



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1730 of 2015

The Employees' Provident Fund Organisation,
Sub Regional Office,
31, Filter Bed Road, Vellore,
Rep by its Regional Provident Fund Commissioner

...Appellant/Respondent

-vs-

M/s.Brakes India Ltd., (Brakes Division)
Rep by its Vice President (Pers & HRD)
Sholinghur-631 102.

...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.02.2015 passed in W.P.No.391 of 2014.

Prayer in W.P.No.391 of 2014:-

Filed under Article 226 of the Constitution of India, to issue a writ or order or direction in the nature of writ, particularly, a writ of Certiorarified Mandamus to call for the records connected with impugned order ref No.TN/VLR/38789/SDC/2013 dated 26.12.2013 on the file of the respondent and quash the same and direct that the respondent shall not have a right to proceed against the petitioner under section 14B of the PF Act and thereby under Justice.

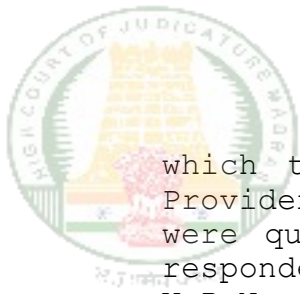
For Appellant : M/s. V.J.Latha

For Respondent : Mr.Sanjay Mohan
for M/s.Ramasubramanian
Associates

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Writ Appeal has been directed against the impugned order dated 06.02.2015 passed in W.P.No.391 of 2014 in and by



which the proceedings dated 26.12.2013 issued by the Regional Provident Fund Commissioner, Vellore against the respondent, were quashed on the basis of the judgements relied on by the respondent herein, more particularly, the order passed in W.P.Nos.7776 and 7777 of 2005 dated 25.02.2010, wherein it was clearly held that the respondent cannot be held responsible in any manner so as to make an attempt to recover any damage that was not passed on to the respondent.

2.Learned counsel appearing for the appellant would submit that when the responsibility of depositing the contributions lies with the principal employer, even though the contractor has been allotted with a code number, the principal employer cannot escape from the statutory liability. But, this aspect has been completely overlooked by the learned Single Judge. Therefore, the impugned order is liable to be set aside.

3. Learned Counsel for the appellant further contended that since the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act and the schemes framed thereunder, clearly fasten the liability on the principal employer in respect of the workers engaged through or by a contractor, the impugned order passed by the learned Single Judge, directing the appellant to recover the damages only from the contractor, who is no more, is also liable to be set aside.

4. Learned counsel for the appellant also contended that when liberty was also obtained to proceed against the legal representatives of the contractor who was also allotted independent code number, the respondent cannot escape from the legal obligation to remit the contributions. Arguing further, it was contended that the allotment of separate code number to the contractor is for administrative reason, that does not extinguish the duty or obligation cast on the principal employer to remit the contributions on time. In this regard, learned Counsel for the appellant relied upon a judgement of this Court reported in [2010 (3) LLJ 232] Balaji paper and newsprint Pvt Ltd., and another V Regional Provident Fund Commissioner and another.

5. Concluding her argument, learned Counsel for the appellant stated that when the respondent establishment, the principal employer, has failed in its duty to ensure that the contractor employed by them have sincerely and promptly paid the contribution, as there were admittedly belated payment of contribution, in accordance with Section 14-B of the Act read with para 32-A of the scheme, the respondent is liable to pay penal damages. Since the damages could not be collected from the contractor on his demise, there is nothing wrong in proceeding against the principal employer.



6. Opposing the above prayer, learned Counsel appearing for the respondent submitted that when the proceeding dated 26.12.2013 issued by the Regional Provident Fund Commissioner, Vellore admits the case of the respondent that one A.Govindaraj, Labour contractor was undertaking contract work from the respondent, while so, the said contractor had paid the EPF and allied contributions belatedly for the period from June 1991 to November 2002, the Proceeding dated 26.12.2013 makes the issue very clear that the Labour Contractor A.Govindaraj, was covered separately under the EPF Code No.(TN/VL/38789/SDC). Hence no interference is called for with the impugned order, as the appellant has already been given liberty to proceed against legal heirs of the said contractor.

7. We find some merit on the submissions of the learned Counsel for the respondent. The reason being that it is an admitted fact that the said contractor A.Govindaraj paid the EPF and allied contributions belatedly for the period from June 1991 to November 2002. Therefore, once the Contribution was admittedly paid in respect of all the employees employed by him, for the delay caused by the said contractor, it is not open to the appellant to proceed against the principal employer. The reason is simple and obvious, inasmuch as a similar issue came up before this Court in W.P.Nos.7776 and 7777 of 2005, where the contractor, who was the second respondent therein under the respondent M/s.Brakes India Ltd., failed to pay the EPF contribution on behalf of the workmen and in view thereof, the appellant herein passed an order under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act 1952, imposing damages to be paid by the said Contractor A.Govindaraj. When the said contractor failed to pay the same, in order to recover the said amount, the proceedings dated 25.02.2005 were wrongly issued against the respondent. Questioning the same, when the above said writ petitions were filed, the learned Single Judge by order dated 25.02.2010 after hearing both parties, has clearly held that there is no controversy that damages sought to be recovered was not passed against the respondent, namely, M/s. Brakes India Limited. As a matter of fact, it was imposed only against the contractor and for the failure on the part of the said contractor, the respondent herein cannot be held responsible in any manner. The Relevant portion of the order is given as under:

''3. There is no controversy before this Court that the damages sought to be recovered was not passed against the petitioner. As a matter of fact, it was imposed only as against the 2nd respondent. For the failure of the 2nd respondent, the petitioner cannot be held responsible in any manner so as to make an attempt to recover such damages



from the petitioner. In such view of the matter, the impugned proceeding is wholly without jurisdiction.

4. In the result, the writ petition is allowed and the impugned order of the 1st respondent dated 25.02.2005 by his proceeding in No.TN/VL/38789/SDC is set aside. However, liberty is given to the 1st respondent to initiate appropriate recovery proceedings against the legal heirs of the 2nd respondent in accordance with law. No costs. consequently, connected MP is closed.''

8. Since the said order has become final and concluded, the appellant, having accepted the said order to proceed against the legal heirs of the said contractor A.Govindaraj, has no justification to proceed against the respondent/ principal employer once again, when the issue is no longer res-integra. Therefore, the learned Judge, by the impugned order, has rightly quashed the proceedings dated 26.12.2013 following the order dated 25.02.2010 passed in W.P.Nos.7776 & 7777 of 2005. Hence, finding no infirmity with the impugned order, the writ appeal fails and it is dismissed. No Costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsn

To

The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Sub Regional Office,
31, Filter Bed Road, Vellore.

+1cc to M/s.S.Ramasubramanian Associates, Advocate, S.R.No.41404
+1cc to M/s.V.J.Latha, Advocate, S.R.No.41790

W.A.No.1730 of 2015

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