IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 315 OF 2018

The Central Board of Trustees, Employees Provident Fund Organization, having office at Bhavishya Nidhi Bhawan, Bhikaji Came Place, New Delhi-110066 through the Regional Provident Fund Commissioner, Employees Provident Fund Organization, Sub-Regional Office, Akola. ...Petitioner

// VERSUS //

M/s Avika Agro Private Limited Akot through its Managing Director, Shri Vinod Satyanarayan Jhunjhunwala, Aged about 60 years, Occ. Business, Plot No. B(1)-B(2), MIDC Akot, Dist. Akola. ... Respondent

Shri H.N.Verma, Advocate for the petitioner.
Shri R.L.Khapre, Senior Advocate assisted by Shri G.S.Kidambi, Advocate for the sole respondent.

CORAM : ANIL S. KILOR, J.
DATED : 12th JUNE, 2023.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. This writ petition takes exception to the order dated 3rd October, 2016 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi setting aside the order passed by the Regional Provident Commissioner, Akola dated 7th January, 2014 holding that the provisions of the Employees Provident Fund and Misc. Provisions Act,

1952 (hereinafter referred as “Act, 1952”) are applicable to the establishment of the respondent.

3. I have heard learned counsel for the respective parties.

4. Shri Verma, learned counsel for the Petitioner - Central Board of Trustees, Employees Provident Fund Organization submits that the notice was issued to the respondent establishment after the visit of the squad of Enforcement Officer to the respondent establishment. It is submitted that said notice refers to four documents (1) attendance cum salary wages registers, (2) Bonus registers, (3) Inspection book/visit book Labour Officer and (4) Ledger and cash book for the year 2001-02, which were produced by the respondent-establishment for verification.

5. It is submitted that thereafter in an application under Section 7(A)(a) of the Act, 1952, the dispute was raised to the applicability of the Act by the respondent-establishment. It is submitted that the Assistant Regional Provident Fund Commissioner after hearing both the parties passed the order on 7th January, 2014, holding that the Act, 1952 applies to the respondent establishment w.e.f 30th April, 2003.

6. The respondent-establishment feeling aggrieved by the same preferred an appeal under Section 7(I) of the Act, 1952, which came to be allowed by setting aside the order passed by the Regional Provident Commissioner, Akola. The said order of the Appellate Tribunal dated 8th October, 2016, is under challenge in this writ petition.

7. Shri Verma, learned counsel for the petitioner submits that learned Tribunal has failed to consider the documents which were produced by the respondent-establishment during the visit by the Squad and referred by the Enforcement Officer in the notice dated 17th September, 2009.

8. It is submitted that the learned Appellate Tribunal has unnecessarily went into the issue of identifiability of the workers and held in favour of the respondent-establishment. In support of his submission, he has placed reliance of *Employees' State Insurance Corporation Vs. M/s Harrison Malayalam Pvt. Ltd.,*[1] *Regional Director, E.S.I.Corporation Vs. Kerala State Drugs & Pharmaceuticals Ltd. and others*[2] *and the judgment of the Co-ordinate Bench of this Court dated 2nd December, 2010 in Writ Petition No. 5390 of 2010 (Anuradha Sugar Mills Ltd., Vs. Regional Provident Fund Commissioner and another).*

9. On the other hand, Shri Khapre, learned Senior Advocate for the respondent-establishment submits that before the Regional Provident Fund Commissioner, the documents namely Bonus Register and Attendance Register were not produced on record and as such there is no findings in respect of the said documents, and therefore, for this reason the order would not vitiate.

10. Shri Khapre, learned Senior Advocate for the respondent-establishment further argues that point in respect of applicability of

1 AIR 1993 SC 2655
2 1995 Supp(3) SCC 148

provisions of Act, 1952 has wrongly been considered by the Regional Provident Fund Commissioner and findings recorded in this regard are contrary to law.

11. Shri Khapre, learned Senior Advocate for the respondent submits that report of the Labour Officer is incomplete and he has not mentioned the details of the labour working on the relevant date and therefore the said document cannot be relied upon to hold that 21 employees working on the relevant date. He, therefore, submits that as the learned Appellate Tribunal has not committed any error, the impugned order needs to be maintained and petition is liable to be dismissed.

11. In light of rival contentions of the parties, I have perused the record and the impugned order.

12. There is no dispute that in the notice dated 17th September, 2009 issued by the Enforcement Officer after the visit of the squad under Enforcement Officer, to the respondent-establishment, in all four documents are referred to as the documents produced by the respondent-Establishment for verification. It is apparent from the face of the record that the Regional Provident Fund Commissioner has taken into consideration the report of the Labour Officer wherein it was shown that on the relevant date i.e. on 30th April, 2003, twenty one employee were found working in the respondent-establishment. However, the Regional

Provident Fund Commissioner in its order dated 7th January, 2014, has not considered the other documents.

13. The Regional Provident Fund Commissioner has after considering the case put up by the respondent-establishment and the documents filed by both the parties, has categorically held that the respondent-establishment engages in manufacturing and the provisions of Act, 1952 apply to the respondent-establishment.

13. However, though the said finding was challenged by the respondent-establishment before the Appellate Tribunal, no finding is recorded as regards whether the provisions of Act, 1952 do not apply to the respondent-establishment as it is the case of the respondent-establishment that it is not engaged in the activity of the manufacturing.

14. From the impugned order of the Appellate Tribunal, it appears that the learned Appellate Tribunal has given much importance to the fact that the Labour Office could not identify the workers who were found to be working when the Labour Officer visited to the respondent-establishment.

15. The Hon'ble Supreme Court in the case of *Employees' State Insurance Corporation Vs. M/s Harrison Malayalam Pvt. Ltd., (supra)* has held thus:

> "2….. The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in

employment. What is more, there is no relation between contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risks against which the workman stands statutorily insured. It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. The obligation ceases only when the Act ceases to apply to the factory/establishment. The obligation to make contribution does not depend upon whether the particular employee or employees cease to be employee/employees after the contribution period and the benefit period expire."

16. It will be beneficial to refer to the observations made in the case of *Regional Director, E.S.I Corporation Vs. Kerala State Drugs & Pharmaceuticals Ltd. and others (Supra)* has held thus:

"3. There is thus no quid pro quo between the persons insured and the benefit available under the Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment."

17. Similarly, the Co-ordinate Bench of this Court in the case of Anuradha Sugar Mills Ltd. Vs. Regional Provident Fund Commissioner and another (supra) has held thus:

> "At this stage, the learned counsel for the petitioner states that the beneficiaries have not been identified. The identification of beneficiaries depends upon the record maintained and produced by the petitioner and the petitioner cannot take advantage thereof to deny the contribution of provident fund on the basis of figures which are mentioned in the chart in the order under Section 7A of the Act."

18. From the above referred observations, it is evident that the contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Furthermore, whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment. It is further evident that identification of beneficiaries depends upon the record maintained and produced by the establishment and the establishment cannot take advantage thereof to deny the contribution of provident fund on the basis of figures which are mentioned in the chart in the order under Section 7A of the Act.

19. In the light of above referred observations, it would be relevant to refer the findings recorded by the Appellate Tribunal in paragraphs 2 of the impugned order, which reads thus:

> "2. Interestingly out of alleged 21 workers, 3 are Hamals/coolies. Hamals/Coolies cannot be covered under the definition of employees until and unless they are working exclusively for appellant. There is no evidence on case file which could reveals that Hamals/Coolie found working exclusively for appellant establishment. Further out of alleged 21 workers, 11 have been shown as "other workers" whose nature of work and their whereabouts not known to respondent."

20. Learned Tribunal while holding that Hamaal / Coolie cannot be covered under the definition of employees, has not recorded any findings justifying said observations. Furthermore, the learned Tribunal has not dealt with the issue about the applicability of the Act, 1952 to the respondent-establishment. Moreover, all the documents produced by the respondent-establishment during the visit of squad of the Enforcement Officer were also not considered by the Tribunal.

21. Therefore, I am of the considered view that the matter needs to be remanded back to the Appellate Tribunal to decide the appeal afresh. Accordingly, I pass the following order.

i. The writ petition is partly allowed.

ii. The order dated 3rd October, 2016 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No. 192(09) of 2014 is hereby quashed and set aside and the ATA No. 192(09) of 2014 is remanded back to the Central Government Industrial Tribunal-cum-Employees Provident Fund, Nagpur.

iii. The Central Government Industrial Tribunal-cum-Employees Provident Fund, Nagpur, is directed to take a fresh decision after hearing both the parties.

iv. All points are kept open.

[ANIL S. KILOR, J.]