**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No. 1881 of 2014 (O&M)

Date of decision: 3.12.2019

Punjab Agro Industries Corporation Limited .. Appellant

vs

The Regional Provident Fund Commissioner and others .. Respondents

**Coram: Hon'ble Mr. Justice Ravi Shanker Jha, Chief Justice.
Hon'ble Mr. Justice Rajiv Sharma**

Present Mr. Mrigank Sharma, Advocate for
Dr. Puneet Kaur Sekhon, Advocate, for the appellant.

Mr. Rajesh Hooda, Advocate, for respondent nos. 1 and 2.

<u>Ravi Shanker Jha, Chief Justice</u>

1. This appeal is filed by the appellant -Punjab Agro Industries Corporation Limited being aggrieved by order dated 19.5.2014 passed in CWP No. 13909 of 2010, whereby the petition filed by the petitioner-appellant against the order dated 15.4.2005 passed by the Regional Provident Fund Commissioner-II, Punjab, show cause notice dated 8.2.2007 issued under Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter to be referred as 'the 1952 Act') by the Recovery Officer and the order dated 19.5.2010 passed by the Appellate Tribunal constituted under the 1952 Act, has been dismissed.

2. Learned counsel for the petitioner-appellant submits that the appellant along with respondent no. 3 constituted a joint venture company -M/s Punjab Biotech Sugar Limited. M/s Punjab Biotech Sugar Limited was required to comply with the provisions of the Employees' Provident Funds

and Miscellaneous Provisions Act, 1952. As the liability under the aforesaid Act relating to the provident fund, etc. was not discharged by the M/s Punjab Biotech Sugar Limited, proceedings under the 1952 Act were initiated against M/s Punjab Biotech Sugar Limited and ultimately by order dated 15.4.2005 passed by the Regional Provident Fund Commissioner, recovery of ₹ 4,09,760/- was sought to be made from M/s Punjab Biotech Sugar Limited through Shri Vikas Singh, Collaborator. As Shri Vikas Singh Collaborator remained ex-parte throughout the entire proceedings and as no recovery could be made by the authorities, a notice dated 8.2.2007 for recovery of ₹ 8,41,689/- was issued to the petitioner-appellant, who immediately filed the appeal before the Appellate Tribunal, which was dismissed vide order dated 19.5.2010 on the ground that no appeal against the proceedings under Section 8F of the 1952 was maintainable before the Appellate Tribunal. The petitioner-appellant being aggrieved filed a petition before this Court assailing the order dated 15.4.2005 passed by the Regional Provident Fund Commissioner, notice of recovery dated 8.2.2007 and the Appellate Tribunal order dated 19.5.2010. It is admitted and undisputed fact that the petitioner-appellant did not challenge the final order dated 20.2.2007 passed in the recovery proceedings.

3. The petition filed by the petitioner-appellant has been dismissed by the learned Single Judge mainly on the ground that the petitioner- appellant was having 26% equity contribution in the company concerned and in such circumstances the petitioner-appellant was not required to be impleaded as a party in the proceedings under Section 7A of the 1952 Act by the respondents. That final order passed in recovery proceedings on 20.2.2007 was not challenged by the petitioner-appellant

and that no notice was required to be issued to the petitioner-appellant before passing any order under Section 7A of the 1952 Act as the authorities are only required to determine the liability under the said provisions.

4. Learned counsel for the petitioner-appellant submits that no order under Section 7A of the 1952 Act could have been passed without impleading the petitioner-appellant and giving an opportunity of hearing to the petitioner-appellant. It is further submitted that as there was no liability or quantification made by the authorities against the petitioner- appellant in the proceedings under Section 7A of the 1952 Act vide order dated 15.4.2005, notice of recovery of any kind issued against the petitioner-appellant is not sustainable. It is further submitted that the petitioner-appellant had assailed the notice dated 8.2.2007 issued for recovery mainly on the ground that the said notice was totally misconceived as no recovery could be made against the petitioner-appellant in the absence of any quantification or determination of liability under Section 7A of the 1952 Act against the petitioner-appellant.

5. Learned counsel for the petitioner-appellant further submits that the learned Single Judge in view of the aforesaid undisputed and admitted facts has erred in law in recording the findings that the petitioner-appellant was not to be given opportunity of hearing in the proceedings under Section 7A of the 1952 Act and has also erred in law upholding the recovery proceedings against the petitioner-appellant even in the absence of the petitioner-appellant being a party or any determination of the liability against it under Section 7A of the 1952 Act.

6. Learned counsel for respondent nos. 1 and 2 in counter submits that the petitioner-appellant did not assail the order passed by the authorities

under Section 7A of the 1952 Act. It is submitted that the petitioner-appellant has also not assailed the final order of recovery dated 20.2.2007. It is further submitted that in such circumstances no fault can be found with the order passed by the learned Single Judge in dismissing the writ petition filed by the petitioner-appellant. It is further submitted that the learned Single Judge has rightly recorded the findings that the petitioner-appellant was not required to be heard or impleaded in the proceedings under Section 7A of the 1952 Act as the petitioner-appellant was a part of the joint venture and had 26% equity contribution in the company, namely, M/s Punjab Biotech Sugar Limited.

7. We have heard learned counsel for the petitioner-appellant as well as respondent nos. 1 and 2 at length.

8. From a bare perusal of the provisions of the 1952 Act, it is apparent and evident that the determination of liability and money due from the employer has to be made by the authorities after giving reasonable opportunity of representation to the employer. Section 7A(3) of the 1952 Act specifically makes and provides for such an opportunity. Section 2(e) of the 1952 Act defines an "employer". In the instant case, it is undisputed that the employer was the M/s Punjab Biotech Sugar Limited. It is also an undisputed fact, which is also admitted by the respondents as well, that even if the petitioner-appellant was treated or could have been treated as an employer for the purpose of the Act, the petitioner-appellant was not impleaded as such in the proceedings under Section 7A of the 1952 Act nor was it given any opportunity of hearing as required under Section 7A(3) of the 1952 Act. It is also evident from the perusal of Section 8 of the 1952 Act that the proceedings for recovery, etc. could be initiated against an employer

or from any person against whom money is due or may become due from the employer or from the establishment or from any person who holds or subsequently held money on account of the employer. Admittedly and apparently, the petitioner-appellant does not fall in any of the aforesaid categories and it is in such circumstances that the petitioner-appellant had rightly assailed the recovery notice dated 8.2.2007.

9. From a bare perusal of Section 7A of the 1952 Act, it is also evident that the employer has to be heard before the amount due from the employer can be determined by the authorities under the Act. Admittedly, no such hearing or opportunity has been given to the petitioner-appellant. At this stage, it is stated that the amount has already been recovered from the petitioner-appellant and is with the respondents.

10. In view of the aforesaid facts and circumstances and keeping in mind the memorandum of understanding entered into between the petitioner -appellant and the collaborator for constituting and creating M/s Punjab Biotech Sugar Limited in consonance with the provisions of Section 7B of the 1952 Act, we are of the considered opinion that the authorities before proceeding against the petitioner-appellant were/ are required to hear the petitioner-appellant and thereafter take a reasoned decision in accordance with law and therefore while setting aside the order passed by the respondent authorities in the recovery proceedings initiated in view of the notice dated 8.2.2007, the matter is disposed of granting liberty to the petitioner-appellant to move an application under Section 7B of the 1952 seeking review of the order passed by the authorities under Section 7A of the 1952 Act. As the proceedings remained pending before various authorities in the interregnum period, therefore, the said application for

review shall be dealt with by the authority concerned on merits and shall not be dismissed on the ground of limitation. The authorities after hearing the parties shall take a decision in accordance with law and the provisions of the 1952 Act.

11. With the aforesaid directions, the appeal stands disposed of.

(Ravi Shanker Jha)
Chief Justice

3.12.2019 (Rajiv Sharma)
vs Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No