

(1999) 12 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 18873 of 1999 and W.M.P. No. 27574 of 1999

Samy Company

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7L, 7O

Citation : (2000) 3 LLJ 119 : (2000) WritLR 470

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

E. Padmanabhan, J,

1. In this writ petition, the petitioner prays for the issue of a writ of certiorarified mandamus calling for the records of the first respondent, the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi, pertaining to the proceedings in Appeal No. ATA 13(61) of 1998, dated March 12, 1999, relating to the petitioner herein and quash the same and consequently direct the first respondent to reconsider the matter on merits.

2. This Court directed counsel for the writ petitioner to serve a copy of the writ petition, supporting affidavit and typed set of papers on Mr. V. Vibhishanan, learned standing counsel, appearing for the respondents. Accordingly, the matter was listed and arguments were advanced by the counsel for either side. With the consent of counsel for the writ petitioner as well as the respondent, the writ petition itself was taken up for final disposal.

3. It is the case of the petitioner that it is a registered partnership firm, that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, was extended to beedi industries. In July, 1977, by notification dated May 17, 1977, that the second respondent on February 23, 1988, called upon the

beedi manufacturers to comply with the provisions of the Act commencing from July, 1977, that the said action of the second respondent was challenged, that all the challenges were consolidated and transferred to the apex Court and the apex Court ultimately dismissed the writ petitions upholding the action, that the second respondent issued a notice u/s 7-A and that the petitioner submitted all their account books, central excise registers, wages registers, leave registers, acquittance registers and other material documents to establish the actual wages drawn by each employee.

4. It is the further case of the petitioner that the amendment was introduced to the Employees' Provident Funds Act by the Central Act 33 of 1988, providing for appeal as against the orders of adjudication passed by the Regional Provident Fund Commissioner u/s 7-A of the Act, that the petitioner filed W.P. No. 4364 of 1989 on the file of this Court challenging the orders of adjudication passed by the second respondent and this Court granted interim stay of the proceedings, that subsequent to the formation of first respondent Tribunal, the petitioner was directed to go before the first respondent and prefer an appeal, that this Court disposing of the earlier writ petition filed by the petitioner directed the first respondent to consider and entertain the claim of the petitioner as well as the interim order on merits and according to law and that the petitioner preferred an appeal before the first respondent Tribunal.

5. It is also the case of the petitioner that the first respondent ignoring the conditions imposed by this Court directed the petitioner to remit a sum of Rs. 1,31,481 being 50 per cent of the amount ascertained towards employer's share, and employees' share having been waived by the second respondent as per the orders of the Central Government, that the petitioner deposited a sum of Rs. 1,39,481 on December 15, 1997, that the appeal was taken on file by the first respondent and it was disposed of along with two other appeals of different parties on March 12, 1999, at its Madras camp, that the first respondent appellate Tribunal did not apply its mind to the grounds raised in the appeal nor it called for the records from the second respondent and that the first respondent had not disposed of the appeal in the manner required by the statutory provision.

6. It is contended that the first respondent did not apply its mind either to the facts of the case or the legal contentions raised or the documentary evidence but simply rejected the appeal confirming the orders of the second respondent. The order passed by the first respondent appellate Tribunal suffers with an error apparent on the face of the record and liable to be set aside by this Court. It was further contended by the petitioner that awarding of interest at 12 per cent on the amount ascertained from the date of the order is illegal and that the first respondent Tribunal had failed to take into consideration of the actual number of workers, their working days and wages paid and it had proceeded on the assumption without any materials even to infer. According to learned counsel for the petitioner, the impugned proceedings of the first respondent suffers with illegality, material misdirections and it is a failure to exercise jurisdiction vested

in it and therefore it is liable to be quashed.

7. Per contra, Mr. V. Vibhishanan, learned standing counsel appearing for the respondent, submitted that no interference is called for with respect to the order passed by the first respondent appellate Tribunal nor any case has been made out for interference by this Court.

8. Learned counsel for the petitioner, took the Court through the orders passed by the first respondent Tribunal and contended that on the face of the order the impugned proceedings is vitiated and it demonstrates total non-application of mind by the first respondent. ATA No. 13(61) of 1998 has been preferred by the writ petitioner, Samy Company. It is also fairly stated that the contribution payable by the employees had been waived by a notification issued by the Central Government. The first respondent Tribunal also took the view that the order impugned in Appeal Nos. 13(58) of 1998 and 13(63) of 1998 is erroneous and declared that the orders impugned therein is bad. :

9. Before referring to the orders passed by the first respondent, it would be essential to refer to the order passed by the second respondent, the original authority. The second respondent, by its order dated March 4, 1991, while noting that the employer had not deducted the employees' share of contribution of the provident fund and other dues for the period commencing from June, 1977, to December, 1985, assessed the amount due excluding employees' contribution. The second respondent assessed the employer's provident fund contribution at Rs. 2,41,679 and also assessed the administrative charges at Rs. 25,435.65, Deposit-Linked Insurance Fund contribution at Rs. 19,332.30 and Deposit-Linked Insurance Fund administrative charges at Rs. 3,866.50.

10. The petitioner directly invoked the writ jurisdiction of this Court and challenged the orders of the second respondent dated March 4, 1991, and this Court while granting four weeks time, directed the petitioner to prefer an appeal before the first respondent u/s 7-I of the Act. As per the orders of this Court the writ petitioner moved the appeal before the first respondent.

11. The first respondent appellate authority, by a common order dated March 12, 1999, disposed of the following three appeals (1) Appeal No. ATA 13(58) of 1998 (Sundaravadivel Mudaliar and Sons v. Regional Provident Fund Commissioner) ; (2) ATA No. 13(61) of 1998 (Samy Company v. Regional Provident Fund Commissioner) and (3) ATA No. 13(63) of 1998 (Minor Sait Beedi Company v. Regional Provident Fund Commissioner). The two other appeals, namely, ATA No. 13(58) of 1998 and ATA 13(63) of 1998, respectively preferred by Sundaravadivel Mudaliar and Sons and Minor Sait Beedi Company, were partly allowed and the impugned orders therein were ordered to be modified to the extent that the appellant need not deposit the share of the employees plus proportionate administrative charges and amount due under other heads as well as 12 per cent interest per annum. However, Appeal No. ATA 13(61) of 1998 has been dismissed.

12. A perusal of the order passed by the first respondent Tribunal would show that there is no discussion at all on merits of the matter and excepting one sentence, "Appeal No. ATA 13(61) of 1998 is dismissed" there is no discussion with respect to the merits of the matter.

13. This Court, pending the writ petition, issued interim orders subject to the condition, namely, to deposit a sum specified in the order and as the same has been complied, the order of interim stay was made absolute. The first respondent appellate forum also took notice of the fact that the appellant had deposited the required sum and the appeal was heard on merits.

14. Except making a reference with respect to the contentions raised by the petitioner, there is no discussion at all nor any finding has been rendered by the first respondent Appellate Tribunal while dismissing Appeal No. ATA 13(61) of 1998. It is not as if the first respondent had dismissed the appeal for non-compliance with Section 7-O of the Act. Section 7-O provides that no appeal by the employer shall be entertained by the Tribunal unless the employer has deposited 75 per cent of the amount due from the employer as determined by an officer referred to u/s 7-O of the Act

15. It has to be pointed out, at the risk of repetition, that it is not as if the first respondent Tribunal had dismissed the appeal of the petitioner on the ground that the appellant before it had failed to comply with Section 7-O. Factually, as set out in the affidavit filed in support of the writ petition, the petitioner had been called upon to remit a sum of Rs. 1,39,481 and the same was deposited on December 15, 1997, and thereafter the appeal was taken on file.

16. A perusal of the appeal grounds would show that the petitioner herein had raised number of factual contentions. None of these contentions had been adverted to nor been considered nor been decided. Section 7-L of the Act provides that the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions, as the case may be, after taking additional evidence, if any.

17. The first respondent Tribunal is a statutory Tribunal and it has all the powers of appellate authority and being a statutory Tribunal exercising the powers of appeal, the first respondent Tribunal has to pass speaking order on merits on the appeal preferred and such order should be on merits. The appellate authority is bound to consider the factual matrix and render its decision. On the face of the impugned proceedings it is clear that the appellate authority had failed to exercise the powers conferred u/s 7-L of the Act and this failure vitiates the proceedings.

18. The matter was pending for quite some time and the writ petitioner had the benefit of stay before the High Court and subsequently deposited the amount directed to be deposited by the first respondent Tribunal. When the petitioner

had complied with the said condition, it is incumbent on the part of the first respondent to consider the appeal on merits. The Tribunal, being the appellate authority, unless the appeal is disposed of u/s 7-O, is bound to decide the appeal on merits and according to law.

19. At the risk of repetition it has to be pointed out that the first respondent-Appellate Tribunal except adding one word "appeal is dismissed", there is no discussion nor the first respondent had adverted to the factual matrix as well as the contentions raised in the appeal. Thus, the proceedings of the first respondent suffers with an error apparent on the face of the record and it is a failure to exercise the jurisdiction vested in it. Hence, the order passed by the first respondent has to be set aside.

20. In the foregoing circumstances, the writ petition is allowed, the impugned proceedings of the first respondent is quashed in so far as it relates to Appeal No. AT 13(61) of 1998 and the matter is remitted back to the first respondent for de novo proceedings. The first respondent is further directed to issue a fresh notice of hearing and pass orders according to law. This Court also further directs that the first respondent shall take up the appeal without requiring further deposit.

21. The writ petition is allowed and the impugned order is quashed. The parties shall bear their respective costs. Consequently, the connected W.M.P. is dismissed.