IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5040 of 2011
Date of Decision:-18.11.2016.

The Vishkarma Indergarh Co-operative Labour & Construction Society Ltd.

......Petitioner

Versus

Employees Provident Fund Organization and others

.......Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. M.S. Longia, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for respondent Nos.1 and 2.

Mr. A.P.S. Mann, Advocate and
Mr. Daman Dhir, Advocate for respondent No.3.

Mr. H.S. Dhandi, Advocate for respondent No.4.

Mr. I.S. Sidhu, Advocate for respondent No.5.

Mr. Karan Gupta, Advocate for respondent Nos.6 and 7.

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P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of deduction of EPF amount from the petitioner-Society Contractor by the third respondent vide Annexure P-3.

2.) The petitioner is a Registered Society registered as Vishkarma Indergarh Co-operative Labour and Construction Society Limited under the Cooperative Societies Act, 1952. The petitioner and the Markfed entered into an agreement. According to the agreement, petitioner-Contractor shall be responsible for arranging labour and guards for handling and transportation of foodgrains as per the requirement of the concerned District Manager, Markfed, Ferozepur etc. While implementing the agreement, the petitioner Society raised certain bills with the Markfed-third respondent. The Markfed-third respondent while making payment to the petitioner deducted EPF amount. Such deduction is aggrieved by the petitioner-Society. Hence, the present petition.

3.) Learned counsel for the petitioner submitted that petitioner being a registered Society is exempted under Section 16 (1) of the EPF Act, which exempts a Cooperative Society if less than 50 persons. Learned counsel for the petitioner submitted that petitioner-Society consists of 25 members. Therefore the petitioner-Society is not covered by EPF Act. Thus, deduction of EPF amount by the Markfed-third respondent is without authority of law. It was further submitted that on 30.11.2007 vide Annexure P-4, RPF Commissioner has issued a communication while confirming that the petitioner Vishkarma Indergarh Co-operative Labour and Construction Society Limited is not covered under the EPF and MP Act, 1952 with the EPF Department as per the office record. Therefore, the petitioner-Society is already exempted by the EPF Department. Consequently, deduction of EPF amount by respondent No.3-Markfed is arbitrary and illegal. It was further contended that EPF Department have not determined the EPF amount under Section 7 A of the EPF Act. Thus, without notice and without hearing the petitioner, the Markfed-third respondent has deducted EPF amount. Hence, the impugned Annexure P-3 is liable to be set aside insofar as deduction of EPF amount.

4.) Learned counsel for the third respondent-Markfed submitted that deduction of EPF amount from the petitioner-Society is pursuant to the communication made by the EPF Department on 20.10.2010 and 24.11.2010 vide Annexure R-3/1 and R-3/2. Therefore, the deduction of

EPF amount from the petitioner is based on the instructions given by the EPF Department. Hence, there is no error committed by the third respondent-Markfed in deducting EPF amount of the petitioner Society vide Annexure P-3.

4.) Learned counsel for respondent Nos.1 and 2 EPF Department submitted that Markfed is the principal employer. Therefore, if the petitioner-Contractor failed to deposit PF amount than the principal employer is liable to deposit PF. Since the petitioner has not deposited PF amount, consequently, the principal employer-third respondent-Markfed has deposited on behalf of the petitioner. It was further contended by the learned counsel for respondent Nos.1 and 2. The petitioners have not questioned any action of the EPF Department in the present petition. Thus, unnecessarily they have been arrayed as party. That apart, he relied on Section 16 (a) read with Section 1 and 2 (fff) to say that even the Registered Societies are covered under the EPF Act and provisions to contend that there is a proviso and there is no blanket exemption for Registered Society. Therefore, the petitioner should have sought for exemption relating to applicability of EPF Act under Section 17. Such exemption has not been obtained by the petitioner. Petitioner relying on communication of the EPF Department dated 30.11.2007 (Annexure P-4) is to say that petitioner-Society is not registered in the EPF Department. Wrongly the word has been used stating that petitioner Society is not covered under the EPF and MP Act, 1952 for the reasons that further reading of the communication that *"we confirm that the Vishkarma Indergarh Co-operative Labour and Construction Society Limited is not covered under the EPF and MP Act, 1952 with this office as per this office records"* to say that petitioner-

Society is not one of the establishment enlisted in the EPF Department and not to the extent that there is a declaration that petitioner-Society is exempted from EPF and MP Act, 1952.

5.) Learned counsel for the petitioner relied on a decision of this Court vide Annexure P-7 to contend that Section 7-A proceedings is required in holding of an inquiry. Section 7-A proceedings would be invoked by the EPF Department only if there are disputed facts relating to number of persons working or non-availability of records or non-remittance of PF amount, if any. Therefore, the judgment dated 7.12.2009 vide Annexure P-7 is not relevant. The respondent counsel relied on a decision of this Court passed in ***Ram Singh and others Vs. Punjab State Co-op Supply & Mkg. Federation Ltd. and others*** decided on 25.7.2006 (para 9 and 10), in support of PF deduction.

6.) Heard learned counsel for the parties.

7.) The grievance of the petitioner is that the third respondent-Markfed cannot deduct the EPF amount as the Society of the petitioner is not covered under the EPF Act. The third respondent proceeded to deduct EPF amount from the petitioner-Society based on the EPF Department communication dated 20.10.2010 and 24.11.2010. For the purpose of payment of EPF, if any, contract or agreement between the principal employer and contractor, in such circumstances, it was bounden duty of the principal employer to deduct the EPF amount under the provisions of EPF Act. Thus, the third respondent-Markfed has complied the provisions of the EPF Act. If at all the petitioner is aggrieved insofar as deduction of EPF amount by the third respondent-Markfed, they should have sought for exemption relating to applicability of EPF Act under Section 17 of the EPF

Act by making necessary application. In the absence of seeking exemption from the EPF Department, the petitioner cannot contend that the third respondent-Markfed has no power to deduct the EPF amount. The contention of the petitioner that EPF Department vide communication dated 30.11.2007, the petitioner has been exempted from EPF Act is nothing but misleading. What has been communicated to the petitioner is that petitioner-Society-Establishment has not been enlisted in the EPF Department and not that an application was considered for exemption under the EPF Act. Presumption of the petitioner that petitioner-Society has been exempted from EPF Act is wholly misconceived. Therefore, there is no error committed by the third respondent-Markfed in deducting EPF amount from the petitioner's payment with reference to the agreement between the petitioner and the third respondent. The third respondent being the principal employer is bound to deduct the EPF amount and remit in the EPF Department. If at all the petitioner is aggrieved by any deduction of EPF amount by the third respondent or any other authorities it is for the petitioner to make necessary application before the EPF Department seeking for exemption from applicability of EPF Act. Thus, the petitioner has not made out a case so as to interfere with EPF deduction by the third respondent.

8.) Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

November 18, 2016.
sandeep sethi

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.