calculated. The applicability of the Act is to an employee and therefore the

authority should have recorded a finding as regards the number of employees to which the Act was to apply and thereupon to mention the arrears of dues in respect of the said employees. None of the kind finds place in the impugned order save an except that the amount due under various heads are mentioned which add up to Rs. 1,28,296/-. The said order, therefore, in my view does not adhere to the principles which have to be adhered to by a quasi judicial authority whilst dealing with the matter within its quasi judicial jurisdiction, more so when the order has the effect of imposing a liability on a party.

11. In so far as the order of the Tribunal is concerned, the Tribunal also perfunctorily has dismissed the appeal by accepting the order u/s 7-A of the said Act without addressing the issues sought to be agitated by the petitioner. This appears to be the style and manner in which the Appellate Tribunal seems to be disposing of the matters, as this Court has come across orders passed by the same Appellate Authority wherein the Appellate Authority without dealing with the contentions disposes of the matter by observing that there is no inconsistency noticed in the order of the Authority. In my view, the least that is expected of a Appellate Authority is to deal with the contentions of the respective parties.

12. For the reasons stated above, both the orders i.e. the order dated 4.7.1998 and the impugned order dated 7.102010 passed by the Tribunal are required to be set aside and are accordingly set aside, and the following directions are issued :

(i) The Regional Provident Fund Commissioner, Akola to hear and decide the 7-A proceedings de novo by giving an opportunity to the petitioner to produce the relevant material before him.

(ii) The Regional Provident Fund Commissioner, Akola to record a specific finding as regards the applicability of the Act and in the event the Act is held to be applicable the same to be in respect of how many employees and the dues in respect of each of such employees.

(iii) The parties to appear before the Regional Provident Fund Commissioner, Akola on 25.7.2011 and the Regional Provident Fund Commissioner, Akola thereafter to decide the 7-A proceedings within a period of two months from 25.7.2011.

(iv) The learned Counsel for the petitioner assures the Court that the petitioner will not seek any adjournment and will produce the relevant material as would be directed by the Regional Provident Fund Commissioner, Akola.

(v) The Regional Provident Fund Commissioner, Akola would be within his rights to refuse an adjournment sought by the petitioner if he finds that the same is unnecessary.

(vi) The petitioner has already deposited Rs. 51,380/- pursuant to the order passed by the Tribunal with the Regional Provident Fund Commissioner. The petitioner, therefore, to deposit the balance amount so as to make the total of Rs. 1,28,296/- with the Regional Provident Fund Commissioner, Akola by 25.7.2011. If the amount is not deposited as directed by this Court, the benefit of this order would not enure to the petitioner and resultantly the petition would be deemed to have been dismissed.

13. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

