

OD-10

APO/184/2019

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

THE REGIONAL PROVIDENT FUND
COMMISSIONER & ORS.

-Versus-

RUPA CO. LTD. & ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 30th January, 2023

Appearance :
Mr. Anil Gupta, Adv
...for the appellant.

Mr. Shyamal Sarkar, Sr. Adv.
Mr. Rajesh Gupta, Adv.
Mr. Meghajit Mukherjee, Adv.
...for the respondent.

The Court : We have heard Mr. Anil Kumar Gupta, learned standing counsel for the appellant and Mr. Shyamal Sarkar, learned senior standing counsel assisted by Mr. Rajesh Gupta and Mr. Meghajit Mukherjee, learned advocates for the respondents.

This intra-court appeal filed by the Regional Provident Fund Authority is against the order dated 4th August, 2016 in WPO No.609 of 1999. The said writ petition was fled by the

respondents challenging an order passed by the appellant dated 10th February, 1999 by which the authority in exercise of its powers conferred under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the 'Act' for brevity) that the respondents establishment employees the contractors for cutting and making and/or working in connection with the work of the respondents establishment and those persons are entitled for the provident fund benefit. The learned Writ Court at the time when the writ petitioner was entertained had granted an order of interim stay. Ultimately, the writ petition was allowed by the impugned order.

Aggrieved by the same, the assessee is before us by way of this appeal.

After we have elaborately heard the learned advocates appearing for the parties and also perused various decisions cited at the bar, we first look into the factual aspect which led to filing of the writ petition. In response to an enquiry initiated by the authority under Section 7A of the Act, the respondents filed their objection which was in the nature of a preliminary objection contending that the persons to whom the material is entrusted for the purpose of cutting and manufacturing are independent job workers or commonly known as the 'jobbers' as they undertook similar job on contract basis for other companies as well. Furthermore, it was contended that

the said jobbers engaged by the appellant are separate establishments and none of them on roll more than 20 per cent to be brought under the coverage of the provisions of the Act. Furthermore, it is contended that those persons employed by the independent establishments would not fall within the definition of employee as defined under Section 2(f) of the Act. This preliminary objection has been decided against the respondents which order was impugned in the writ petition.

Mr. Anil Gupta, learned standing counsel for the appellant after referring to the factual position, placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s. P.M. Patel & Sons & Ors. Vs. Union of India & Ors. reported in (1986) 1 SCC 32 (AIR 1987 SC 447) and the decision in the case of Officer-in-Charge, Sub-Regional Provident Fund Office Vs. Godavari Garments Limited, reported in (2019) 8 SCC 149. Mr. Shyamal Sarkar, learned senior counsel appearing for the respondents in his reply, after referring to the factual details, has also placed reliance on the very same decision cited by Mr. Gupta, namely, the decision in the case of P.M. Patel (supra).

Before we take a look into the decisions cited at the bar, we need to take note of the findings rendered by the learned Single Bench. The learned Single Bench after examining the factual and legal position and after noting the law on the

subject pointed out that the first duty cast upon the provident fund authorities was to consider as to whether job workers were independent contractors only after taking a decision on this issue and if the answer to the issue is in the negative then the second step to be taken is to ascertain the number and identity of the workers employed by the contractor or contractors and thereafter ascertain the amount of work that each worker of the contractor had performed for the writ petitioner at the proportion of monthly and daily wages etc. and thereafter only the provident fund liability could have been ascertained. The learned Writ Court, on facts, in no uncertain terms, holds that the authority has not brought any facts or evidence in this regard and in the absence of any proper enquiry by the authority in the direction which they ought to have proceeded, the learned Writ Court was convinced that the order dated 10th February, 1999 passed by the authority together with the order dated 13th September, 1999 are to be set aside. Further noting that on the date when the writ petition was allowed, that is, 4th August, 2016, nearly 20 years had lapsed after the adjudication had commenced and, therefore, observed that no information will be available at that relevant point of time, however, mentioned that the provident fund authorities may take steps in accordance with law following the ratio of the judgment(s) which were referred

therein. Though the decision in P.M. Patel (supra) was referred to by Mr. Gupta, the factual position therein should be taken note of. In the said case the question for consideration was whether the workers employed at their homes at the monthly wages are entitled to the benefits of the EPF and the Schemes framed thereunder. The Hon'ble Supreme Court after examining the factual position found that in those cases that the work is entrusted by independent contractors who treat the workers as their own employees and get the work done by them either at their own premises or in the dwelling homes of the workers in order to fulfill and complete contracts entered into with the manufacturers for the supply of finished products from the raw materials supplied by the manufacturers to the contractors. Further, the Hon'ble Supreme Court noted that, according to the manufacturers, to whom workers had attend at the factories within specified hours everyday and collect raw material for taking to their homes for rolling beedis. Further, it was contended that while it is true of home workers employed directly by the manufacturers or who have been placed in employment through contractors with the manufacturer, in the case of home workers employed by independent contractors that may not be so. Further, the Hon'ble Supreme Court pointed out the most important test which needs to be considered is as to whether there exists master and servant relationship between

the parties. As rightly pointed out by the learned Single Bench the authority while initiating proceedings under Section 7A of the Act did not endeavour to make any such enquiry and merely agreed with the proposal made by the department without deciding as to whether those contractors were independent jobbers who had carried on manufacturing activities from the materials supplied by the respondents as well as by other similarly placed entities. The decision in Godavari Garments Limited (supra) is also distinguishable on facts as in the said case the Hon'ble Supreme Court held that the home workers were permitted to do work off site and, therefore, it would not take away their status and rights of the respondent company. Mr. Sarkar, learned senior counsel, had brought to the notice of the Court a decision taken by the Regional Provident Fund Commissioner, Kolkata dated 1st August, 2000 in a proceeding under Section 7A of the Act in the case of establishment, namely, M/s. Biswanath Hosiery Mills Private Limited.

We find that the order to be an elaborate order wherein all the factual and legal aspects were considered by the authority and it was held that the 'jobbers' are not the contractors of the establishment and the employees engaged by the 'jobbers' do not fall under the definition of the proviso to Section 2(f) of the Ac. Thus, we are of the clear view that the learned Single Bench had rightly interfered with the order

passed by the authority and the decision rendered by the learned Single Bench does not call for any interference.

Accordingly, the appeal [APO/184/2019] fails and the same stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)