

(2005) 10 CAL CK 0010
In the Calcutta High Court

Case No : Writ Petition No. 15067 (W) of 2001 and C.A.N. No. 3918 of 2003

Regional Provident Fund Commissioner	APPELLANT
Vs	
Assam Biri Factories (P) Ltd. and Others	RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Constitution of India, 1950 — Article 12
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(2)
Penal Code, 1860 (IPC) — Section 196, 198, 228

Citation : (2006) 3 CALLT 62

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Vinay Mishra, for the Appellant; Moloy Kumar Basu, R.N. Mitro, Pinaki Motilal and Aniket Mitro, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Mitra, J.—The petitioner. Regional Provident Fund Commissioner, Calcutta filed the instant writ petition with the following prayers:

a) A writ of and/or in the nature of Mandamus commanding the Respondents not to give effect and/or further effect to annexure "PI" to the petition.

b) A writ of and/or in the nature of Certiorari calling upon the Respondents to produce the records of the case and after perusal of the same to quash the same.

2. Affidavit-in-opposition was filed on behalf of respondent Nos. 1 to 4. Affidavit-in-reply to the said opposition was filed on behalf of the petitioner. Supplementary Affidavit was filed on behalf of the petitioner and it was stated in the Supplementary Affidavit that by mistake, respondent No. 5 that is the Presiding Officer, EPF Tribunal hadn't been shown as party/respondent in the writ petition. It was stated that actually this is a typographical mistake and the learned Advocate of the petitioner missed the same. Actually, when final typing

of the writ petition was made the respondent No. 5 was not included and it was the fault of the Lawyer. The petitioner should not be penalised.

3. On behalf of respondent Nos. 1 to 4 an application being CAN 3918 of 2003 was filed. In the said application the respondent Nos. 1 to 4 raised a preliminary objection that the writ petition is not maintainable against the respondent Nos. 1 to 4 is not a "State" within the meaning of Article 12 of the Constitution of India and the respondent Nos. 1 to 4 are not amenable to writ jurisdiction.

4. The learned Counsel for respondent Nos. 1 to 4 also raised this preliminary objection and submitted that this question should be decided first as to whether the writ petition is maintainable or not and/ or whether the respondent Nos. 1 to 4 are amenable to writ jurisdiction or not.

5. The learned Counsel for the petitioner submitted that he has challenged the order passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal that is the respondent No. 5. He has not challenged any action of respondent Nos 1 to 4.

6. The learned Counsel submitted that since the respondent Nos. 1 to 4 are involved and/or affected by the said impugned order dated 29/12/2000 passed in Case No. ATA/150(15) 2000, the petitioner has made the respondent Nos. 1 to 4 as party respondents.

7. According to the learned Counsel for the petitioner when the main challenge or only challenge in the order passed by the learned Tribunal, whether the respondent No. 1 is a private Company or Government Company or it has been discharging public functions or public duties that is not the concern of the petitioner and that is not the question to be decided here.

8. Mr. Basu, submitted that his clients, the respondent No. 1 is purely a private manufacturer of biri and the respondent No. 1 Company never discharges any public function or public duties and the Government has no deep or pervasive control over respondent No. 1. The respondent No. 1 is purely a commercial Company and in that view of the matter respondent Nos. 1 to 4 are not amenable to writ jurisdiction,

9. Mr. Mishra, the learned Counsel for the petitioner submitted that his client, that is the Regional Provident Fund Commissioner has challenged the order dated 29/12/2000 passed by the learned Tribunal and as such the question of non-maintainability of writ petition does not arise. The writ petition is very much maintainable against an order of quasi-Judicial authority. The respondent Nos. 1 to 4 have been made party respondents incidentally inasmuch as by the order impugned the respondent Nos. 1 to 4 are affected and as such they are necessary parties but they are not the main parties.

10. On the preliminary objection heard the learned Counsel for the parties. In my view, this is a challenge of the order passed by the learned Tribunal in Case No. ATA/150(15)2000. The said impugned order has been passed in an appeal

preferred by the appellant/respondent No 1 against the writ petitioner. In fact from the prayers A and B to the writ petition it would appear that the challenge is annexure "PI" to the writ petition that is the order passed by the learned EPF Tribunal and in that view of the matter non-maintainability of the writ petition does not arise and this preliminary objection is overruled.

11. Let me now come to the merit of the main writ petition.

12. In the writ petition the fact which has been stated is inter alia as follows:

The respondent No. 1 is covered under the Employees Provident Fund Act and the said respondent No. 1 (hereinafter termed as said Company) is carrying on business as manufacturer of biri known as Jai Hind. The respondent No. 1 has got 11 contractors. The Regional Provident Fund authority that is the writ petitioner herein issued summons u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 as amended (hereinafter term as the said Act) to the respondent No. 1 and its authorized representative, Sri Vijay Kr. Chanda, who attended the hearing from time to time. The case was lastly heard on 2nd November, 1995 and Sri Chanda confirmed the calculation which was Rs. 38,31,612.10 from the period February, 1986 to August, 1995. Sri Chanda signed an order sheet of 7 A proceedings and also received the copy of calculation sheet by signing thereon 5th November, 1999. The respondent No. 1 being aggrieved by and dissatisfied with the impugned order preferred an appeal before the Appellate Tribunal being Appeal No. ATA/150(15) 2000 (hereinafter termed as said appeal).

13. The learned Tribunal by order dated 29th December. 2000 allowed the appeal on an erroneous view of law and fact and the impugned order was set aside. The case was remanded back for redetermining the Provident Fund dues, The petitioner was directed to summon the Contractors. The Xerox copy of this order is annexed herewith and marked as annexure "PI".

14. The petitioner in this writ petition took the grounds that the impugned order passed by the learned Tribunal is arbitrary, illegal, mala fide and against established principle of law and natural justice. The petitioner also took the ground that calculation was confirmed by the authorized representative of respondent No. 1 Company and in that view the learned Judge was wholly wrong in remanding the case for redetermination.

15. The petitioner took another ground that the learned Judge was wholly wrong in not appreciating that under paragraph 30(3) of the scheme it is the duty of the principal employer to pay both the contributions 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.

16. The petitioner also took further ground that the learned Judge misconstrued the provisions of law and came to a wrong finding and as such the order passed by the learned Tribunal is to be set aside.

17. Affidavit-in-opposition was affirmed by respondent No. 4 on behalf of respondent Nos. 1 to 4. In the opposition the respondents stated that respondent No. 1, Assam Biri Company (P) Ltd. is a private limited Company incorporated under the Companies Act, 1956 and the respondent Nos. 2, 3 and 4 are its Contract others. The respondent No. 1 being registered under the Companies Act and covered by the provisions of the said Act it is a separate legal entity and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. The respondent No. 1 Company being non-statutory body and since it does not perform public duties, no writ of Mandamus lie against the respondent No. 1 Company, the respondents are engaged in the manufacture and sale of branded biris and manufacture and sale of biris will not involve any public function. Therefore, the respondents are not amenable to writ jurisdiction and as such the present writ petition is not maintainable and the Hon''ble High Court has no jurisdiction to entertain the present writ petition.

18. It has further been stated in the opposition that in any event the validity and legality of the order dated 2th December, 2000 passed by the Presiding Officer. EPF Appellate Tribunal, New Delhi cannot be challenged in the present writ petition and without making the Appellate Tribunal the party therein the same is not maintainable and this High Court has no jurisdiction to entertain such an application of the petitioner.

19. In the affidavit-in-opposition the respondent Nos. 1 to 4 stated that they have got their own P.F. Code Nos. and against the said Code Nos. they have been depositing regularly the employer''s and employees'' share in respect of the employees directly employed by them and also the Contractor''s workers who were/are working at their sole industrial premises at Ragurnathpur for toasting, packing and labeling packed branded biri of the Company for making those biris marketable.

20. It has further been stated that respondents had not directly employed home workers or biri rollers for rolling biris and had paid wages to those home workers. During the period under inquiry u/s 7A the respondent establishment had not maintained any register of the home workers of their biri Contractors because of the fact that those biri workers never visited the factory premises of the respondents. The respondent Company is concerned only with payment to the Contractors and the payment of wages to the home workers.

21. The respondents also stated that number of Contractors varies year after year and a particular Contractor might not/may not continue his work for a continuous period with a single manufacturer of biri Therefore, it is very difficult task on the part of the respondents to bring all the Contractors including ex-Contractors in a proceeding u/s 7A of the Act for the periods, for the purpose of identification of eligible biri rollers and for determination of Provident Fund contributions in respect of those workers.

22. On 01/11/1996 the Regional Provident Fund Commissioner, Barrackpore Local Office, West Bengal issued Provident Fund Sub-Code Nos. to 11 biri Contractors of the respondent No. 1 Company and the same were duly received by them. The respondent Company annexed a copy of the letter of allotment of biri Contractors to whom the petitioner had issued Provident Fund Code Nos. Since the allotment of said Provident Fund Sub-Code Nos. by Provident Fund Office the aforesaid 11 biri Contractors started depositing Provident Fund contributions in respect of their biri rollers/home workers.

23. A registered summon was issued dated 22nd May, 1998 and 12th June, 1988 was fixed and as the date of hearing of the proceeding u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act. 1952 and directed the respondent No. 1 Company to submit the Contractors' list at the time of hearing positively.

24. On 12/06/1998 7A hearing was adjourned till 31/07/1998 and the petitioner issued another registered summon on 20/07/1998 and directed the respondents to submit Contractors' list.

25. On 03/07/1998 the respondents have filed list of biri Contractors stating names, addresses and date of joining in the above mentioned 7A proceeding.

26. On 19/02/1999 the respondents fully cooperated with the petitioner in the above 7A proceeding by filing 12A Register (biri production register) for the year 1986-1987 to 1994-95, Contractors' Payment Register for the year 1986-1987 to 1993-1994. In the said order the petitioner directed the respondents to file Profit and Loss A/C and Balance Sheet for the year 1986-1987 to 1994-1995. In the affidavit dated 25/03/1999 the respondents annexed true copy of the year-wise list of biri Contractors (from 02/1986 to 08/1995) being marked with the letter "R-6" and true copy of the said year-wise list of biri Contractors from 02/1986 to 08/1996 and the same has been marked as letter "R6" to the opposition.

27. The respondents also annexed a copy of the order dated 30/03/ 1999 issued by the petitioner and the same has been marked annexure "R7" to the opposition.

28. In response to the said order dated 30/03/1999 by letter dated 16/04/1999 the respondents have furnished Profit and Loss Account for the year 1987-1988 to 1990- 1991. Balance Sheet details of wages paid to the workers and Medical Certificate of the Managing Director who was unable to appear before the 7A authority due to his serious illness.

29. In the opposition the respondents stated that 7A proceeding was adjourned from time to time and by order dated 18/11/1999, 02/02/ 2000, 16/02/2000 passed by the petitioner in the above mentioned proceedings u/s 7A of the Act against the respondents for the period 02/1986 to 09/1995, the petitioner most arbitrarily, mechanically, incorrectly and without identifying the workers of the

biri Contractors of the respondents, who were eligible for getting membership under the Employees Provident Fund Act and the Scheme framed therein had determined Rs. 38,31,612.10 as the dues against the respondent Company on account of Provident Fund contributions (both employer's and employees' share). The respondents annexed true copy of the said order dated 16/02/2000 as annexure "R9".

30. The subject matter of challenge in this writ petition is the order passed in 7A proceedings on 29/12/2000.

31. The petitioner filed affidavit-in-reply reiterating his stand taken in the writ petition. In the reply, the petitioner stated that by bonafide mistake and inadvertently the Presiding Officer of the Appellate Tribunal was not made a party and in the reply it was stated that it is the fault of the learned Advocate and because of the fault of the learned Advocate the client cannot be penalised.

32. The Assam Biri Company being the appellant, preferred an appeal before the EPF Appellate Tribunal being Case No. ATA/150(15) 2000 where the Regional Provident Fund Commissioner was made respondent. In the appeal, the learned Counsel for the appellant submitted that the learned 7A authority has determined Provident Fund dues against the appellant for the period from 02/1986 to 08/1995 amounting to Rs. 38,31,612.10. The learned Counsel for the appellant before the Tribunal submitted that this determination has been done without identifying the employees. The payment relates to the Contractors of the biri, who supplied biri to the appellant therein and the appellant pays to the Contractors. The Contractors have their employees and pay them as per their contract.

33. The learned Counsel further submitted that being the appellant before the Tribunal they supplied the list of Contractors, with their addresses and requested to summon them for identifying the employees and also to determine the dues according to the payments made to them but the learned 7A authority did not summon the Contractors.

34. The learned Counsel for the Regional Provident Commissioner insisted that appellant, should himself furnish the name of the employees engaged by the Contractors but they failed. Their representative accepted the correctness of the Provident Fund calculations by the Department or Provident Fund Commissioner.

35. The learned Counsel for the appellant submitted before the Tribunal that they have filed this appeal on the ground that determination without summoning the Contractors and without identifying the employees and the emoluments earned by them without waiving the employees' share for pre-discovers period is bad in law.

36. The learned Appellate Tribunal ultimately, after hearing both sides, allowed the appeal, set aside the order impugned and the case was remanded back for re-determination of Provident Fund dues. The learned Tribunal also observed that

the appellant shall do everything in accordance with the direction of the Hon''ble Supreme Court in the Nasiruddin Biri case and the department shall also conform to those directions of the Hon''ble High Court but it is advisable that 7A authorities should summon the Contractors to safeguard the interest of the employees which would not be illegal.

37. Challenging this order passed by the learned Tribunal, the Regional Provident Fund Commissioner being the petitioner herein filed the instant writ petition.

Now. in the instant writ petition the points of law for determination are:

- 1) Whether it is the duty of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through the Contractors.
- 2) Was paragraph 30(3) of the Scheme correctly interpreted by the learned Judge.

38. To come to a conclusion regarding the first question, let me discuss the provisions of Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The said Section is quoted hereinbelow:

7 A. Determination of moneys due from employers.

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner. any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order:

- (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute, and
- (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be.

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under Sub-section (1) shall, for the purpose of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908). for trying a suit in respect of the following matters, namely:

- (a) enforcing the attendance of any person or examining him on oath:
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commission for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code. 1860(45 of 1860).

(3) No order [***] shall be made under Sub-section (1), unless the "[employer concerned] is given reasonable opportunity of representing his case.

**[(3A) Where the employer, employee or any other person required to attend the inquiry under Sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from an employer, as the case may be on the basis of the evidence adduced during such inquiry and other documents available on record].

[(4) Where an order under Sub-section (1) is passed against an employer ex parte, he may, within three months from the dated of communication of such order, apply to the officer for setting aside such order and if the satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employee had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation?Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the ex parte order.

(5) No order passed under this Section shall be set aside on any application under Sub-section (4) unless notice thereof has been served on the opposite party.]

39. The provision of Section 7A(b) is to determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be.

40. In view of the provision the determination which is required is the amount due from any employer. Now, what is the amount due? The amount due is the amount insofar as the direct employees of the employer concerned or the amount dues to the Contractor's employees are also included? Second part must be in the negative inasmuch as under the Contractor Labour Abolition Act and Rules the Contractor is liable for payment to his employees and when the Contractor fails then the principal employer becomes liable. Admittedly, the Contractor changes, admittedly, the set of employee changes. Now, it cannot be

the duty of the employer to pay insofar as the Contractor's employees are concerned, therefore, when determination u/s 7A is required it must be the direct employees of the employer. In the Judgment of the Hon''ble Apex Court reported in *The District Exhibitors Association, Muzaffarnagar and others Vs. Union of India and others*, . the Hon''ble Apex Court observed that the payment of employees'' contribution by the employer with the corresponding right to deduct the same from the wages could be only for the current period during which the employer has also to pay his contribution. Therefore, by retrospectively applying the Scheme the manufacturer could not be asked to pay the employees'' contribution for the current period antecedent to the impugned notification by which the Scheme was made applicable to the employer. That apart in another Judgment reported in *Food Corporation of India Vs. Provident Fund Commissioner and Others*, . the Hon''ble Apex Court observed that "The Commissioner while conducting an inquiry u/s 7A has the same power as are vested in a Court under the CPC for trying a suit. The power given u/s 7A to the Commissioner is to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise his powers to collect all evidence and collect all materials before coming to proper conclusion. That is the legal duty of the Commissioner. Though the employer and the Contractors are both liable to maintain registers in respect of the workers employed but the question is not whether one has failed to produce evidence. The question is whether the Commissioner, who is the statutory authority, has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act. It would be failure to exercise the jurisdiction particularly when a party to the proceeding requesting for summons summoning evidence from a particular person.

41. In a Judgment reported in 1994 (2)CHN 75 *Mantu Biri Factory (P) Ltd. and Anr. v. The Regional Provident Fund Commissioner and Anr.* the Hon''ble Division Bench of this High Court observed in paragraph 8 of this Judgment inter alia as follows:

"8. In the instant case it appears that the liability was fixed u/s 7A of the said Act only on the basis of the wages paid to some named contractors without any reference to the number of home workers. Provident fund dues had to be kept in the account of individual home workers. Their name and address and/or their identity is required to be known by the provident fund authorities otherwise the person in whose favour the money is kept would not get it back when he was entitled to get it. Such sum could not be kept with reference to the contractors inasmuch as the contractors are not recipient of the benefit under the Act. We are of the view that in the peculiar fact and circumstances of the case the Regional Provident Fund Commissioner shall issue notice to the contractors in question for disclosing the name and address of the home workers in exercise of the power conferred upon the Regional Provident Fund Commissioner u/s 7A(2) (a)(b) unless such power is directed to be exercised, the identity and the

particulars of the home workers could not be known and as in our view, no provident fund money could be kept in account of some unknown employees and workers. It must be remembered that this is not a tax or fee payable by the employer to the Provident Fund Commissioner. It is an act for the welfare of the employee and that the provident fund amount paid to the provident fund authorities are meant for the employees and/or workers and unless their identity is found out the purpose of the legislation will be frustrated. Accordingly, the Regional Provident Fund Commissioner is directed to issue summons to all the contractors for the purpose of appearing before such an authority and to disclose the name and address of each and every home workers and on whose account the provident fund dues were realized. The individual contractors against whom such notice is issued should appear and disclose all relevant materials for the purpose of disclosing and finding out the identity of such persons. Furthermore, the Provident Fund Commissioner shall also deploy some of the Inspectors to verify the particulars submitted by such contractors in respect of home workers to find out the genuineness of such particulars furnished to the provident fund authorities. We make it clear that such course of action is necessary for the purpose of doing justice to each and every home workers who are the recipient of the benefit of the provident fund. The Provident Fund Commissioner shall also so that the list furnished are correct and complete and as the home workers are illiterate and poor the Provident Fund Commissioner shall send Inspector to their respective villages or their houses for making some random check. For this purpose we also direct the appellants to compel the contractors to disclose the name and addresses of the home workers for the past periods and also as and when the moneys are paid by the company on account of home workers as their remuneration the contractors should be directed to submit the list of such home workers with their addresses and the appellant petitioners shall then forward a statement before the Regional Provident Fund Commissioner giving the names and addresses of each and every home workers and the amount of Provident Fund realized from their wages and the contribution of the employer for the purpose of record. Furthermore, the home workers should also be informed that the provident fund authorities are realizing and keeping with them provident fund dues of each and every home workers as the home workers are poor and illiterate and are most supposed to know all these matters it must be brought to their notice so that they may approach to the Provident Fund authorities for the purpose of obtaining loan and/or withdrawal of the money lying with the Provident Fund authorities. Accordingly the order of the Regional Provident Fund Commissioner is modified to the extent that the employees' share of contribution which could not be realized by the appellants for the period under reference should not be imposed as a liability of the employer. But the employer would be liable for the employers contribution for the aforesaid period including administration charges. Regional Provident Fund Commissioner shall issue notice to each and every contractor for the purpose of disclosing the names and addresses of each home workers who were paid wages by such contractors. For the purpose of enrolling the names in the provident fund account so that the

account in their names be maintained, the appellant is also directed not to make any payment on account of wages to the contractors until and unless such contractors furnish the names and addresses of each and every home workers and the amount of wages paid to such workers in detail. It is made clear that it is the primary duty of the employer to get the name of Home Workers collected and sent to the Provident Fund Deptt. for necessary action. The appellants being the employer shall immediately forward the statement furnished by the contractors giving in detail the names and addresses of such home workers and the amount of wages paid to such home workers for the purpose of verifying the amount of contribution whether paid correctly or not. If the course of action is not laid down by us is not followed in that event there may be scope for manipulation which will frustrate the very purpose of the Provident Fund Act. All arrears shall be paid within 3 months from today to the Provident Fund Authorities.

42. From all these Judgments it clearly appear that the Hon''ble Apex Court and the Hon''ble Division Bench of this High Court found that determination of dues means determination of dues from the employer as provided in Section 7A not the dues of the Contractor and if the dues are to be ascertained the Contractors need to be summon inasmuch as the employer cannot in any event say as to who are the Contractors'' employees since the contractor changes employees each and every year. It is obvious and pertinent to mention here that to ascertain the dues of the employer only the register of employer''s employees can be called for and the employer cannot be asked to pay for the pre-discovery period or to pay for the dues of the Contractors. If the Contractor is to be made liable the summons must be sent to the Contractor. The language of Section 7A is very clear which says "the amount due from the employer" doesn''t mean the amount due from the principal employer as well as the employees of the Contractor. The principal employer becomes responsible or liable to pay the dues of the Contractor''s employees only when the Contractor fails to pay its employees their dues (as provided in Contract Labour Abolition Act and Rules).

43. The learned Tribunal therefore, rightly found that the Contractors need be or should be summoned and the principal employer cannot be asked to pay both the contributions payable by himself in respect of the employees directly appointed by him and also in respect of the employees employed by or through a Contractor.

44. Now comes paragraph 30(3). Paragraph 30 of the Employee''s Provident Fund Scheme, 1952 runs in the manner as follows:

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 the 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 him and also administrative charges.

2[Explanation?For the purposes of this paragraph the expression administrative charges means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses fix.]

45. In paragraph 30(3) it has been stated that the responsibility of the principal employer is to pay both the contributions 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 him and also administrative charges. From this paragraph it is clear that the employer will pay the dues for the employees directly employed by him or for the employees appointed by the Contractor.

46. As observed earlier, under the Contract Labour Abolition Act and Rules the principal employer becomes responsible when the Contractor fails to pay the dues of the employees. However, the employer under the Contract pays the Contractor in a lumpsum amount for the purpose of work and the Contractor out of this lumpsum amount pays the wages to its employees. Therefore, the employer pays the Contractor overall lump sum from which determination cannot be made u/s 7A inasmuch as the employees of the Contractors are not available to the employer though the employer principally is responsible but the list of employees or the register of employees of the Contractors lie with the Contractors themselves. Therefore, unless the Contractors are summoned the dues cannot be determined u/s 7A.

47. The learned Tribunal correctly interpreted the provisions of paragraph 30(3) of the Scheme. At the cost of repetition it is observed that the principle employer may be responsible for payment to the employees that is his employees and the Contractor's employees but the Contractor's employees do not come to light unless the registers of the Contractors are produced and if the registers are to be

produced Contractors need be summoned. The Contractors must come before the Tribunal. In my view, therefore, the learned Tribunal came to the correct finding insofar as both the points are concerned.

The writ petition is therefore, dismissed.

All the connected applications are also disposed of herewith.

There will be no order as to costs.

Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.