

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Judgment: 19.02.2018

+

W.P. (C) 1929/2016

M/S MOHIT INDUSTRIES AKOLA Petitioner

Through: Ms. Nandita Rao, Advocate.

versus

THE ASSISTANT PROVIDENT FUND COMMISSIONER

AKOLA Respondent

Through: Ms. Inderjeet Sidhu along with
Mr. Suchitra Chawla, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. The challenge in this writ petition is the impugned order dated 14.12.2015 passed by the Employee Provident Fund Tribunal, New Delhi (in brief 'Appellate Tribunal') in ATA No.37 (9)/2012 by which the appeal of the petitioner under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'EPF Act') was dismissed.
2. The brief facts leading to the filing of the present writ petition are that the Inspectors/Enforcement Officers of the respondent organisation visited the establishment of the appellant on 10.11.2011 and found 23 employees working there. They

prepared a list of employees which was signed by the Enforcement Officers and on behalf of petitioner establishment. The Enforcement Officers of the respondent recommended the coverage of the petitioner establishment under EPF Act. A coverage notice dated 30.11.2011 under Section 1 (3) (a) of the EPF Act was issued by the respondent to the petitioner establishment.

3. A representation dated 30.12.2011 was submitted by the petitioner with the respondent which initiated enquiry under Section 7-A of the EPF Act in order to resolve the dispute. The petitioner without waiting to the outcome of the said representation approached the Appellate Tribunal. After perusing the file of the respondent, the Tribunal observed that Enforcement Officer found 23 employees working with the petitioner establishment and the list was signed by Enforcement Officers and the petitioner establishment and accordingly dismissed the appeal.
4. Learned counsel for the petitioner submits that in fact the Inspectors/Enforcement Officers of the respondent visited their establishment during lunch hours when the workers of the neighbouring factory were having lunch with the workmen of the petitioner establishment and the list prepared by the Enforcement Officers of the respondent was counter signed on behalf of the petitioner establishment with an endorsement.

5. Copy of the list of employees which is the part of the Report of the Enforcement Officers is on the record. It reflects an endorsement under the handwriting of the person, who signed on behalf of the petitioner establishment, that the employees at Sr. No.1 to 6 were of the neighbouring factory. It further bears endorsement on behalf of the petitioner that employees mentioned at Sr. No.13 and 14 are also not their employees and they had come to meet their labour acquaintances.
6. Learned counsel for the petitioner submits that since less than 20 persons were employed with the petitioner establishment, the coverage notice issued to them is illegal and not sustainable. He further submits that the Appellate Tribunal has also failed to take note of this endorsement while perusing the record before dismissal of their appeal.
7. The copy of the list which is part of the Enquiry Report of the Enforcement Officers is not disputed by Ms. Sidhu, learned counsel for the respondent. She submits that the petitioner establishment submitted their representation dated 30.12.2011 whereupon the respondent had initiated an enquiry under Section 7-A of EPF Act so as to resolve the disputes. She submits that instead of participating in the enquiry, the petitioner approached the Appellate Tribunal against the coverage notice dated 30.11.2011. She submits that the petitioner establishment has an alternative effective remedy

available to get the disputes resolved in the enquiry which has been initiated under Section 7-A and may be directed to approach the respondent with the requisite evidence to support its claim.

8. I have heard learned counsel for the parties.
9. To meet the rival contention of learned counsel for the parties, it is necessary to refer to Sub Section 1(a) of 7-A of the EPF Act, which reads as under:-

“7A. Determination of moneys due from employers.-

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute;”

10. It is evident from a bare reading of Sub Section (1)(a) of Section 7-A of EPF Act that the CPFC/DFFC/RPFC/APFC may decide the dispute regarding applicability of the Act to an establishment.
11. In view of the submissions of the learned counsel for the respondent that an enquiry under Section 7-A has been initiated

by the respondent on the representation dated 30.12.2011 filed by the petitioner establishment, the petitioner, if so desire, may approach the respondent with necessary evidence in support of its case about non-applicability of provisions of EPF Act.

12. In the circumstances, the petition is disposed of with the directions that the petitioner establishment shall join the enquiry which is being initiated by the respondent under Section 7-A of the EPF Act on its representation dated 30.12.2011. It is further directed that in case the petitioner establishment approaches the respondent within the reasonable time given by the respondent, the impugned order dated 14.12.2015 of the Appellate Tribunal shall not come in the way.

(VINOD GOEL)
JUDGE

FEBRUARY 19, 2018

“sandeep”

न्यायमेव जयते