

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Writ Appeal 64 of 2014

Shri Swapan Kumar Paul,
S/o Late Rajendra Kumar Paul,
resident of B K Road, Banamalipur, Agartala,
P.S. East Agartala, District - West Tripura.

..... *Appellant.*

- Vs -

1. **Oil & Natural Gas Corporation Ltd.,**
having its office at Jeevan Bharati Building,
Tower li, 124, Connaught Place, New Delhi,
110001, represented by its Chairman and Managing Director.
2. **The General Manager (Finance),**
The Oil & Natural Gas Corporation Ltd. (Finance Department),
Badharghat Complex, Tripura Asset,
Agartala - 799014.
3. **The Regional Provident Fund Commissioner,**
Employees Provident Fund Organization,
Sub-Regional Office, near Bholagiri Ashram,
Agartala Airport road, Agartala - 799006,
West Tripura.
4. **The Union of India,**
Represented by the Secretary,
Ministry of Revenue, New Delhi.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the appellant	:	Mr. A K Bhowmik, Sr. Advocate, Mr. R Dutta, Advocate.
For the respondents	:	Mr. P B Dhar, Advocate.
Date of hearing and Delivery of judgment	:	11.03.2015.
Whether fit for reporting	:	Yes.

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, CJ)

By means of this appeal, the appellant has challenged the judgment dated 31st July, 2014 passed by a learned single Judge of this Court in WP(C) 221 of 2008.

2. Briefly stated, the facts of the case are that the petitioner was providing employees on contract to the Oil & Natural Gas Corporation Ltd. (*hereinafter referred to as 'ONGC'*) and working as a contractor of the ONGC. He entered into two contracts for providing vehicles to the ONGC. The periods of these contracts were from the year 1996 to 1999.

3. The conditions of the contract with which we are concerned read as follows :

“Clause 4.14 : The contractor shall be responsible to comply with all the statutory, regulations, Bye-laws including, but not limited to M.V. Act, Shops & Commercial Establishment Act, Labour Laws etc. and for payment of any Taxes, Duties, Levis etc. and will be solely responsible for any breach of any of the applicable Act, Rules, Regulations, Notifications etc. and shall keep ONGC absolutely indemnified against any action arising from any non-compliance as aforesaid.

Clause 4.22 : The contractor shall be responsible to comply with the provision of E.P.F. & M.P. Act, 1952 in letter & spirit. He will be responsible to obtain E.P.F. code for his establishment from P.F. Commissioner and deduct appropriate amount of provident fund from the wage

paid to his employees which shall be deposited by him directly with the P.F. Commissioner.

Clause 20.03 : The Corporation reserve the right to recover from the bill(s) and security deposit of the tenderer the amounts due to the Corporation against any penalties or as a result of any claim(s) compensation(s) or due to any statutory imposition etc. without Notice. The Corporation also reserves, the right to withhold any payment to safeguard the interest of the Corporation against any due(s), claim(s), legal disputes etc. The decision of the Chief Manager (Logistics) in this regard shall be final and binding on the tenderer."

Admittedly, the question relates to the payment of provident fund dues of the employees engaged by the contractor in respect of the contract entered into with the ONGC. The contractor as per the law then prevalent was not given EPF number and therefore, did not deposit the provident fund dues of the employees.

4. Our attention has been drawn to the letter dated 28th May, 2001 which indicates that EPF number was granted to the contractors in the year 2001 or later. Some of the employees of the contractors raised a dispute with the Provident Fund Commissioner for payment of their dues and this dispute was disposed of vide an order dated 31st January, 2007 passed by the Regional Provident Fund Commissioner, Agartala who after hearing the ONGC as well as the contractors directed the ONGC to deposit an amount of Rs.7,20,824/- on account of the provident fund dues payable to the drivers engaged by the contractors. These EPF dues were calculated by taking into

consideration the minimum wages payable to the drivers under the Minimum Wages Act.

5. The ONGC thereafter paid this amount but challenged the order of the Regional Provident Fund Commissioner in this Court by filing WP(C) 430 of 2000. In that case neither the present petitioner nor any of the other contractors were made a party. However, from the reading of the judgment it is apparent that the learned single Judge of the Gauhati High Court, Agartala Bench held that as per the reading of paragraphs 30 & 32 of the E.P.F Scheme, 1952 and reading the provisions of Section 2(e) and 2(f) of the Employees Provident Fund Act, 1952 the principal employer cannot escape the liability in respect of provident fund contribution. Both the Provident Fund Commissioner as well as the single Judge of the Gauhati High Court held that the ONGC being the principal employer could not escape the liability to pay the provident fund. After this judgment was passed, the ONGC proceeded to recover this amount from the contractors out of the payments due by the ONGC to the said contractors and while deducting such payments, reliance was placed on the conditions of the contract entered into between the contractors and the ONGC which we have quoted hereinabove.

6. Clause 4.14 of the contract clearly provides that the contractor shall comply with all statutory regulations and keep the ONGC indemnified against any action arising from any non-

compliance of any statutory publication. Clause 4.22 is absolutely clear and by this Clause the contractor has under the contract agreed to be responsible to comply with the provisions of the EPF & MP Act, 1952 in letter and spirit. He has agreed to deduct appropriate amount of provident fund from the wages paid to his employees which shall be deposited by him directly with the Provident Fund Commissioner. Therefore, the petitioner had agreed that he would deduct and deposit the amount of provident fund. It may be true that as per the practice prevalent at the relevant time, the contractor was not getting an EPF code but that did not absolve the contractor from his obligation to deduct the amount payable under the EPF and pay it to the Commissioner. If the contractor found any difficulty in doing so it could have been paid to the ONGC.

7. If we read both the clauses together it is clear that all statutory obligations including those of EPF were to be borne by the contractor. He had agreed to do so. The learned single Judge vide the impugned judgment has taken the same view and has held as follows :

“17. There is no conflict with the terms and conditions as engrafted in clause 4.22 and 20.3 with the provisions of Section 8A of the EPF & MP Act, 1952. The liability primarily lies with the contractor, the petitioner herein. For his default, the entire liability has been shifted to the principal employer, the respondent-ONGC. By invoking the provisions of Section 8A of the EPF & MP Act, 1952, the Regional Provident Fund Commissioner has shifted the entire liability with the respondent-ONGC and recovered the entire sum. By the judgment and

order dated 19.12.2006, this controversy has not been adjudicated. Moreover, the petitioner was not a party in the said proceeding, being W.P.(C) No.430/2000. The question that has been decided by the said judgment and order dated 19.12.2006 is whether by the final order dated 31.07.2000 the Regional Provident Fund Commissioner has committed any illegally or not? The answer as given by the said judgment and order dated 19.12.2006 is in the negative. But, nowhere the said judgment it reflects that the contractor is absolved from any liability. The respondent-ONGC, by invoking the provisions embodied in the contract, has recovered the sum equal to which had been recovered by the Regional Provident Fund Commissioner from the respondent-ONGC.

18. The controversy that has been raised in this writ petition is not about the manner in which the sum had been recovered, but about whether the contractor has got any liability to pay the said amount. A conjoint reading of Section 7A and Section 8A of the EPF & MP Act, 1952 demonstrate that the primary liability lies with the contractor. Since the principal employer has the liability to ensure compliance of the provisions of the EPF & MP Act, 1952 by the contractor, in the event of default, the Regional Provident Fund Commissioner has been authorised to recover the entire amount from the principal employer by invoking the provisions of Section 8A of the EPF & MP Act, 1952. This recovery is a penal measure. The provisions of Section 8A of the EPF & MP Act, 1952 do not in any manner eclipse or impact on the provisions of the contract entered between the contractor and the respondent-ONGC. The contractor and the respondent-ONGC are bound by the provisions as made in the said contract. As such, if there is any contractual liability to keep the respondent-ONGC indemnified as regards the EPF payment or default thereof, the petitioner cannot get absolved from that liability. From a close reading of the Contract, this Court finds that the liability of payment of EPF deposit for the employees remains with the contractor and by the said indemnity clause the respondent-ONGC, the principal employer is kept indemnified from such liability. This Court shall not

exercise its jurisdiction further under Article 226 of the Constitution of India for considering any other aspect as the controversy emanates from interpretation of a private contract.”

As rightly held by the learned single Judge, even though under the Act the principal employer may not be able to escape his liability, the principal employer, if so entitled under the contract, is entitled to recover this amount from the contractor.

8. As far as the present case is concerned, there were clear-cut conditions in the contract that the contractor i.e. the present petitioner would indemnify the ONGC on account of any statutory payments required to be made and special reference had been made to the provident fund payments. Merely, because the petitioner did not have a code number did not absolve him from his liability to indemnify the principal employer from paying this amount. Therefore, we find no merit in the appeal which is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Sukhendu