IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTER PATENT APPEAL NO.25 OF 2012
WITH CA/4205/2012 IN LPA/25/2012 WITH WP/4976/2007
WITH CA/8971/2007 IN WP/4976/2007 WITH CA/3763/2012
IN WP/4976/2007

THE OFFICER INCHARGE AND ASSISTANT P.F. COMMISSIONER
VERSUS
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION
AURANGABAD AND ORS

Mr. N. K. Chaudhari, Advocate h/f Mr. K. B. Chaudhari, Advocate for the appellant
Mr. A. S. Bajaj, Advocate for respondent No.1

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 04.07.2019

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. In the Letters Patent Appeal issues are sought to be raised in respect of order dated 23-11-2011 passed by learned Hon'ble Single Judge in writ petition No. 66 of 2011 and are canvassed with reference to provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred to as the “EPF & MP Act”].

2. Said writ petition had been preferred by City and Industrial Development Corporation (CIDCO)-respondent No.1 herein against, order dated 20-09-2010 passed by the Employees Provident Fund Appellate Tribunal in appeal ATA No. A-413 (9) of

2007, and also, order dated 06-06-2006 passed by Officer Incharge Assistant Provident Fund Commissioner, SRO.

3. Questions which were raised on behalf of the CIDCO in the writ petition were:

(a) Whether proceedings initiated under Section 7-A of the Employees Provident Fund and Misc. Provision Act, 1952 are bad on account of lack of jurisdiction and authority ?

(b) The period from which the demand is made extends from 1980 to 1995, while the provisions of the said Act came to be made applicable to cleaning and sweeping workers with effect from 01.04.2001.

4. Learned counsel Mr. Niteen K. Chaudhari passionately submits on behalf of the appellants that the EPF & MP Act is a beneficial legislation for welfare and security of employees who generally are from weaker economic section of society. In spite of several efforts, CIDCO had not supplied list of contractors who had carried out activity of cleaning and sweeping in the CIDCO area during material time and in the absence of details been made available, eventually, looking at the balance sheet of CIDCO of relevant period, the EPF authorities had no alternative but to consider 30% as labour component and, as such, amount had been demanded from CIDCO. The EPF Officers had appropriately assessed and levied penalty for breaches and non-compliances.

5. Mr. N. K. Chaudhari puts in lot of efforts in the present matter emphasising actions by EPF authorities and has addressed various aspects and has also referred to several provisions which according to him would show that EPF authorities were within their powers and authority and were bound to take action and pass orders and levy charge on CIDCO.

6. Mr. Anil S. Bajaj, learned counsel appearing for respondent No. 1 has submitted that putting CIDCO under caption 'building and construction' of schedule and levy of charges therefor, is not in accordance with provisions in the statute and that EPF authorities had no competence to levy charge. The authorities had not appreciated factual aspects properly. CIDCO had been working at preliminary level during 1980 to December, 1985. While activity of sweeping and cleaning had been carried out by contractors, its record was not supposed to be maintained by CIDCO. It was supposed to be maintained only by contractors. For an activity 15 years before, to expect its record with CIDCO would not be proper. Moreover, the same would not be logical. The details as were sought by EPF authorities, in the circumstances, could not be provided rather the expectation had not been legitimate. The charges demanded as also method that had been allegedly followed by EPF authorities are incompatible with law.

7. Superceding aforesaid, Mr. Bajaj, learned counsel submits that while CIDCO is a government company, looking at Section 16 of the EPF and MP Act and Section 1(b) thereof, it is not

the case of appellant that the case can be said to be covered by Sub-Section 4 of Section 1. Learned counsel has also taken us through the provisions of Maharashtra Regional Town Planning Act, 1966 [hereinafter referred to as the “MRTP Act”] particularly Section 134 thereof and reads the same with Section 16 of the EPF and MP Act and contends, in view of the same, present Letters Patent Appeal would tantamount to nothing more than flogging a dead hourse.

8. Learned Single Judge, has referred to the decision in writ petitions No. 1820 of 2003 and 910 of 2004 *Cable Corporation of India Ltd Vs Union of India and another;* and considered, having regard to observations in said decision in paragraph No. 11 as were reproduced by him, that impugned orders before him and purported assessment thereunder would be untenable. Order by the appellate authority had been considered to be untenable since it did not appreciate the defence of CIDCO and had further considered that 30% as a labour component is not logical.

9. Learned counsel Mr. Bajaj for CIDCO submits that CIDCO is Special Planning authority under the Maharashtra Regional & Town Planning Act, 1966. He refers to Sections 40(1)(b) and 113 (3)(3A) of the said Act, reading thus :

> ***Section 40:*** *“Special planning authority for developing certain notified areas:*
>
> *(1) The State Government may, by notification in the*

Official Gazette for any undeveloped area specified in the notification in this Act referred to as "the notified area" either"

(b) Appoint any Development Authority declared under sub-section (3A) of Section 113.

Section 113:

(3) The Chief Executive Officer shall be the Secretary of the Development Authority (constituted under sub-section (2))

(3A) "Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the State Government may, notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the State Government; and thereupon, such corporation or company shall, in relation to such area, be declared by the State Government, by notification in the Official Gazette, to be the New Town Development Authority for that area."

10. During the submissions of the parties a copy of notification dated 01-06-1973 issued pursuant to the Maharashtra Regional & Town Planning Act, 1966, had been tendered across. Perusal of said notification dated 01st June, 1973 would show, it has been referred to that the Government of Maharashtra had declared the City and Industrial Development Corporation of Maharashtra

Limited (CIDCO) to be, respectively, 'new town development authority' for area comprising new Bombay and 'special planning authority' for Aurangabad notified area.

It may not be out of place to refer to that the CIDCO is subsidiary company of State Industrial and Investments Corporation of Maharashtra Limited, a company owned and controlled by the State Government.

Under the notification, the State Government has declared in exercise of powers under section 134 of MRTP that provisions of Provident Funds Act, 1925 to apply to provident fund by CIDCO.

11. Notification dated 01-06-1973 is reproduced herein below for ready reference;

STATE GOVERNMENT OF MAHARASHTRA
GENERAL ADMINISTRATION DEPARTMENT

Sachivalaya Bombay 32 BR dated 01st June, 1973

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966

N CID 2073-U-Whereas by the Government notification Urban Development Public Health and Housing Department Nos. RPB/1171/18124-II W 20th October, 1972, and TPS 3072/76840-W-II dated 30th October, 1972 **the Government of Maharashtra has declared the City and Industrial Development Corporation of Maharashtra Limited being a subsidiary Company of Maharashtra of the State Industrial and Investments Corporation of Maharashtra Limited a company owned and controlled by the State Government to be respectively the New Town Development Authority for the area comprised in the site of New Bombay and Special Planning Authority for the Aurangabad Notified Area** (hereinafter referred to as "the said Authority").

And whereas, the said authority has constituted a provident fund for the benefit of its Officers and employees (hereinafter referred to as "the said Fund")

And whereas the State Government considers it expedient that the provisions of the Provident Funds Act, 1925 (XIX of 1925) should apply to such fund as it were a Government Provident Fund.

Now, therefore, in exercise of the powers conferred in subsection (2) of Section 134 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of the Government of Maharashtra hereby declares that the provisions of the Provident Funds Act, 1925 (XIX of 1925) shall apply to the said fund if it were a Government Provident Fund.

By order and in the name of the
Governor of the Maharashtra

S.S.Gadkari,
Deputy Secretary to Government

12. Conjoint reading of the provisions under Sections 40(1)(b), 113 of the MRTP Act and aforesaid notification shows that CIDCO would be acting as special planning authority and as an agent of the State Government.

13. While aforesaid is the situation in respect of CIDCO, Section 134 of MRTP Act reads, thus:

Section 134- Pension and Provident Funds

(1) Every Regional Board [Special Planning Authority] or Development Authority may constitute for the benefit of its whole time paid members and of its officers and other employees, in such manner and subject to such conditions as may be prescribed by rules, such pension or provident fund or both as it may deem fit.

(2) Where any such pension or provident fund has been

constituted, the State Government may declare that the provisions of the Provident Funds Act, 1925 shall apply to such fund as if it were a Government Provident Fund

14. Thus, it emerges that CIDCO is new town development authority and special planning authority which has constituted provident fund and is declared to be governed by Provident Funds Act, 1952 for benefits of its members and officers and other employees under notification dated 1st June, 1973 reproduced above does show the same and veracity of the same is not disputed.

15. It would be worthwhile to refer to Section 1 of enactment EPF & MP Act reading, thus:

Section 1**: **Short title, extent and application.

(1) This Act may be called the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to *do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.*

(4) Notwithstanding anything contained in sub-section (3) of this Section or sub-section (1) of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

16. Section 16 of the EPF and MP Act, 1952 reads thus:

Section 16: Act not to apply to certain establishment-

This Act shall not apply-

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits.

(c) to any other establishment set up under any Central,

Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, that class of establishments from the operation of this Act for such period as may be specified in the notification.

17. It is easily discernible that CIDCO would be an authority covered by clause (b) of Section 16 of the EPF and MP Act, 1952 referred to above. Sub-section (3) of Section (1) of the EPF and MP Act, 1952 shows that applicability of the Act would be subject to provisions contained in Section 16 and further that it is not the case of the appellant that their case is covered under sub-section of 4 of Section 1 of the EPF and MP Act, 1952.

18. Having regard to aforesaid, it transpires that CIDCO in present matter as the special planning authority would hardly be said to be governed by the provisions of Employees Provident Fund and Misc. Provisions Act, 1952. In view of the same, we do not find that the Letters Patent Appeal can be entertained on the grounds and the submissions as advanced on behalf of the appellant. Letters Patent Appeal therefore, is dismissed. No order as to costs.

19. In view of the aforesaid, amount determined by the In-charge, Sub-Divisional Officer, Aurangabad under order dated 30-

05-2006 and which is stated to have been recovered from the bank accounts of CIDCO which under the orders of this Court was restrained from being utilized, in the circumstances, will have to go back to CIDCO alongwith accrued interest thereon. In view of above discussion writ petition No. 4976/2007 stands disposed of.

20. We, however, cannot resist our temptation to take note of the brilliant efforts of and labour invested by counsel for the appellant- Mr. N. K. Chaudhari, who performed commendably taking huge efforts for the provident fund authorities till discovery of legal position by respondents at belated stage during hearing of Letters Patent Appeal that CIDCO would not be amenable to governance by provisions of the Employees Provident Funds and Misc. Provisions Act, 1952.

21. In view of dismissal of the LPA and writ petition, the civil applications do not survive and are disposed of.

[S.M.GAVHANE, J.] **[SUNIL P. DESHMUKH, J.]**