IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4694 OF 2016

THE ASST PROVIDENT FUND COMMISSIONER AURANGABAD
VERSUS
MS PRECICUT ENGINEERING PVT LTD AURANGABAD THR ITS PROPRIETOR

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Advocate for Petitioner : Mr.Chaudhary K.B.
Mr.Prabhakaran T.K., Adv., for Respondent / sole.

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CORAM : P.R. BORA, J.
Dated: June 22, 2016

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PER COURT :-

1. By filing the present petition the petitioner has challenged the order dated 26th November, 2014, passed by the Presiding Officer, Employees Provident Funds Appellate Tribunal at New Delhi in ATA No.432(9)2004. The aforesaid appeal was filed by the present respondent against the order passed by the E.P.F. Authority under Section 7A of the EPF Act whereby the respondent was directed to deposit the outstanding dues to the extent of Rs.14,69,928/-. The appellate authority, after having considered the arguments advanced by the parties and on perusal of the impugned order and other material placed on record, set aside the order passed on 11th March, 2004,

by the EPF Authority. Aggrieved thereby, the EPF authority has filed filed the present petition.

2. Shri K.B.Chaudhari, learned Counsel appearing for the petitioner, submitted that the appellate authority has failed in considering the fact that the respondent has failed in providing necessary particulars to the EPF Authority, about the amount of Rs.48,89,038.71 shown to have been paid in its balance sheet toward labour charges. Learned Counsel further submitted that the respondent was duty bound to enquire whether the contractors from whom the work was being got done by the respondent by paying labour charges, whether EPF contribution was paid and deposited with the EPF authorities of the worker employed by the said contractor. Since no such particulars were made available, according to the learned Counsel, the EPF authority was right in holding that the respondent has failed in depositing the amount of contribution in respect of the said workers to whom labour charges, to aforesaid extent, were paid by the respondent. In such circumstances, according to him, the order passed by the

appellate authority deserves to be set aside and the order passed by the EPF authority needs to be confirmed. Learned Counsel has relied upon the judgment in the case of *Saraswati Construction Co. Vs. Central Board of Trustees* delivered by the High Court of Delhi on 19th of April, 2010, and the judgment of the Madhya Pradesh High Court in the case of *Malwa Vanaspati and Chemical Co. Vs. Regional Provident Fund ((1976) I LLJ 307 MP).*

3. Opposing the submissions made by the learned Counsel appearing for the petitioner, Shri T.K.Prabhakaran, learned Counsel appearing for the respondent, submitted that some work was got done by the respondent on labour charge basis from different vendors at the premises of the said vendors and, in such circumstances, the respondent was not required to keep account of the wages paid to the employees of the said vendors or further to deduct and pay the E.P.F. contribution in respect of the wages paid to the employees of the said vendors. Learned Counsel submitted that the appellate authority has, therefore, rightly quashed and set

aside the order passed by the E.P.F.Authority. Learned Counsel, therefore, prayed for dismissal of the writ petition.

4. On careful reading of the order passed by the E.P.F. authority whereby it has directed the respondent to pay the amount of Rs.14,69,928/- along with interest, it is revealed that the said authority has held the amount of Rs.48,89,038.71 shown in the balance sheet of the respondent to have been paid by way of labour charges to be liable for the payment of contribution presuming that the said charges were paid for employees of the contractors from whom some work was got done by the respondent.

5. The material on record reveals that since beginning it was the specific contention of the respondent that the respondent company did get some job work done from different vendors on labour charge basis and, as such, the respondent Company was neither liable to give account of the wages paid to the employees of the said

vendors nor it was supposed to deduct the contribution and remit it to the E.P.F. authorities of the wages paid to the workers employed by the respective vendors. The respondent Company has submitted the list of 13 such vendors and also provided the particulars of the labour charges paid to each of the said vendor along with the invoices received from the said companies. However, the E.P.F.authorities in the impugned order, by only observing that it was not satisfied with the explanation provided by the respondent, proceeded to hold that the respondent was liable to pay the contribution on the said amount of labour charges.

6. The approach so adopted by the E.P.F. authorities and the interpretation so made by the authorities was apparently illegal and unsustainable. The Appellate Tribunal has rightly observed that the job work got done by the respondent and the labour charges paid by the respondent in that regard to the respective vendors cannot be considered as wages for the purpose of calculating Provident Fund dues. As is revealing from the

record, the job work was done by the independent establishments and many of them are already covered under the E.P.F.Act independently. As mentioned hereinabove, though the respondent had brought to the notice of the E.P.F. Authority the aforesaid facts and more particularly that the vendors from whom the respondents have got the work done were having their independent identity, the E.P.F. Authorities did not consider the said aspect in an enquiry under Section 7A of the Act. The Tribunal has further rightly noted that the liability to pay the Provident Fund contribution can be fastened only when the person is identified by the authorities and is found working in the unit. The purchase order for job on labour charges basis cannot be taken into consideration for calculation of the Provident Fund dues. The Honourable Apex Court in the case of *Food Corporation of India Vs. Provident Fund Commissioner and others ((1990) 1 SCC 68)* has held that the power given under Section 7A to the Commissioner is to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen (emphasis supplied). Learned Tribunal has referred to and relied upon the judgment of the Honourable Apex Court in the case of Himachal Pradesh State Forest Corporation Vs. RPFC ((2008) 5 SCC 756) wherein it is held that the amounts due from the companies will be determined only with respect to those employees who are identifiable.

7. Shri Chaudhari, learned Counsel appearing for the petitioner, has cited the judgment of this Court (Coram: R.K.Deshpande, J.) delivered on 3rd April, 2012, in Writ Petition No.5147/2011 (Regional Provident Fund Commissioner vs. Taj Tibbiya College and Rasheeda Hospital through its Chairman), however, the said judgment may not be of any help to the case of the petitioners since the facts of the present case are quite different than the facts which were involved in the cited judgment.

8. After having considered the material on record, it is quite evident that the E.P.F. authority misconstrued

the provisions and has wrongfully held respondents liable for the payment of contribution on the basis of the entries in the balance sheet of the respondent company, showing certain amounts having been paid towards labour charges, without proper identification of the employees.

9. In the above circumstances, it does not appear to me that the appellate Tribunal has committed any error in setting aside the order passed by the E.P.F. Authority. There is no substance in the petition so filed; it, therefore, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

10. Needless to state that it will be open for the E.P.F. authority to carry out further enquiry in respect of the labour charges shown to have been paid by the respondent Company to the respective vendors, the particulars of which are submitted by the respondent to the E.P.F. authorities, and further to find out the employees employed by the said vendors and whether the said vendors were liable to be covered under the

provisions of the E.P.F. Act, and liable to pay E.P.F. contribution towards those employees.

(P.R. BORA, J.)

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