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

Date of decision: 21.01.2019

+ **W.P.(C) 882/2014, CM No. 1774/2014 & 4063-4064/2015**

BHARAT HEAVY ELECTRICALS LTD. Petitioner

Through Mr.J.C. Seth, Adv. with
Mr.Balaparameshwari K., Adv.

versus

**REGIONAL PROVIDENT FUND COMMISSIONER-II
(EXEMPTION) AND ORS** Respondents

Through Ms.Inderjeet Sidhu, Adv. for R-1.
Mr.Arun Bhardwa, Adv. for UOI.
Mr.G. Sivabalamurugan, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner impugns the order dated 14th November, 2013 passed by the respondent no.1, whereby the petitioner had been directed to secure compliance of all the eligible employees in its EPF Trust, including those engaged by or through the contractors, with or in connection with the work of petitioner/establishment and to report compliance thereto. The petitioner also impugns the notice dated 27th December, 2013, whereunder the petitioner was directed to show cause as to why in view of its non-compliance with the aforesaid dated 14th November, 2013, the exemption granted to it under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred

to as 'EPF Act') ought not be cancelled.

2. It may be noted that while issuing notice on 12th February, 2014, this Court had stayed the operation of the aforesaid order dated 14th November, 2013 as also of the show cause notice dated 27th December, 2013. Thereafter, vide its order dated 11th May, 2017, this Court had directed the respondent no.1 to pass a reasoned order in respect of the impugned show cause notice, after giving due opportunity of hearing not only to the petitioner but also to the workmen, namely Jyoti Swaroop and others, who had filed an impleadment application being *CM No. No.4063/2015* before this Court.

3. Pursuant to the directions passed by this Court, the respondent no.1 passed an order dated 27th July, 2017, a copy whereof has been placed before this Court by the learned counsel for the respondent no.1. By placing reliance on the said order, learned counsel for the respondent no.1 states that nothing further survives for adjudication in present petition and prays that the same be disposed of as such.

4. At this stage, it may be appropriate to refer to the relevant extracts of the order dated 27th July, 2017 passed by the respondent no.1, which are reproduced hereinbelow for the sake of ready reference:-

"I am, therefore, of the considered opinion that in view of the legal position as provided under the Act and also the new facilities being provided by the EPFO, the establishment M/s BHEL cannot be directed to seek compliance of the contractor employees in its EPF Trust under legal authority if employees are covered under the Act under the

independent code number of contractor. However, though the contractors have separate PF code numbers, the overall responsibility of ensuring the compliance under the EPF Act, for the employees working through the contractors, shall rest with M/s BHEL in the capacity of the Principal Employer and any default in this respect is required to be made good by the Principal employer.”

5. I have heard the learned counsel for the parties at length and perused the record. The basic grievance raised by the petitioner in the present petition is that it cannot be compelled to ensure compliance of the employees engaged through contractors in its EPF Trust, with or in connection with the work of petitioner/establishment. A bare perusal of the order dated 27th July, 2017 shows that the respondent no.1 has categorically stated therein that the petitioner cannot be directed to seek compliance of the contractors' employees in its EPF Trust under legal authority, if employees are covered by the Act under the independent code number of contractor. In other words, the order dated 27th July, 2017 not only supersedes the previous order dated 14th November, 2013 passed by the respondent no. 1 but virtually recalls the show cause notice issued on 27th December, 2013. Thus, I find that in view of the order dated 27th July, 2017, nothing further survives in the present petition.

6. At this stage, learned counsel for the petitioner states that he has no grievance qua the respondent no.1's conclusion that the petitioner cannot be directed to seek compliance of the contractors' employees in its in its EPF Trust under legal authority if the

employees are covered by the EPF Act under the independent code number of contractor. He, however, submits that the second direction holding the petitioner to be overall responsible for ensuring compliance under the EPF Act for the employees working through the contractors, is not at all justified and is even otherwise beyond the scope of the terms of reference to the respondent no.1. Therefore, while conceding that the present petition has become infructuous, he prays for liberty to challenge the order dated 27th July, 2017 insofar as it refers to the second observation as noted hereinabove, if the need so arises.

7. The writ petition and pending applications are disposed of as infructuous with liberty as prayed for.

CM No. 4063/2015 (for impleadment)

1. Learned counsel for the applicants states that in view of the fact that the present petition has become infructuous as a consequence of the order dated 27th July, 2017 passed by the respondent no.1, which order also affects the rights of the applicants, he does not wish to press the present application any further. He, however, seeks liberty to challenge the aforesaid order dated 27th July, 2017 in accordance with law.

2. The application is dismissed as not pressed with liberty as prayed for.

(REKHA PALLI)
JUDGE

JANUARY 21, 2019/aa