(2004) 04 GUJ CK 0098

In the Gujarat High Court

Case No : Special Civil Application No 6832 of 2003

Sandvik Asia Limited APPELLANT

Vs

Assistant Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 17-04-2004

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2005) 1 LLJ 1049

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Nanavati Associates, for the Appellant; M.S. Rao for Respondent No. 1-2, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The short facts of the case are that the petitioner is served with the summons for inquiry u/s 7A of Employees'' Provident Fund and Misc. Provisions Act, 1952 (hereinafter referred to as "the Act") by the Asst. Regional Provident Fund Commissioner (hereinafter referred to as "ARPFC"). It is the case of the petitioner that on 26.4.02 the officer of the petitioner requested for giving some time to produce necessary material and the petitioner was communicated by letter dated 29.5.02 by ARPFC that the petitioner company may represent within 15 days from the receipt of letter. However, the grievance of the petitioner is that in the mean time on 29.4.02, even prior to the communication dated 29.5.02 whereby time was given, the final order u/s 7A of the Act has been passed by ARPFC whereby the liability to pay PF dues is fixed amounting to Rs.64,32,546/-. The petitioner preferred review application before the authority which also ultimately came to be rejected as per order, dated 31.3.03. As there is statutory remedy of appeal against the order passed u/s 7A of the Act the petitioner has preferred appeal before the tribunal under the Act being Appeal No.294(5)/2003. It is the case of the petitioner that the application for waiver of the amount to be deposited is also submitted and the petitioner has pressed for hearing of said application but since the Presiding Officer is not available in the tribunal the petitioner is constrained to approach this court. The petitioner has addressed letter to the authority regarding pendency of appeal and it is the case of the petitioner that inspite of the same recovery certificate for so called PF dues as per order u/s 7A of the Act was issued and under the circumstances the petitioner has approached this court. The petitioner pending this petition has amended the petition and has also challenged the legality and validity of the order, dated 29.4.02 and order u/s 7A of the Act and the order dated 31.3.03 passed in review application u/s 7B of the Act.

2. Heard Mr. Gandhi for the petitioner and Mr. Rao learned counsel for respondent authorities. Upon hearing the learned counsel for both sides it appears that there is no dispute on the point that the appeal is pending before the tribunal and the application for waiver is also pending. However, Mr. Gandhi for the petitioner contended that since the presiding officer is not available in the tribunal the petitioner is not in a position to press for the relief upon the application for waiver and inspite of the said fact brought to the notice of the PF authority, the recovery certificate is issued and the amount is sought to be recovered and the petitioner has no option but to approach this court. Mr. Rao, Ld. counsel for the respondent authority also admitted the position that the Presiding Officer is not available and therefore the application for waiver is pending and he has submitted that since there is no prohibitory order either staying the impugned order in appeal or any order for waiver, the authority would be justified in proceeding for recovery of the amount.

3. I would have considered the matter for granting interim protection only pending appeal since the Presiding Officer is not available in the tribunal, but however upon hearing the learned counsel for petitioner as well respondents, it appears that the officer concerned on the one hand as per order, dated 29.5.02 granted time and opportunity to produce the documents whereas on the other hand has already passed the final order u/s 7A on 29.4.02. A perusal of the communication, dated 29.5.02 shows that the concerned officer who passed the impugned order dated 29.4.02 has communicated the same and the Ld. counsel Mr. Rao appearing for the respondents is unable to dispute the position. It appears that no explanation is placed on record to the communication dated 29.5.02 issued by the ARPFC. If the party is communicated for giving opportunity to produce material record in connection with the request letter, it would be unreasonable on the part of the quasi judicial authority to pass the order contrary to the same. It further appears that the ARPFC who has passed the order on 29.4.02 has not even communicated the factum of final order in the letter, dated 29.5.02. I would have examined the matter further qua the conduct of the officer, but since the concerned officer is not impleaded as party, further observations on the said aspect are not made. Suffice it to say that the communication dated 29.5.02 shows that there is exfacie breach of principles of natural justice while passing the order dated 29.4.02 u/s 7A of the Act. The matter has not ended there, but even though the review application was

preferred and the same is also rejected. Therefore, it appears that the order dated 29.4.02 is passed without giving reasonable opportunity of producing the case before the authorities concerned and the same can not be sustained in the eye of law since there is breach of principles of natural justice.

4. Mr. Rao, Ld. counsel appearing for respondent authorities made an attempt to submit that in the balance sheet of the petitioner the profit is shown as that of job work and the same shows that the petitioner company is getting job work done and is adequately proved therefrom and it was further submitted that even if the expenses of the employees are considered at the rate of 60% to the figure of profit the liability of PF can be fixed. Mr. Rao, Ld. counsel for the respondent also made an attempt to submit that the veil is required to be lifted that for the beneficial legislation of the Act and therefore the authority is within its power to consider as to whether there is any camouflage in giving contract or not. In the submission of Mr. Rao, as per his instructions for regular profits of the company the job work is being done through contract which otherwise could have been done through the employees of the petitioner company.

5. Mr. Gandhi for the petitioner however submitted that the said amount of profit in the balance sheet is of job work performed by the petitioner company itself through its employees and all those employees are covered under the PF Scheme and requisite contribution is paid. He further submitted that the profit reflected in the balance sheet of the job work is not pertaining to job work contract given to other contractors and in the submission of Mr. Gandhi, so far as job work contractors whose bills were submitted to PF authorities are concerned they have their own PF account numbers and contribution and unless said aspect is verified by issuing summons to the contractor concerned, it can not be concluded that the concerned employees are the employees of the petitioner company and the quantum of liability to make payment. As observed earlier I find that the impugned order u/s 7A of the Act has been passed in breach of principles of natural justice and for the reasons recorded earlier the matter will have to be reconsidered by the authority and therefore I find on the issue as to whether the contract is permissible or not, and as to whether the contract is a camouflage or not, or as to whether it is open to the PF authority to lift the veil for fastening the liability of PF contribution or not required to be decided by this court at this stage since it may prejudice the inquiry or final conclusion before the authority who has to reconsider the matter.

6. Mr. Gandhi appearing for the petitioner has declared before this court that since this court has examined the legality and validity of the impugned order, no useful purpose would be served in keeping the appeal pending and the petitioner shall withdraw the appeal within a period of 15 days from today. Mr. Gandhi also submitted that in view of the decision of this court dated 12.4.04 in SCA No.15042/03 in the matter of Proto Pumps & Motors Pvt. Ltd vs Asst. P.F. Commissioner, EPFD the authority may be directed to reconsider the matter for the purpose of exercising power u/s 7A of the Act.

7. Considering the facts and circumstances of the case, and more particularly in view of peculiar facts and circumstances of the case that the order can not be maintained since the same is in breach of principles of natural justice and in view of the reasons recorded by this court in the order, dated 12.4.2004 passed in SCA Nol.15042/03, I find that the following directions shall meet with the ends of justice:

(i) The order, dated 29.4.02 (annexure "B") passed u/s 7A of the Act and the consequential order dated 31.3.03 (annexure "C") passed in review application and the recovery certificate, dated 30.4.03 (annexure "A") are quashed with direction that the ARPFC shall reconsider the matter for the purpose of exercise of power u/s 7A of the Act and shall give opportunity of hearing to the petitioner and shall follow the procedure required under law and shall pass the order as early as possible preferably within a period of four months from the date of receipt of writ of this court.

(ii) The petitioner shall withdraw the appeal within a period of 15 days from today and accordingly report the same to the concerned ARPFC before the matter is reconsidered as indicated hereinabove.

8. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

