

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CWP No. 5303 of 2012 (O&M)
Date of decision : 12.5.2016

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Food Corporation of India

.....Petitioner

vs.

The Presiding Officer, Employees Provident
Fund Appellate Tribunal, New Delhi and others

.....Respondents

2) CWP No. 7289 of 2012 (O&M)

...

Food Corporation of India

.....Petitioner

vs.

The Presiding Officer, Employees Provident
Fund Appellate Tribunal, New Delhi and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Atul Gaur, Advocate and
Mr. Sumeet Goel, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for respondent No.2

Mr. P.K.S. Phoolka, Advocate for respondent No.3.

Mr. N.S. Chahal, Advocate for
Mr. J.S. Brar, Advocate for respondent No.4.

None for respondent No.5.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? |] |
| 2. To be referred to the Reporters or not? |] |
| 3. Whether the judgment should be reported in the Digest? |] |

P.B. Bajanthri, J.

These two petitions have been filed by petitioner-Food

Corporation of India. For the purpose of brief facts of the case, CWP No. 5303 of 2012 is taken.

2) Petitioner – Food Corporation of India (for short 'FCI') has questioned the validity of the order dated 1.2.2008 and Appellate Authority's order dated 14.7.2011, vide Annexures P-6 and P-7, respectively.

(3) The petitioner – FCI is a body Corporate under the provisions of Food Corporation of India Act, 1964. The petitioner deals in procurement/storage and removal and distribution of food grains throughout the country. It is stated that duties of the FCI includes and involves transportation, loading and unloading, handling of food grains in various depots at different places of the entire country. The work of loading/unloading would be fluctuating depending upon various factors, including export of food grains and other exigencies. It is stated that in most of the places the work of transport, loading and unloading and hoarding of food grains is carried out by employing contractor by awarding handling and transport contracts. The contractor is paid for the work assigned who onward engage the services of the labourer to carry out the work. The contractors are appointed for a specific period with certain conditions. Since the services of the labourers were engaged by the contractor, therefore, the petitioner – FCI is not liable for payment of provident fund contribution. In this regard certain internal correspondence have been made between the petitioner and respondent- department vide Annexures P-2 and P-3. There was a

confusion regarding contribution of provident fund by the FCI – petitioner. On one hand the petitioner is of the view that they are not liable for making contribution, on the other hand they have remitted provident fund contribution for the period from October 2004 to June 2006. It was further averred that respondent-department confirmed that there are no dues.

4) On 23.10.2007, respondent-department issued a show cause notice under Section 14 B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'Act, 1952') and the Schemes framed thereunder. In the show cause notice, it was stated that petitioner has defaulted to pay the employees provident fund contributions/Employees Pension Scheme contribution/ Insurance Fund contributions and Administrative charges/ Inspection charges into the respective funds, during the period from October 1996 to February 2006. Thus, the petitioner has been called for to reply to the show cause notice as to why damages as such rates as deemed fit and upto the extent of amount in arrears should not be imposed and recovered. It was further directed that the petitioner may appear in person or send a representative before the Authority on 27.11.2007, alongwith necessary documents and explain the case of the petitioner.

5) The petitioner stated to have submitted their reply vide Annexure P-5 for levying damages under Section 14 B and Interest under Section 7 Q of the Act, 1952. The respondent-department after considering the reply, passed an order on 1.2.2008 vide Annexure P-6,

determined the damages amount to the tune of Rs.3,33,094/- and interest under Section 7 Q of the Act, 1952, to the tune of Rs.81,225/- alongwith schedule of the dues.

6) Feeling aggrieved by the order dated 1.2.2008 of the department, petitioner – FCI preferred an appeal before the Appellate Authority under Section 7 (I) of the Act, 1952. On 14.7.2011, Employees Provident Fund Appellate Tribunal, New Delhi, rejected the appeal of the petitioner in ATA No. 251 (11) 2008. The petitioner – FCI aggrieved by the order dated 1.2.2008 (Annexure P-6) and order dated 14.7.2011 (Annexure P-7), presented this petition.

7) Learned counsel for the petitioner submitted that they are not liable to contribute provident fund and other benefits towards employees who were working under contractor. Therefore, impugned orders are liable to be set aside. It was further submitted that petitioner made internal correspondence with the department of respondent and found that there were no dues as is evident from Annexures P-2 and P-3. Therefore, petitioner is under the impression that there were no dues to be paid to the Provident Fund Department. EPF authorities communicated that petitioner – FCI need not contribute provident fund in view of the judgment cited in the communication dated 11.7.2002 (Annexure P-2). Assuming for the sake that petitioner - FCI is liable to pay contribution of provident fund, damages and interest, the respondent – EPF department should have opened their eyes as and when it was due. The due relates back to 1996 to 2007. There is an enormous delay in issuing show cause

notice for the first time in the year 2007 and deciding issue in the year 2008. Therefore, petitioner – FCI is not liable to pay damages under Section 14 B of the Act, 1952 and interest under Section 7 Q of the Act, 1952. Therefore, the entire action in passing order dated 1.2.2008 and Appellate Authority order are highly arbitrary. Moreover, the petitioner is exempted from EPF contribution. The same has not been considered by the respondent – EPF department, so also by Appellate Tribunal. Hence this petition.

8) Per contra, learned counsel for EPF department submitted that in view of Section 8 A of the Act, 1952, the petitioner – FCI being the principal employer is liable to pay the provident fund contribution etc. He cannot shirk the responsibility of contributing provident fund and other ancillary dues to the EPF department, in accordance with law. It was further contended that petitioner – FCI has deposited provident fund contribution from October 2004 to June 2006 vide Annexure P-3A, which is evident that petitioner is liable to make provident fund contribution, therefore, petitioner – FCI cannot turn around and say that petitioner is exempted from making provident fund contribution and the EPF Act is not applicable etc. In respect of the contention that EPF authorities have stated that FCI need not contribute provident fund in view of the judgment vide Annexure P-2 dated 11.7.2002, is concerned, it has no assistance to the petitioner for the reasons that after 11.7.2002 for the period from October 2004 to June 2006, petitioner has deposited provident fund contribution vide Annexure P-3A. Therefore, question of exemption

to the petitioner – FCI may not survive. In so far as delay in demand and issuance of show cause notice and passing of impugned orders are concerned, learned counsel for respondent – EPF department contended that it was duty cast on the petitioner to pay/deposit provident fund contribution and the petitioner has failed in his duty in not depositing provident fund contribution for several years. The EPF department has noticed in the year 2007, thereafter they have proceeded to act under Section 14 B read with Section 7 Q for determining the amount and put forth determined amount to the petitioner – FCI. Delay in proceeding under EPF Act has been elaborately considered by the Supreme Court and it has been held that delay would not be a hurdle for invoking the Act, 1952. In the case of *Hindustan Times Ltd. vs. Union of India and others (1998)* 2 Supreme Court cases 242, paragraph 29 reads as follows:-

“29. From the aforesaid decisions, the following principles can be summarised:

The authority under [Section 14-B](#) has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts

involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under [Section 14B](#). The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under [Section 14B](#) would be taken; mere delay in initiating action under [Section 14B](#) cannot amount to prejudice inasmuch as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under [Section 14B](#), he had changed his position to his detriment to such an extent that if the

recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature: he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

9) Further learned counsel for the respondent submitted that before passing the order dated 1.2.2008 vide Annexure P-6, ample opportunity has been provided to the petitioner – FCI and the same has been availed by filing reply as well as filing appeal. Thus, the petitioner – FCI has not make out a case so as to interfere with the impugned orders. The petition is liable to be dismissed.

10) Heard learned counsel for the parties.

11) In view of Section 8 A of the Act, 1952, the petitioner – FCI is liable to contribute provident fund and other ancillary dues to the respondent EPF department. Contention of the petitioner that they had a correspondence with the EPF department and the department have confirmed that there are no dues and relying on communication dated 11.7.2002 that the petitioner - FCI need not contribute provident fund in view of judgment quoted in Annexure P-2 dated 11.7.2002, are diluted in view of Annexure P-3A where the petitioner – FCI had admitted that they have deposited provident fund contribution from October 2004 to June 2006, which is subsequent to Annexure P-2 dated 11.7.2002. Now the question of delay in demand and issuance of show cause notice while invoking Section 14 B read with Section 7 Q of the Act, 1952 is concerned, the Supreme Court decision cited Supra suffice that delay in invoking Act, 1952 may not be a hurdle. In view of the facts and legal issues, order dated 1.2.2008 (Annexure P-6) and order of the Employees Provident Fund Appellate Tribunal, New Delhi, dated 14.7.2011 (Annexure P-7), passed in ATA No. 251 (11) 2008, are upheld.

12) Both civil writ petitions stand dismissed.

13) No order, as to costs.

May 12, 2016
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(P.B. Bajanthri)
Judge