(2011) 06 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (C) 4174 of 2011

Ranjit Sagar Dam Project APPELLANT

Vs

Central Board of Trustees and Others RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16(1), 7A, 7B, 7O

Citation : (2012) 3 SLJ 211

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.P. Arora, for the Appellant; Ankit Kohli, for R1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The writ petition impugns the order dated 4th June, 2010 of the Employee''s Provident Fund Appellate Tribunal dismissing the appeal of the Petitioner against the order of the Provident Fund (PF) Authority u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. The case as set out in the writ petition is, that the Petitioner was brought under the purview of the Act with effect from 31st October, 1980 though Code Number was allotted to it on 14th July, 1987; that the Petitioner was brought under the purview of the Act as a "Building and Construction Industry"; that the Petitioner entered into a Contract Agreement with M/s Tata Robins Fraser Ltd. (TRF Ltd.) for supply and commissioning of fully automatic Centrally Operated Belt Conveyor Plant and also for operations and maintenance of the Plant for three years from the date of commissioning; that as per the time frame, the trial runs were to take place with effect from 1st June, 1995; that M/s TRF Ltd. on completion of the Belt Conveyor System, without seeking written approval of the Petitioner sublet the job of running of Belt Conveyor System to three agencies; that the PF Authority passed an order for determination of the PF dues of the

employees of Contractors/Sub Contractors and with which the Petitioner did not even have any privity of contract; that an amount of Rs. 7,57,34,740/- was determined as due from the Petitioner as the Principal Employer; that the review applied for u/s 7B of the Act was rejected by the PF Authority; that aggrieved therefrom the Petitioner preferred an appeal to the Tribunal; that the Petitioner was directed to deposit 50% of the determined amount i.e. Rs. 3,78,67,370/- by an interim order u/s 7O of the Act in the said appeal and which amount was so deposited; that the said appeal was partially allowed vide order dated 11th May, 2000 and the matter was remanded to the PF Authority for re-determination of the PF dues; that the PF Authority did not follow the instructions in the remand order and split the inquiry on such remand in three parts and vide order dated 30th September, 2008 re-determined the PF liability of the Petitioner qua the employees through one of the Sub Contractors M/s P.K. Talwar & Company at Rs. 3,00,123/-; that an appeal was again preferred to the Tribunal against the said order and which has now been dismissed vide order dated 4th June, 2010 impugned in this petition.

3. The main contention of the Petitioner, in the writ petition as well as during the course of hearing is, that the provisions of the Act are not applicable to the Petitioner in as much as the functional activities of the Petitioner do not answer the requirement of Section 1(3)(a) or 1(3)(b) of the Act; it is contended that the Petitioner is not functionally engaged in building and construction industry, under which head the Petitioner has been brought within the purview of the Act; it is further contended that the Petitioner is a project of the Irrigation Department of the State Government of Punjab and is not engaged in any building and construction work and is not liable for coverage as per Section 16(1)(b) and 16(1)(c) of the Act. The Petitioner being fully conscious of the hard reality of having not challenged the applicability of the Act before the PF Authority or before the Tribunal, has contended that there is no estoppel in law.

4. It is also the contention of the Petitioner that M/s P.K. Talwar & Company (impleaded as Respondent No. 3) as a Contractor has not even been asked to pay the PF dues of its employees in the first instance and without the same having been done, the Petitioner even as a Principal Employer could not have been made liable. It is thus contended that the Petitioner cannot be liable for the PF dues of the employees of its Contractors.

5. It is yet further the contention of the Petitioner that the amount of Rs. 3,78,67,370/- deposited by it with the Tribunal during the hearing of the earlier appeal is still lying deposited with the Tribunal and since the entire demand of Rs. 7,57,34,740/- then under challenge was set aside, the Petitioner seeks a direction to the Tribunal for refund of the said amount.

6. It is yet further the case of the Petitioner that the re-determination finding a sum of Rs. 3,00,123/- as due from the Petitioner is not in conformity with the earlier order in appeal remanding the matter to the PF Authority. It is contended that another demand of Rs. 24,27,070/- pursuant to the said remand is subject

matter of challenge in W.P.(C) No. 2407/2011 in which notice has been issued by another Bench and which is listed next on 8th July, 2011.

7. A perusal of the order dated 11th May, 2000 of the Tribunal disposing of the appeal earlier preferred by the Petitioner shows that it was the contention then also of the Petitioner that its establishment was not a building and construction industry and as such the employees of the Contractors were not its employees and that the Contractors being themselves registered establishment, the Petitioner could not be made liable for the employees of the Contractors.

8. However, the said contention did not find favour with the Tribunal.

9. It was then also the contention of the Petitioner that the employees whose contribution it had been made liable for, had not been identified. Finding merit in the said contention, the then demand of Rs. 7,57,34,740/- was set aside and the matter remanded. The operative part of the said order is as under:

The appeal is partly allowed to the extent of re-determination alone. The case is remanded back for re-determination of PF dues in the light of observations made above in the body of this order.

10. In my opinion, the challenge now made by the Petitioner to the applicability of the Act and to the Petitioner being not liable for PF dues of the employees of its Contractors ought to have been made by challenging the aforesaid order dated 11th May, 2000 of the Tribunal, which was neither challenged then nor in the present writ petition. Thus, the question of applicability of the Act and liability for the employees of the Contractor, has attained finality on 11th May, 2000 and cannot be re-agitated after 11 years. It may be mentioned that the present writ petition itself has been filed after nearly one year of the order dated 4th June, 2010 of the Tribunal. Only a vague explanation is given in the writ petition of the order having not been communicated to the Petitioner, without even mentioning as to when it was first communicated to the Petitioner. The Petitioner having not challenged the order dated 11th May, 2000 in the earlier appeal, cannot now be permitted to challenge the said two aspects. The principle of estoppel cannot be invoked in isolation. The said principle has to be read with other principles viz. of finality of matters. The Petitioner having allowed the said two aspects to have attained finality, cannot at least qua them invoke the principle of estoppel. It may be however be clarified that this order will not come in the way of the Petitioner if otherwise entitled to challenge the continued applicability of the Act to itself, in making the said challenge. However, as far as the demand qua the employees of the Contractors aforesaid is concerned, the same will remain unaffected by said challenge even if any made.

11. Finding that the remand vide order dated 11th May, 2000 (supra) was only for re-determination of PF dues, it has been repeatedly enquired form the Petitioner as to what is wrong with such re-determination finding a sum of Rs. 3,00,123/- as due from the Petitioner. The only argument which the counsel for the Petitioner could muster was that the said re-determination suffers from the

same malice as the earlier determination i.e. of not identifying employees.

12. I am unable to agree. The sum of Rs. 3,00,123/- has been found due towards the employees of one of the said Contractors only i.e. M/s P.K. Talwar & Company on the basis of the payments made by the Petitioner to the said Contractor. The counsel for the Petitioner has been unable to show that the amount should be anything other than Rs. 3,00,123/-.

13. Faced with the aforesaid, the counsel for the Petitioner lastly urged that since notice has been issued in the other writ petition being W.P. (C) No. 2407/2011, notice should be issued in this petition also.

14. Though the argument, notwithstanding being an argument of last resort, sounds attractive but such request if any ought to have been made at the outset. The Petitioner after having been fully heard and after this Court has spent time on the matter and reached the conclusion aforesaid, cannot be permitted to abort the hearing on such grounds. Mere issuance of notice in another writ petition stated to be entailing the same controversy would not entitle a litigant to issuance of notice if the Court does not find any merit in the writ petition, as the case here is.

15. Similarly, the demand for refund of amounts stated to be lying deposited with the Tribunal cannot be made for the first time in this petition, without having been shown to be made to the Tribunal. In any case, it shall be open to the Petitioner to take appropriate steps seeking refund of the amounts if any due.

16. The writ petition is accordingly dismissed in limine. No order as to costs.

