

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6791 OF 2012

M/s. Yashwant Sahakari Sakhar
Karkhana Ltd.

..Petitioner

Vs.

The Assistant Provident Fund Commissioner
Employees Provident Fund Organization

..Respondent

Mr. Saurabh Kulkarni, Advocate for the petitioner.
Mr. Suresh Kumar, Advocate for the respondent.

Coram : SMT. R. P. SONDURBALDOTA, J.

Date : 4th August, 2015.

P.C. :

This petition filed under Article 227 of the Constitution of India, challenges the order dated 22nd October, 2008, passed by the Regional Provident Fund Commissioner-II, Employees Provident Fund Organization, Regional Office, Pune, under Section 7A of Employees Provident Fund and Miscellaneous Act, 1952 (hereinafter referred to as 'the Act'). The order impugned in the petition was carried by way of appeal to the Employees Provident Appellate Tribunal and the appeal of the petitioner was decided by the Tribunal by its order dated 18th October, 2010. The petition does not challenge the order of the Appellate

Tribunal since the order of the Provident Fund Commissioner merged with the order of the Appellate Tribunal, in the absence of challenge to the order of Tribunal, the petition cannot be maintained. Hence, the petition is liable to be dismissed on this ground alone.

2. The petitioner was served with notices alleging that it had failed to remit Provident Fund, Deposit Linked Insurance Fund Contributions and Administrative charges towards provident fund contribution due in accordance with the provisions of the Provident Fund Act, the Employees Provident Funds Scheme, 1952, Employees Pension Scheme, 1955 and Employees Deposit Linked Insurance Scheme, 1976. It responded by claiming that the employees employed by its contractor, do not become its employees under Section 2(F) of the Act and that the independent contractors engaged by the petitioner were necessary parties to the proceedings. It also claimed that the work which was being done by the employees of the contractor is of an intermittent nature and not the regular work. The petitioner, did not take any defence on the merits of the demand.

Therefore, the Regional Provident Fund Commissioner, Regional office, Pune, by his order dated 22nd October, 2008 held that the petitioner was liable to deposit sum of Rs.3,09,881/- towards the above mentioned dues and interest at the rate of 12% per annum thereon.

3. When the petitioner carried the order in appeal, it contended, for the first time that, it being not the principal employer had no particulars and record of the labourers of the contractor. Therefore, non-examination of the contractor had caused prejudice to it. It also claimed that, the contractor had in fact deposited the amounts with the respondent and as such, the petitioner was not liable to deposit the amount. Perusal of the record, however, shows that there was not even an attempt made by the petitioner for examining it's contractor to establish the fact of depositing the amount.

4. Mr. Kulkarni, the learned Advocate for the petitioner relying upon the decision of the Apex Court in ***Food Corporation of India vs. The Provident Commissioner & ors. reported in 1991 CLR page 20***, submits that it was legal duty of the

Provident Fund Commissioner to exercise his powers to collect all evidence and collate all material before coming to proper conclusion and failure to exercise the jurisdiction, particularly, when a party to the proceedings requests for summoning evidence from a particular person amounts to failure to exercise the jurisdiction. In the decision cited, there was a specific case made out by the petitioner that it had some problems in collating the lists of all workers engaged in the depots scattered at different places. For that reason, it had requested the Provident Fund Commissioner to summon the contractors. In such circumstance, failure on the part of the Provident Fund Commissioner to summon the contractors was disapproved by the Apex Court. In the case on hand, there was no difficulty expressed by the petitioner as regards furnishing of the information to the Commissioner. The petitioner had merely claimed that there are contracts with Rayat Serva Seva Sanstha and another 18 to 19 contractors, who were required to be impleaded to the proceedings. The petitioner had not even disclosed the names of 18 to 19 contractors. In this conspectus

of facts, there is no substance in the contention raised. Besides, it was open for the petitioner to examine its contractors, during the enquiry before Assistant Provident Fund Commissioner. In the circumstances, I find no infirmity whatsoever, with the impugned order. Hence, the petition is dismissed.

Smt. R. P. SondurBaldota, J.