

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7103 OF 1999

Food Corporation of India,
Head Office at 16-20, Barha Khamba Lane,
New Delhi and the Regional office at
Mistry Bhavan, Dinshaw Waccha Road,
Churchgate, Mumbai – 400 020. ... Petitioner

v/s

Regional provident Fund Commissioner,
Bhavishya Nidhi Bhavan, 341,
Bandra (East), Mumbai – 400 051. ... Respondent

Ms.J.A. Sarkhot for the petitioner.

Ms.S.P. Bharucha for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 17 DECEMBER 2015

ORAL JUDGMENT:

By this petition, the Petitioner Food Corporation of India has challenged the order dated 27 April 1998 passed by the Appellate Tribunal, established under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, dismissing the proceedings filed by the Petitioner.

2. The Petitioner engaged certain contractors for operation of

loading and unloading activities. On 19 March 1998, the Regional Provident Fund Commissioner sent a notice under Section 7-A of the Act to the Petitioner calling upon him to show cause as to why the Petitioner should not pay the provident fund in respect of those employees who are engaged in handling of transportation. On 24 July 1987, the Petitioner filed reply and contended that it was the duty of the contractor to pay provident fund as the employees were engaged and employed by the contractor. On 14 May 1993, the Regional Provident Fund Commissioner passed an order holding that the Petitioner was liable to pay provident fund for the concerned employees, and not the contractor. The Petitioner filed proceedings before the Central Government, Ministry of Labour, under Section 19 of the Act on 7 September 1993 which was converted as an Appeal. The appeal was heard by the Appellate Authority and the Appellate Authority, by the impugned order dated 27 April 1998 dismissed the appeal. The Appellate Authority held that it is the responsibility of the Petitioner as a principal employer to pay the provident fund amount. This order is challenged by the Petitioner by way of present writ petition.

3. I have heard Ms.Sarkhot, learned counsel for the Petitioner and Ms.Bharucha, learned counsel for the Respondent.

4. Ms.Sarkhot submitted that the Appellate Authority has not considered that there is a difference between Contract For Service and Contract Of Service, and that under the contract which was

given to the contractor, the contractor used to employ his own employees. She contended that there was no connection at all between the Petitioner and the employees of the contractor. She submitted that it was not the work of loading and unloading which was carried out by the Petitioner Corporation for which the contract labour was employed, but the contract was given specifically for loading and unloading to an outside agency who employed their own personnel. She submitted that the reliance placed by the Appellate Authority on the definition of 'principal employer' is entirely misplaced. Ms.Bharucha supported the impugned order.

5. Since the Petitioner Corporation has various depots and offices all over India and has large scale operations, the issue as to whether it is liable to pay provident fund for the employees of handling and transport contractors is of importance for the Petitioner as it will have implications all over India for them. The matter was adjourned from time to time to ascertain whether the issue has been concluded by any decision of any Court. Learned counsel for the parties state that inspite of their best efforts, they are not been able to locate any decision by which the issue is concluded.

6. Perusal of the impugned order passed by the Tribunal shows that it is completely unreasoned. All that the Tribunal has done is to reproduce definitions under the Act, the underlying philosophy of the enactments, thereafter in one line the Presiding Officer has

held that therefore there is no reason why the Petitioner should not be required to ensure payment of provident fund contribution. The manner in which the said complex issue is dealt with is entirely unsatisfactory. Various facets arise. It is the case of the Petitioner that the Petitioner had engaged contractors for execution of handling and storing food-grains and in turn the said contractors have engaged their own employees. In the memo of appeal filed by the Petitioner, various grounds in detail have been taken. The Petitioner has relied upon tender document wherein the liability of the contractor has been specified. The nature of work and what is given to the contractors is also been enumerated. It is the case of the petitioner that the contracts given to the outside agencies is a composite contract, according to which, the said agency has to produce stated results and it is not the concern of the Petitioner as to how the contractor manages the same. Therefore it was the stand of the Petitioner that there is no employer-employee relationship. This central argument advanced by the Petitioner has been completely side stepped by the Tribunal which only reiterates the legislative policy in the impugned order. As stated above, the issue to be decided has widespread ramification for the Petitioner and the same could not have been disposed of in such a summary manner. The case for remand therefore to the appellate authority is made out.

7. Accordingly, the impugned order passed by the appellate authority dated 27 April 1998 is quashed and set aside. The

petition which was filed under Section 19-A of the Act bearing Petition No.S-3500/9(15)/93-PFC transferred to the appellate authority under Section 7-P of the Act, stands restored to file. The Appellate Tribunal will dispose of the appeal as per the law.

8. All contentions of the parties are kept open.

9. The amount deposited by the Petitioner in this petition along with the accrued interest shall stand transferred to the Appellate Tribunal. Registry shall take steps to transfer the amount deposited by the Petitioner in this Court to the Appellate Tribunal to be treated as an amount of deposit under Section 7-O of the Act. The Petitioner will take appropriate steps for the purpose of transferring the said amount to the Tribunal.

10. Rule is made absolute in above terms. No costs.

(N. M. JAMDAR, J.)