IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14143 OF 2022

City and Industrial Development Corporation CIDCO Bhavan, CBD Belapuar, Navi Mumbai …**Petitioner**

Versus

1. Union of India
2. Employees Provident Fund Organization, Sub-Regional Officer, Vashi, Tower No.6, 5th Floor, Vashi Station Complex Vashi, Navi Mumbai – 400 7093
3. M/s. R. A. Madhavi, Janabai Niwas, Near Hanuman Mandir, Thane Belapur Road, Airoli Gaon Airoli, Navi Mumbai 400 701

…**Respondents**

Mr. G. S. Hegde, Senior Counsel, i/b Ms. P. M. Bhansali, for the Petitioner.
Mr. Gunjan Choubey, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATED : 17th JULY, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition, the City and Industrial Development Corporation ("CIDCO") takes exception to an order passed by the

Assistant Provident Funds Commissioner, Vashi Region, under Section 7A of the Employees Provident Funds Miscellaneous Provisions Act, 1952 (“the Act, 1952”) directing it to pay the dues of Rs.35,79,984/- towards the contribution in respect of field allowance and special allowance paid to the employees, who are appointed through M/s. R. A. Madhavi, the Contractor, as a principal employer.

3. The petitioner has invoked the writ jurisdiction, though a statutory remedy of appeal is provided under the Act, 1952, on the premise that the impugned order is without jurisdiction since the petitioner has been excluded from the operation of the provisions of the Act, 1952.

4. The petition proceeds on the following premise.

(a) The CIDCO is a New Town Development Authority constituted under Section 113A of the Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act, 1966”). It is a Government company. In exercise of the powers conferred under Section 134 of the MRTP Act, 1966, CIDCO has been declared by the State Government as an establishment having Government Provident Fund vide Notification dated 1st June, 1973. Thus, CIDCO has been excluded from the operations of the provisions of the Act, 1952.

(b) CIDCO in discharge of its duties as New Town Development Authority appoints various contractors. Respondent No.3 was appointed for engaging workers for sanitization work in various nodes, railway stations and water supply departments etc. Under the contract, the contractor is liable to pay all the statutory dues and contributions for the welfare of the labourers.

(c) Konkan Shramik Sangh filed a complaint with Assistant Provident Funds Commissioner alleging that the Provident Fund contributions were not paid after taking into account the special allowance/field allowance paid to the labourers from the months of September, 2005. An enquiry was instituted by the Assistant Provident Fund Commissioner, CIDCO, contested its liability specifically pointing out that it is an excluded "establishment" and thus not amenable to the provisions of the Act, 1952. Unjustifiably discarding the said objection, according to the petitioner, the Assistant Provident Fund Commissioner passed the impugned order. Hence, this petition.

5. An affidavit-in-reply filed on behalf of respondent Nos.1 and 2 supporting the impugned order.

6. I have heard Mr. Hegde, the learned Senior Advocate for the petitioner and Mr. Choubey, the learned Counsel for respondent Nos.1 and 2, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

7. Mr. Hegde, the learned Counsel for the petitioner, submitted that the impugned order suffers from the vice of exercise of jurisdiction not vested in the authorities under the Act, 1952. The Assistant Provident Fund Commissioner transgressed the jurisdictional limit despite being specifically apprised of the indubitable fact that CIDCO is an excluded establishment. Once an establishment is excluded from the operations of the provisions of the Act, 1952, the authorities thereunder cannot resort to the provisions of the said Act to fasten the liability on an excluded establishment, submitted Mr. Hegde.

8. Mr. Hegde would urge that the provisions of the Act, 1952 especially Section 1 and Section 16 are explicitly clear and there is no ambiguity about the consequences which emanate from the exclusion of an establishment from the operations of the Act, 1952. Nor the controversy is *res intergra.* Mr. Hegde submitted that the issue is covered by a Division Bench judgment of this Court in ***Letter Patent Appeal No.25 of 2012*** in the case of ***The Officer Incharge and Assistant P. F. Commissioner vs. City and Industrial Development Corporation, Aurangabad and ors.*** and the judgment of the Supreme Court in the case of ***M/s. Yeshwant Gramin Shikshan Sanstha vs. Assistant Provident Fund Commissioner and ors.***[1]

9. Mr. Choubey, the learned Counsel for respondent Nos.1 and 2, countered the submissions of Mr. Hegde. Inviting the attention of the Court to the definition of employee contained in Section 2(f) of the Act, 1952, Mr. Choubey submitted that a principal employer is equally covered by the provisions of the Act, 1952. Special emphasis was laid on paragraph 30 of the Employees Provident Fund Scheme, 1952 which, *inter alia,* casts responsibility on the principal employer to pay both the contributions payable by the principal employer in respect of the employees directly employed by him and also in respect of the employees employed by and through a Contractor and also administrative charges.

10. Mr. Choubey would further urge that the nature and object of the Act, 1952 cannot be lost sight of. It is a welfare litigation. Its object is to provide social security to the

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1 AIR 2017 SC 1403.

employees. In the absence of material to show that the petitioner had made a provision for comparable social security, the petitioner cannot be permitted to wriggle out of the liability under the provisions of the Act, 1952. Reliance was sought to be placed on a decision of the Calcutta High Court in the case of ***Hindustan Steel Works Constructions Ltd. vs. Regional Provident Fund Commissioner – I and ors***[2].

11. I have considered the rival submissions canvassed across the bar.

12. The controversy sought to be raised in the instant petition plainly revolves around the applicability of the provisions of the Act, 1952 to the petitioner establishment. Sub-Section (3) of Section 1 of the Act, 1952 provides that subject to the provisions contained in Section 16, the Act 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:"

13. Sub-section (4) of Section 1 reads as under:

> "Section 1(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

2 2018 SCC Online Cal 8766.

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."

14. It would be contextually relevant to note the provisions contained in Section 16 of the Act, 1952 which excludes certain establishments from the operation of the Act. It reads as under:

> "**16. Act not to apply to certain establishments**.—[(1) 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; or
>
> (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 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.]"

15. Evidently, Sub-section (3) of Section 1 makes the applicability of the Act, 1952 subject to the exclusions carved out in Section 16. A conjoint reading of the provisions contained in Section 1(3) and Section 16(1)(b) would indicate that the provisions of the Act would not govern an establishment which either belongs to or is under the control of the Central Government or a State Government and whose employees are entitled to the benefits of contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government regulating the grant of such benefits. The twin conditions which are thus required to satisfied are that either the establishment belongs to or is under the control of the Central or State Government and the employees of such establishment should be entitled to the benefits of contributory Provident Fund or old age pension.

16. Whether CIDCO satisfies the description of the 'establishment', envisaged by Section 16(1)(b). As noted above, in exercise of the powers conferred under Section 40 of the Act, 1966, CIDCO has been established as a New Town Development Authority under the provisions of Section 113A of the MRTP Act, 1966 for the notified area. Under Section 134(1) of the Act, 1966, 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, such pension or provident fund or both as it may deem fit, in such manner and subject to such conditions as may be prescribed by Rules. Sub-section (2) of Section 134 empowers the State Government to declare that the provisions of the Provident Funds Act, 1925 shall supply to such fund, constituted under Sub-Section (1), as if it were a Government Provident Fund.

17. In exercise of the powers conferred under Sub-Section (2) of Section 134 of the Act, 1960, the State Government has issued a Notification on 1st June, 1973, which is extracted below.

> "GENERAL ADMINISTRATION DEPARTMENT
> Sachivalaya, Bombay-400 032 dated 1st June.
>
> Town Planning's Act, 1966
> No. CID 2073-U- Whereas, by Government Notification, Urban Development Public Health and Housing Department Nos. TPS 1171/13124 - H.W. dated the 30th March 1971, the Government of Maharashtra has declared the City and Industrial Development Corporation of Maharashtra Limited a Company owned and controlled by the State Government to be respectively the New Town Development Authority for the area commission in the site of New Bombay, and the Special Planning Authority for the Aurangabad National Area thereafter referred to as 'the said Authority'.
>
> Whereas the sold Authority has constituted a provident fund for the benefit of his officers and employees (hereinafter referred to as the said fund.'
>
> And whereas, the State Government considers expedient that the provisions of the Provident Act.

> Now there are in exercise of the powers conferred by sub-section (2) of section 134 of the Maharashtra National and "Town Planning Act, 1966 (Mah.XXXVII of the Government of Maharashtra hereby declared that the provisions of the Provident Fund Act, 19 (XIX of 1925) shall apply to the said fund, it were a Government Provident Fund."

18. A conjoint reading of the aforesaid provisions and the Notification would indicate that CIDCO is the New Town Development Authority and Special Planning Authority, which has constituted a Provident Fund and under the Notification dated 1st June, 1973 the State Government has declared that the said fund would be governed by Provident Funds Act, 1925. All these factors cumulatively lead to an inference that the petitioner satisfies the description of the 'establishment' envisaged by Section 16(1)(b) of the Act, 1952. Consequently, CIDCO cannot be said to be amenable to the provisions of the Act, 1952.

19. Reliance placed by Mr. Hegde on the Division Bench judgment of this Court in the case of ***City and Industrial Development Corporation, Aurangabad*** (supra) appears to be well founded. In the said case after an analysis of the aforesaid provisions of the MRTP Act, 1966 and the Act, 1952 the Division Bench, *inter alia,* observed as under:

> "**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 there case is covered under sub-section 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. .....”

20. The endeavour of Mr. Choubey to sustain the impugned order with reference to the object of the Act, 1952, though well intended, yet does not pass judicial muster. Reliance on the decision of the Calcutta High Court in the case of ***Hindustan Steel Works*** (supra) is of little assistance to respondent Nos.1 and 2 as the petitioner therein was an establishment exempted under Section 17 of the Act, 1952. An ‘exempted establishment’ under Section 17 of the Act, 1952 and the establishment which is excluded from the operations of the Act, 1952 stand on a different footing. In the later case, the provisions of the Act are not at all attracted. Thus the analogy sought to be drawn by placing reliance on the decision of the Calcutta High Court in the case of ***Hindustan Steel Works*** (supra) does not advance the cause of respondent Nos.1 and 2.

21. An issue which engaged the attention of the Court was, the absence of clarity as to whether the petitioner has made a provision for provident fund in respect of the subject mater of the impugned order? What would be the situation if no provision is made in the provident fund constituted by the excluded establishment in respect of the contract employees? Would the establishment be still excluded from the operations of the provisions of the Act, 1952 even if no provision is made in respect of a given set of employees?

22. The decision of the Supreme Court in the case of ***M/s. Yeshwant Gramin Shikshan Sanstha*** (supra) addresses these questions. In the said case, 16 part-time employees working in the establishment of the appellant therein were not governed by the State Government CPF Scheme applicable to other permanent employees of the said establishment. In that context, the Supreme Court considered the question, was it possible to uphold the decision of the Authority that the appellant was liable to pay towards the Provident Fund under the Central Act in respect of its part-time employees.

23. Answering the aforesaid question in the negative, the Supreme Court enunciated the legal position as under:

> "**23.** As we have held that the establishment of the appellant fulfills the twin conditions specified in Section 16 (1) (b), it must follow that the same is exempted from the application of the provisions of the Central Act. In the present case, however, it has been found by the authority concerned and the Tribunal, that the 16 part-time employees working in the establishment of the appellant were not covered by the State CPF Scheme applicable to the other permanent employees of the establishment. Inasmuch as, Rule 20 does not cover the part-time employees working in the school, in case they are not doing full time load of

work. True it is that the said finding of fact cannot be over turned. Even so, is it possible to uphold the decision of the authority as confirmed by the Tribunal and the High Court that the appellant is liable to pay towards the Provident Fund under the Central Act in respect of its part- time employees? Intrinsic in that direction, is that the provisions of the Central Act are invoked against the establishment of the appellant. That is impermissible. As aforesaid, Section 16 of the Central Act makes it abundantly clear that the provisions of the Central Act will have no application to the establishment, if covered by one of the excepted category provided therein. Notably, the exemption is for the establishment as a whole and for all purposes, from the application of the Central Act. Once the establishment is covered by the excepted category specified in Section 16, to get exemption, it is incomprehensible that the provisions of the Central Act can be invoked against such establishment on the specious reasoning that few (16 in this case) part-time employees working thereat were not covered by the CPF Scheme of the State Government, as applicable to rest of its employees.

24. It is not possible to countenance situation that although the establishment enjoys a exemption from application of the provisions of the Central Act, is still liable to be proceeded in respect of its few (16) part-time employees. That would lead to an incongruous approach, not envisaged by the Central Act. Taking any other view would result in rewriting of the provisions of the Central Act to mean that although the establishment is exempted from the application of the provisions of the Central Act, yet it would be open to the central authorities to proceed against such establishment in certain situations. In our opinion, once the establishment qualifies for exemption of application of the provisions of the Central Act, there is no way that the authorities under the Central Act can exercise authority over it or call upon the establishment to comply with the provisions of the Central Act, unless the exemption of the establishment is withdrawn or lifted de jure. Section 16 of the Central Act does not envisage a concept of partial exemption of application of the provisions of the Central Act in respect of employees, but the exemption operates qua the establishment for all purposes.

…….

26. Once an establishment is covered under any one of the excepted category under Section 16 of the Central Act, the officials empowered by the Central Act will have no authority to proceed against such establishment; and more so on the ground that a miniscule number of employees (16 part-time employees) working in the establishment were not eligible for the benefits under the State Contributory Provident Fund Scheme governing the rest of the regular employees of the establishment.”

24. The Supreme Court has ruled in clear and explicit terms that once an establishment is covered by any of the exclusionary clauses of Section 16, the authorities under the Act, 1952 can not proceed against such establishment, even on the ground that a class of employees working in such establishment were not eligible for the benefit under the State Contributory Provident Fund Scheme governing the rest of the regular employees of the said establishment.

25. In view of the aforesaid exposition of law, I find substance in the submissions of Mr. Hegde that the impugned order fastening liability on the petitioner, an excluded establishment, to make payment towards the provident fund under the provisions of the Act, 1952, is legally unsustainable. Resultanlty, the petition deserves to be allowed.

26. Hence, the following order.

: O R D E R :

(i) The petition stands allowed in terms of prayer Clause (a).

(ii) The order dated 23rd September, 2019 passed by the Assistant Provident Commissioner, Vashi Region, assessing and directing the payment of dues towards the provident fund stands quashed and set aside.

(iii) Rule made absolute.

(iv) No order as to costs.

[N. J. JAMADAR, J.]