

(2010) 02 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 9151 of 2003

Sharp Electrodes Pvt. Ltd.

APPELLANT

Vs

The Assistant Provident Fund Commissioner, Employees
Provident Fund and The Recovery Officer, Employees
Provident Fund Organisation

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7(1),
7A, 7I, 7O
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2010) 02 MAD CK 0094

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Vadivelmurugan, for the Appellant; K. Gunasekar, ACGSC, for the Respondent

Judgement

M. Venugopal, J.—The petitioner is an Industry engaged in the manufacturer of different kinds of electrodes. It introduced a Voluntary

Retirement Scheme to the workers from 1986 because of the lack of production activities of the Company. The willing workman had opted out

under the Voluntary Retirement Scheme and 19 of them were relieved from duty and the same was entered into by means of Section 18(1)

Settlement under the Industrial Disputes Act, 1947. The said 19 workers were paid their dues including the Provident Fund contributions and they

were relieved in terms of the Voluntary Retirement Scheme.

2. The stand of the petitioner/Company is that some of the workman had represented to it stating that they may be provided with casual

employment whenever there was a need and when the petitioner procured orders and therefore the petitioner assured them that they would be given casual employment if need arose thereto. Accordingly it offered casual employment to 14 workmen and maintained a separate attendant register for them.

3. While this being so, the Enforcement Officer of the first respondent office visited the petitioner's Company and verified the attendant register

and found that 14 employees were not permanent workers but they were employed on casual basis. It appears that the first respondent by means

of proceedings dated 05.12.2002 addressed to the petitioner had issued a notice u/s 7A of the Employees Provident Funds and Miscellaneous

Provisions Act claiming a total sum of Rs. 1,34,034.80/- to be paid by the petitioner, being the due amount for the period from 5/2001 to 9/2002

on the basis of the available records in his office and the break up figure for Rs. 1,34,034.80/- runs as follows:

1. Employees' Provident Fund Contribution

(A/c No. 1) Rs. 81,702-00

2. Employees' Pension fund Contribution

(A/c No. 10) Rs. 43,503-00

3. Deposit Linked Insurance Fund Contribution

(A/c No. 21) Rs. 2,584-00

4. EPF Administrative charges

(A/c No. 2) Rs. 5,735-00

5. Deposit Linked Insurance Fund

Administrative charges (A/c No. 22) Rs. 510-00

Total Rs. 1,34,034-80/-

and the petitioner was directed to pay the aforesaid amount within 15 days from the date of receipt of the order, etc., Later the second respondent

had caused a notice of demand dated 08.01.2003 addressed to the Manager of the petitioner/Company claiming a sum of Rs. 1,00,431.70 being

the due amount and this notice was issued prior to attachment of movable and immovable properties and for a sum of Rs. 1,00,431.70/-, the

details of amount mentioned in the Recovery Certificate issued by the Authorised

Officer are shown below:

Contributions Etc Damages Period

1. Employees' Provident Fund 05/01

Contribution (A/c No. 1) Rs. 61148 Rs. To 09/02

2. Employees Pension Scheme

Contribution (A/c No. 10) Rs. 32587 Rs.

3. Deposit Linked Insurance

Fund Contribution (A/c No. 21) Rs. 1926 Rs.

4. Employees' Provident Funds

Administrative Charges (A/c No. 2) Rs. 4292/70 Rs.

5. Deposit Linked Insurance Fund

Administrative Charges (A/c No. 22) Rs. 478 Rs.

Total Rs. 1,00,431.70/-

4. The prime contention put forward on the side of the petitioner is that the impugned order passed by the concerned Authority dated 05.12.2002

was in violation of principles of natural justice inasmuch as the petitioner was not given a sufficient opportunity to defend itself properly and

moreover the copy of the complaint was not furnished to it and the said order was a vitiated one in lieu of malafide exercise of power at the biggest

of the Trade Union and also that the notice of recovery issued by the second respondent was also clearly unsustainable because of the fact in the

second notice dated 08.01.2003 the amount of recovery was mentioned as Rs. 1,00,431.70/- and in view of the discrepancy of amount

mentioned in the two proceedings of the first respondent and the second respondent dated 05.12.2002 and 08.01.2003 respectively, the petitioner

is entitled to file this writ petition before this Court challenging both the orders passed by the concerned authorities and therefore prays for allowing

the writ petition in the interest of justice.

5. A perusal of the proceedings dated 05.12.2002 of the second respondent addressed to the petitioner clearly mentions the following:

None appeared on 10.10.2002 hence adjourned to 23.10.2002 as a last chance and finally to 31.10.2002. On 31.10.2002 Shri R. Naganathan,

Manager and Shri Paulraj, Assistant Manager appeared. They stated that they have enrolled all the employees and submitted dues and filed returns

also. However, on verification of complaint with returns it is seen that one Smt. Manonmani is not enrolled. As regards to others, the return filed

show difference of 1 year in date of joining also. This is contrary the statement given by the Trade Union. The employer has denied the fact of date

of joining being May 2001. Hence, the Trade Union Officials, workers in question are also summoned for hearing on 13.11.2002. On 13.11.2002

Shri R. Balasubramanian, VP (AITUC) appeared with the workers in question. They have stated that they have not left the company even for a

day. They are paid Rs. 70 per day for ladies and Rs. 80 for gents. Operators are paid Rs. 100 per day and helpers Rs. 90 per day. As the

employer has failed to appear, the hearing is adjourned to 14.11.2002. Shri R. Naganathan and Shri Paulraj appeared and agreed to the facts.

They are directed to enrol the workers from their respective dates and remit dues in respect of them. Hence the dues are assessed on the basis of

available information.

and as such the first respondent by means of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act 1952 had

determined the dues liable to be paid by the petitioner for the period from 05/2001 to 09/2002 and the amount so determined comes to Rs.

1,34,034.80/-. The contents of the first respondent's proceedings dated 05.12.2002 latently and patently indicates that on 10.10.2002 none on

behalf of the petitioner had appeared before the Authority and therefore the matter was adjourned to 23.10.2002 as last chance and finally it was

posted to 31.10.2002. Only on 31.10.2002, one Mr. R. Naganathan, Manager and Mr. Paulraj, Assistant Manager appeared and mentioned that

they had enrolled all the employees and submitted dues and also filed returns. But on verification of the complaint with returns, it was seen that one

Smt. Manonmani was not enrolled and in regard to others, the return files show the difference of one year in the date of joining, etc., which was

contrary to the statement given by the Trade Union and as a matter of fact, the petitioner denied the fact of date of joining being May 2001, etc.,

Also it is quiet evident from the proceedings dated 05.12.2002 that one R. Balasubramanian, VP (AITUC) appeared with the workers and stated

that they had not left the Company even for a day and they were paid Rs. 70 per day in respect of ladies and Rs. 80 for male and operators were

paid Rs. 100 per day and helpers Rs. 90 per day and when the employer had failed to appear the hearing was adjourned to 14.11.2002 and R.

Naganathan and Paulraj appeared and agreed to facts. They are directed to enrol the workers from their respective dates and remit dues in

respect of them and therefore the assessment were made on the basis of the available information.

6. At this stage, it is significant for this Court to make a pertinent mention that the proceedings of the first respondent dated 05.12.2002 addressed

to the petitioner shows a sum of Rs. 1,34,034.80/- being the amount determined to be paid by the petitioner whereas the notice of demand dated

08.01.2003 issued by the Recovery Officer of the EPF, Coimbatore shows a sum of Rs. 1,00,431.70/- to be paid by the petitioner Company. As

such there is a discrepancy in regard to the exact amount to be paid by the petitioner has appeared to his notice as well as the second notice.

7. It is apt for this Court to point out that in the decision Digpal Singh Vs. Union of India (UOI) and Another, , it is held that a Biparte order

passed u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, a remedy of appeal is provided in Sub-section (1) of

Section 7 of the Act. Inasmuch as 75% of the amount which is determined to be due u/s 7A of the Act, has to be deposited before the filing of an

appeal u/s 7O of the Act, this petitioner has knocked the door of the Court u/s 482 of the Cr.P.C with a view to avoid the aforesaid deposit. Thus

the writ was not maintainable.

8. It is to be noted that while exercising the jurisdiction u/s 7A of the Act, the Provident Fund Commissioner has the same powers vested in a Civil

Court in trying a suit as per the decision of the Hon"ble Supreme Court, Food Corporation of India Vs. Provident Fund Commissioner and

Others, , in fact the Provident Fund Authorities should invoke the powers as vested in a court under CPC for determining a liability, in the

considered opinion of this Court.

9. As against the orders passed by the authorities dated 05.12.2002 and

08.01.2003, the petitioner is having a viable, effective, efficacious and alternative remedy of preferring an appeal to a Tribunal as per Section 7I of the Employees Provident Fund and Miscellaneous Provisions Act 1952. Generally speaking, if a question is raised in a writ petition which goes to the root of the matter the existence of an alternative remedy of appeal available under Sub-section 1 of the Act will not be a bar for this Court to entertain a writ petition. But in the present case on hand, there appears to be some kind of discrepancy in regard to the amount originally claimed in the first notice dated 05.12.2002 and in the letter notice of demand dated 08.01.2003. The said discrepancy possibly arises out of factual disputes/controversies between the parties. If there is factual controversy/dispute then the writ proceedings cannot be an answer to solve the same. Admittedly when the issues involved are both a factual and a legal one which requires even adducing of oral and documentary evidence as a case may be, then, the option is given to the parties to adduce necessary oral and documentary evidence before the authorities concerned and thrash out the issues involved in a complete and comprehensive manner so as to give a quietus to the issues once and for all and when the petitioner has a viable, effective and alternative remedy of approaching the competent authorities by way of preferring an appeal as per Section 7I of the Employees Provident Fund and Miscellaneous Provisions Act 1952 then it is too premature for the petitioner/Company to approach this Court under Article 226 of the Constitution of India praying for a discretionary relief from the hands of this Court and since this extraordinary power will have to be exercised sparingly and with circumspection by this Court, this Court is not inclined to allow the writ petition but dispose of the same with a direction that the petitioner shall prefer an appeal before the Competent Authority/Tribunal as against the orders dated 05.12.2002 and 08.01.2003 passed by the authority in the manner known to law and seek appropriate remedy thereto, if so advised. Also a Review of the order u/s 7A of the E.P. Funds and M.P. Act 1952 has to be filed within 45 days and in the prescribed form. Considering the facts and circumstances, the parties are directed to bear their own costs.

8. In the result, the writ petition is disposed of with a direction that the petitioner shall prefer an appeal before the competent authorities as against

the orders dated 05.12.2002 and 08.01.2003 passed by the authority in the manner known to law and seek appropriate remedy thereto, if so

advised. Considering the facts and circumstances, the parties are directed to bear their own costs.