IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA- 1422-2015 (O&M)

Decided on : 21.01.2016

M/s Calcutta Construction Company .... Appellant

VERSUS

Regional Provident Fund Commissioner,
Chandigarh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE LISA GILL

Present: Mr.Harsh Aggarwal, Advocate, for the appellant.

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RAJIVE BHALLA, J.

CM-3039-2015

Prayer in this application is to condone delay of 20 days in filing the appeal.

In view of averments in the application and arguments addressed, the application is allowed and delay of 20 days in filing the appeal is condoned.

CM-140-2016

CM is allowed as prayed and Annexures P-18 to P-20 are taken on record.

LPA-1422-2015

The appellant challenges order dated 14.05.2015, dismissing its writ petition filed to challenge order dated 03.09.2001, whereby application to entertain the appeal without deposit of 75%

of the amount assessed under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') was dismissed and order dated 21.12.2001 whereby the appeal was dismissed for non-deposit of 75% of the demand raised against the appellant.

Counsel for the appellant submits that as contributions towards provident funds are to be paid by the employer i.e. the Punjab State Electricity Board and not by the contractor, the liability fastened by the appellant regarding contributions of provident funds are contrary to the definition of the employer and employee set out in Sections 2 (e) and (f) of the Act. A perusal of paragraph 30 of the Employees' Provident Fund Scheme, 1952 and paragraph 4 of the pension scheme make it abundantly clear that the appellant cannot be held liable to make contributions under the Act. A perusal of Annexures P-18 and P-19, dated 03.07.1993 and 22.10.2013, clearly prove that the submission advanced by counsel for the appellant are correct. The appellant being a contractor of the Punjab State Electricity Board is not obliged whether legally or by contract to pay contributions under the Act. The order fastening liability upon the appellant, the order dismissing the application for exemption from deposit of 75%, the order dismissing the appeal and the order dismissing the writ petition may, therefore be set aside.

We have heard counsel for the appellant with a great degree of care but are not inclined to accept the contentions in view of following facts noticed while dismissing the writ petition: -

> "In the instant case, it is a matter of record that all the employees/workers employed by the contractor were paid salary by the petitioner-contractor. The petitioner-contractor has also been allotted a separate code number. Thus the plea that it is the establishment who has the control over the affairs of the Company thus is liable to pay contribution of the employees falls flat on the face of the petitioner-contractor. Even going by the language of para 30 of the Scheme as referred to by the appellate authority in the order under challenge dated 16.9.2010 it reveals that it is the employer who in the first instance avail the contributions paid by himself and also on behalf of the employees employed by him 'directly' or 'indirectly' and thereafter the employee employed by the employer or his contractor shall recover the contribution payable by CWP No. 5333 of 2011(O&M) 10 such employees. The aforementioned provisions envisages the situation where the contractor has not been allotted code number, for the reasons that in such situation the employee should not be made to suffer.
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> Here the expression "employer" leaves no manner of doubt that it is the contractor who had employed the workers and deputed at the premises of the establishment to maintain the machinery installed at the premises of the PSEB and thus the contractor was also being paid the charges in lump-sum by the PSEB. Thus the pith and substance of the language of para 30 ex facie reveals that it is the employer who has to make the contribution at the first instance. This Court also had an occasion to deal with this situation in the judgment in Regional Provident Fund Commissioner Vs. M/s Ropar Thermal Plant (GGSTP) PSEB's cse (supra) where the contractor had not been given the code number. It is till such time till the code number was not allotted it is the establishment who shall pay.
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> The instant case is not of such kind as it is a conceded position that the petitioner-contractor has been allotted the code number."

We are in complete agreement with the above opinion, recorded while dismissing the writ petition particularly in view of the facts that a code number was allotted to the appellant, the workers were employed and deputed at the premises of the Punjab State Electricity Board by the appellant, the Punjab State Electricity Board had no control over the service conditions of the employees employed by the appellant. Thus, finding no merit in the submissions, the appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

21.01.2016
shamsher

[LISA GILL]
JUDGE