

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 30.10.2023

CWP-12998-2018 (O/M)

Food Corporation of India

..... Petitioner

Versus

Board of Trustees, Employees' Provident Fund Organization of India and
others

..... Respondents

CWP-7208-2016 (O/M)

Ranbir Singh Punia and Company and others

..... Petitioners

Versus

Food Corporation of India and others

..... Respondents

CWP-23903-2021 (O/M)

M/s Madan Lal Krishan Lal

..... Petitioner

Versus

Food Corporation of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Anurag Jain, Advocate
for the petitioner in CWP-12998-2018;
for respondents No. 1 and 2 in CWP-7208-2016 and
for respondents No. 1 and 2 in CWP-23903-2021 .

Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Shantanu Bansal, Advocate
for the petitioners in CWP-7208-2016.

Mr. Rakesh Roy, Advocate
for the petitioner in CWP-23903-2021.

Mr. Rajesh Hooda, Advocate
for the Regional Provident Fund Commissioner
(in all the cases).

Mr. Rakesh Sobti and Ms. Saumya Ahluwalia, Advocate (s)
for respondent No. 2 in CWP-12998-2018.

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HARSH BUNGER, J.

1. This common order shall dispose of three writ petitions, being CWP-7208-2016 titled as ***“Ranbir Singh Punia and Company and others Vs. Food Corporation of India and others”***, CWP-12998-2018 titled as ***“Food Corporation of India Vs. Board of Trustees and others”*** and CWP-23903-2021 titled as ***“M/s Madan Lal Krishan Lal Vs. Food Corporation of India and others”***.

2. In CWP-12998-2018, the prayer made by the petitioner-Food Corporation of India is for quashing of order dated 18.10.2017 (Annexure P-3) passed by the Board of Trustees, Employees' Provident Fund Organization of India (respondent No.1 therein), whereby the petitioner has been held to be the principle employer *qua* the katcha arathias (Commission Agents) in grain market without there being any proceedings for examining the amenability/coverability of the establishment of the said katcha arthias under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the 1952 Act').

3. CWP-7208-2016 has been filed by the Commission Agents seeking quashing of letter dated 07.08.2015 (Annexure P-2) issued by the Regional Provident Fund Commissioner (respondent No.3 therein) to the extent it was held that the workers engaged in the establishment PUNSUP, PUNGRAIN, MARKFED, PACL, FCI, Punjab State Warehousing Corporation through Commission Agents are covered under the E.P.F. Act. A further prayer has been made in this writ petition seeking issuance of

directions to respondents No.1 and 2 (Food Corporation of India) to release the due payments to the petitioners with interest at the rate of 12% and not to pressurize the petitioners to get themselves registered under the 1952 Act by way of withholding their due payments.

4. In CWP-23903-2021, prayer has been made to restrain respondents No.1 to 3 therein from pressurizing the petitioner to get itself registered under the 1952 Act as the petitioner is not covered under the provisions of the said Act. A further prayer has been made seeking issuance of directions to respondents No.1 and 2 therein to release the amount so retained by it from the bills submitted by the petitioner against the purchases made by them through the petitioner.

5. A perusal of the paper books would reveal that CWP-12998-2018 and CWP-7208-2016 came to be decided by a co-ordinate Bench of this Court vide order dated 13.03.2020 by holding as under:-

'(1) This order shall dispose of CWP Nos. 7208 of 2016 and 12998 of 2018 as common issues are involved.

(2) In CWP-7208-2016, the petitioners inter alia, seek quashing of the letter dated 07.08.2015 (P2) issued by respondent No.3 – the Regional Provident Fund Commissioner to the extent that the workers engaged in the establishments of PUNSUP, PUNGRAIN, MARKFED, PACL, FCI, Punjab State Warehousing Corporation through commission agents are covered under the EPF Act.

(3) On a pointed question put by this Court as to if the official respondents have issued any directions to the FCI to retain any amount from the payments to be made by the food

procurement agencies, counsel for the Regional Provident Fund Commissioner submits that there is no direction to retain any amount.

(4) In CWP No.12998 of 2018, the prayer made by the petitioner-FCI is to quash the order dated 18.10.2017 (P3) passed by respondent No.1- Board of Trustees, Employees Provident Fund Organisation whereby the petitioner has been held to be the principal employer qua the katcha arathias (commission agents) in the grain market without there being any proceedings for examining the coverability of the establishment of such katcha arathias under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. In this writ petition, the preliminary objection raised by the Provident Fund authorities in fact is that the main proceedings under Section 7-A(1)(b) are still to be concluded or initiated and as such the petitioner-FCI is free to participate in those proceedings and make its defence.

(5) At this stage, Mr. Mohan Jain, learned senior counsel rightly urges that the petitioners in CWP-7208-2016 would make an undertaking to the FCI that in the event any Court comes to the conclusion that the amount so deducted has to be paid to the Provident Fund authorities, they shall make good the same and also undertake that the said amount if not paid by the petitioners, the same can be deducted from future payments which are due to FCI. On filing of such undertaking, the amount retained by the FCI be returned to the petitioners in CWP-7208-2016. The prayer so made is accepted.

(6) In this view of the matter, the writ petitions are disposed of with a direction that the petitioner-FCI may participate in the proceedings under Section 7-A(1)(b) which are still to

be concluded or initiated. In addition, the petitioners in CWP-7208-2016 shall file an undertaking as referred to above. On filing of such undertaking, FCI would refund the amount so retained.

(7) So ordered.”

6. The aforesaid order dated 13.03.2020 was impugned by way of intra-court appeals, i.e. L.P.A. No.675 of 2020 titled as ***“Food Corporation of India and another Vs. Ranbir Singh Punia and Company and others”*** and L.P.A. No.676 of 2020 titled as ***“Food Corporation of India Vs. Board of Trustees and others”***. The said appeals (L.P.As.) came to be disposed of by a Division Bench of this Court vide order dated 06.09.2021, wherein order dated 13.03.2020 passed by the learned Single Judge in CWP-12998-2018 and CWP-7208-2016 was set aside with a request to the learned Single Judge to decide the matters on merits.

7. The Hon'ble Division Bench of this Court while disposing of the aforesaid appeals (L.P.As.) noted the contention of learned counsel appearing for the Provident Fund Commissioner and held as under:

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5. Learned counsel for the Provident Fund Commissioner has submitted that the matter requires to be adjudicated upon by the Commissioner himself and the matter be remanded back to the competent authority for consideration so that the liability can be determined of the concerned as per the provisions of the Employees' Provident Fund and Misc. Provisions Act, 1952.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone

through the pleadings as well as the impugned order passed by the learned Single Judge which is under challenge.

7. We do not intend to refer to in detail to the various provisions, on which reliance has been made by the learned senior counsel for the appellants while attacking the order dated 18.10.2017 (Annexure P-3) passed by the Regional Provident Fund Commissioner nor do we intend to go into the detailed stand of the respondents in the light of the fact that we are of the considered view that the judgment passed by the learned Single Judge does not deal with any of the aspects raised by the parties while challenging the impugned orders. The directions also, which have been issued by the learned Single Judge to the appellants, appear to be one sided without there being any consent of the counsel for the appellant or justification for issuance of such directions especially in the light of the fact that the basic order dated 18.10.2017 (Annexure P-3) in CWP No.12998 of 2018 had been challenged by the appellant-Corporation. We are of the opinion that the matter requires to be remanded back to the learned Single Judge for adjudication on merits.

8. In view of the above, order dated 13.03.2020 passed by the learned Single Judge in CWP Nos.12998 of 2018 and 7208 of 2016 is, hereby, set aside with a request to the learned Single Judge to decide the matter on merits.

9. Parties are directed to appear before the learned Single Judge on 22.09.2021.”

8. In the aforementioned circumstances, the present writ petitions have been placed before this Court.

9. Briefly, in CWP-12298-2018 filed by Food Corporation of India (FCI), it is pleaded that the FCI is engaged in the activities of

procurement of food grains such as wheat, paddy etc. and its storage in the godowns till its movement to the deficit States and for public distribution system and such activities are being discharged by the petitioner-Food Corporation of India (hereinafter referred to as 'FCI') as a welfare function of the Central Government. It is, inter alia, stated that the procurement of food grains is made by FCI by direct purchase from Katcha Arathias (hereafter referred to as 'Commission Agents') working in various grain markets at the price announced by the Government from time to time plus the overhead expenses against the bills raised by the said Commission Agents and paid by FCI. It is further stated that in each State/Union Territory, there is a State Agricultural Marketing Board established by the concerned State/U.T. Government and in terms of Section 10 of the Punjab Agricultural Produce Markets Act, 1961, such Commission Agents are required to obtain a license for doing the business of sale and purchase of food grains within the notified market area. It is next stated that the license is given to a Commission Agent on his furnishing the complete details of his establishment, which includes the details of the manpower engaged by him and the said details can easily be obtained from the said State Agricultural Marketing Board.

10. As per FCI (petitioner in CWP-12998-2018), the procurement policy is issued by the concerned State Government at the beginning of each procurement season and the entire work of loading, unloading, cleaning, weighing, stacking, stitching etc. is being done by the Commission Agents at their own level through their own manpower,

which they usually engage temporarily during the procurement season and in many cases, the number of such temporarily engaged manpower/workers is even less than 20 persons qua each Commission Agent. As per FCI, the food grains are directly purchased from the Commission Agents at a price announced by the Government from time to time plus overhead charges and the concerned Commission Agent raises the bill to the FCI and the payment is made directly to such Commission Agent against such bill. The FCI claims that the relationship between FCI and Commission Agents is only that of seller and purchaser for the supply of goods and the Commission Agent cannot be said to be a contractor qua the FCI nor FCI can be described as a principal employer qua the workers, if any, engaged by Commission Agent.

11. It is the contention of FCI that as regards the liability of payment of the employer's contribution and employee's contribution of Employees' Provident Fund is concerned, it will firstly be determined by the concerned authority under the EPF and MP Act, 1952 (in short '1952 Act') as to whether the establishment is covered under the provisions of 1952 Act or not. It is submitted that in case, the number of employees of a Commission Agent is less than 20, then the coverability of such establishment of Commission Agent under the 1952 Act does not arise. It is submitted that FCI has no control over the manpower of a Commission Agent in any manner whatsoever and a Commission Agent cannot be said to be contractor as regards the FCI.

Learned counsel for petitioner-FCI has referred to various

judgments in the cases of Food Corporation of India Versus Provident Fund Commissioner and others 1990 (1) SCC 68; Himachal Pradesh State Forest Corporation Versus Regional Provident Fund Commissioner (2008) 5 Supreme Court Cases 756; Sheong Shi Tannery and another Versus Regional Provident Fund Commissioner and others 2019 SCC OnLine Cal 5895.

12. It is the case of petitioner-FCI (CWP-12998-2018) that vide order dated 18.10.2017 (Annexure P-3), it (FCI) has been treated as principal employer qua the alleged workers engaged by Commission Agents and petitioner-FCI has been further directed to deposit the contribution alongwith statutory return without even establishing the names of beneficiaries in whose accounts the EPF contribution is to be deposited. It is contended that the EPF is not a tax, which is deducted and deposited with the Government, rather the EPF is deducted and deposited with the EPF Organization in a systematic regulated manner qua the specified employees of any establishment and prior to that, it has to be determined as to whether the establishment would be amenable/coverable under the 1952 Act, which would necessarily include the determination of the question as to whether the establishment is employing manpower of 20 or more persons. It is also contended that in the entire impugned order, there is no mention of any detail as to who or which of the Commission Agent has employed 20 or more employees in its establishment and what are the details of such employees, who would be the ultimate beneficiaries of such EPF contribution. It is contended that crores of rupees are lying

unclaimed with the EPF Organization, accordingly, it is submitted that unless and until the coverability of establishment under the 1952 Act is examined and the manpower working in an establishment is identified, there is no rationale of depositing the EPF dues. It is thus contended that the matter is required to be adjudicated upon by the concerned authority as regards the amenability/coverability of the petitioner-FCI as well as Commission Agents under the provisions of 1952 Act. Accordingly, prayer has been made for quashing impugned order dated 18.10.2017 (Annexure P-3), passed in CWP-12998-2018, with a further prayer to remand the matter to the concerned authority to firstly determine the coverability/amenability of the petitioner-FCI as well as Commission Agents as regards temporarily engaged manpower/workers under the provisions of 1952 Act before proceeding further in the matter.

13. In CWP-7208-2016, an application (CM-17656-CWP-2021) has been filed under Order VI, Rule 17 read with Section 151 of Code of Civil Procedure, seeking amendment of the writ petition.

For the reasons mentioned in the application, same is allowed and amended writ petition is taken on record subject to all just exceptions.

Application is accordingly disposed of.

14. As per the amended writ petition, the petitioners are the Commission Agents and they contend that provisions of 1952 Act are not applicable to them as they are employing at the maximum 8-10 labourers for filling, stitching and marking of paddy bags and that too for seasonal period of 45 days in a year. It is submitted that the workers work only for

a few days and then in their place, other persons are employed and no employees are employed for more than 30 days in a season. It is submitted that the provisions of 1952 Act are not applicable, where the number of employees are less than 20 and that there is neither any Notification issued by the Government of India nor any instructions issued by the Regional Provident Fund Commissioner for covering the petitioners or similarly situated Commission Agents, employing maximum 8-10 labourers during the paddy season for 45 days under the 1952 Act. It is contended that the labourers carry out the work of filling, stitching and marking of paddy bags at piece rate basis and are not paid wages. The petitioners state that they are carrying on the business of Commission Agents of paddy and were supplying paddy to respondents-FCI. In the month of November, 2015, petitioner No. 1 (Ranbir Singh Punia and Company) had sent a bill for Rs. 1,71,959.48 and from the perusal of the said bill, it is evident that the same relates to filling, sewing and marking of paddy bags at the rate of Rs. 5.85 per bag for filling and sewing and Rs. 0.97 for marking bags measuring 9455.25 quintals. It is next submitted that other petitioners have also raised their respective bills in similar terms.

It is the case of the petitioners in CWP-7208-2016 that the payment of their bills for labour charges are not being released by respondents-FCI on the premise that the provisions of 1952 Act are applicable to them and they have been asked to comply with the provisions of 1952 Act.

15. The petitioners dispute their coverability under 1952 Act for the purpose of deducting and depositing of provident fund of labourers employed for stitching, filling and marking of paddy bags for seasonal period of 45 days and that too for the employees not more than 8-10 in number during the whole season. It is contended that infact it is respondents-FCI, which is covered under 1952 Act.

It is also the stand of the petitioners in CWP-7208-2016 that in the Market (Mandi), the labour is working as freelancers, who go to a particular commission agent where there is work and they are paid on the basis of work done by them on the rates prescribed under the Punjab Agricultural Produce Markets Act, 1961 (as applicable to Chandigarh) and the rules framed thereunder. It is submitted that there is no permanent labour with the petitioners or any other similarly circumstanced Commission Agents. It is contended that in order to include an establishment within the ambit of 1952 Act, minimum 20 persons should have worked on regular basis, whereas in the case of the petitioners, the labour engaged by them for stitching, loading etc. is purely temporary in nature and is dependent on the arrival of the food grains in the market and further that the said labour is not limited to working in single place and on any given day, it may work at more than two or more places depending on the availability of work. It is stated that such labour is not permanent as they keep on moving in search of job and are not easily locatable. Accordingly, it is submitted that respondents-FCI is pressurizing the petitioners for getting themselves registered under 1952 Act by

withholding their payments. It is submitted that Chandigarh Aarhtia Association Grain Market, Chandigarh had submitted a representation dated 16.02.2016 to respondents-FCI that the Punjab Government had released the labour bills of the Commission Agents by withholding 30% of the amount and similar procedure could be adopted by respondents-FCI as regards the petitioners are concerned, so that the Commission Agents can get at least some of their payments to run their business, however, it is contended that nothing has been paid to them. It is accordingly submitted that the provisions of 1952 Act are not applicable to the petitioners and respondents-FCI is wrongly and illegally withholding their due payments. Therefore, prayer has been made for quashing of the letter dated 07.08.2015 (Annexure P-2 in CWP-7208-2016), with a further prayer for directing respondents-FCI to release due payments to the petitioners and not to pressurize the petitioners to get themselves registered under 1952 Act by way of withholding their due payments.

16. CWP-23903-2021 is also a writ petition filed by M/s Madan Lal Krishan Lal, who is also a Commission Agent and deals in food grains after obtaining a license from State Agricultural Marketing Board. In this writ petition as well, the petitioner has disputed its coverability under 1952 Act on the similar pleas as raised in CWP-7208-2016. Accordingly, prayer has been made for issuance of a writ in the nature of prohibition for restraining respondents-FCI as well as Regional Provident Fund Commissioner for pressurizing the petitioner to get itself registered under 1952 Act; with a further prayer for directing respondents-FCI to

release the amount so retained by it from the bills submitted by the petitioner against purchased made by respondents (FCI) through the petitioner.

17. The prayer made in the writ petition (CWP-12998-2018) has been opposed by the counsel appearing for respondent No. 1-Employees Provident Fund Organization of India (hereafter referred to as 'respondent-Department') by raising an objection that the petitioner has not availed the remedy of appeal against impugned order as provided under Section 7 (I) of 1952 Act. While referring to its written statement, it has been submitted that petitioner-FCI is already covered under the 1952 Act, however, it has only been granted exemption under Section 17 of 1952 Act. It is submitted that the liability to pay provident fund is upon the principal employer even in respect of the employees engaged/employed by or through a contractor and it is upon the principal employer to recover the same from the contractor under Section 8A of 1952 Act read with Para 36-B of the Scheme. It is stand of respondent-Department that petitioner-FCI is getting the work of filling, stitching, loading etc. done through the employees employed by the Commission Agents and is paying the bills to said Commission Agents for the work done by the said employees. It is submitted that the Commission Agents are nothing but the contractors, who themselves are not covered under 1952 Act and are not paying the EPF dues of the employees employed by them, therefore, petitioner-FCI being the principal employer is liable to pay EPF dues for the employees employed by the Commission Agents.

18. As regards CWP-7208-2016, it is stand of respondent No. 3-Regional Provident Fund Commissioner (hereinafter referred to as respondent-Department) that employment strength of the petitioners in this writ petition needs verification by the Area Enforcement Officer and it is contended that 1952 Act does not distinguish between casual and regular employees whether engaged by the employer or through the contractor and all the employees working on regular or piece rate basis would be counted for coverage under 1952 Act.

19. I have heard learned counsel for parties in respective cases and also perused the paperbooks of respective cases with their able assistance.

20. As regards the contention of respondent-Department that the petitioner (s) have not availed alternate remedy of appeal; suffice it to say that CWP-7208-2016 was filed way back in the year 2016 and the other writ petition bearing No. 12998-2018 was filed in the year 2018 and the said writ petitions were earlier disposed of by a learned Single Judge on 13.03.2020. The said order dated 13.03.2020 was further challenged in intra court appeals (LPA-675-2020 and LPA-676-2020), which were decided on 06.09.2021 and the matters were remitted to learned Single Judge for adjudication. Therefore, these writ petitions were entertained and in my considered view, it is too late in the day to contend that the petitioners herein should have availed alternative remedy.

21. In these cases, the core issue is regarding coverability/amenability of the procurement agency like FCI etc. as well

as Commission Agents as regards temporarily engaged manpower/workers, under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

22. In order to adjudicate the aforesaid core issue, it needs to be seen whether the authority, which is a statutory authority, has exercised its power vested in it to collect relevant evidence before fastening the liability on the Procurement Agency and/or Commission Agents (if any) on account of EPF contribution/dues.

23. On a pointed query being raised to learned counsel appearing for respondent-Department (Regional Provident Fund Commissioner) as to whether any evidence with regard to identity of the persons employed/engaged by the Commission Agents was taken, so that the money sought to be recovered as provident fund dues could be deposited against those persons as members under the Scheme, learned counsel representing respondent-Department could not dispute the fact that no such evidence has been taken. Even as regards the contention of the Commission Agents regarding the number of workers engaged by them during the procurement season not being more than 8-10 in number for 45 days, it is categoric stand of respondent-Department that the employment strength of the petitioners (Commission Agents in CWP-7208-2016) needs verification by Area Enforcement Officer. Still further, in the order dated 06.09.2021, passed by a Division Bench of this Court in LPA-675-2020, titled as Food Corporation of India and another Versus Ranbir Singh Punia and Company and others and in LPA-676-2020 titled

as Food Corporation of India Versus Board of Trustees and others, stand of respondent-Department has been noticed, wherein it was categorically stated that the matter requires to be adjudicated upon by the Commissioner himself and the matter be remanded back to the concerned authority for consideration, so that the liability can be determined by the concerned authority as per the provisions of 1952 Act.

24. Here it would be apposite to refer to Section 7A of 1952 Act which reads as under :-

“7A. Determination of moneys due from employers.-- (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,--

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary;

(2) The officer conducting the inquiry under subsection (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters,

namely:--

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly

served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.-- Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

25. A perusal of the above noted provisions would manifest that Section 7A (1)(a) of 1952 Act clearly provides that the concerned authority under 1952 Act has jurisdiction to adjudicate upon the applicability of the Act to an establishment and in case any dispute arises regarding applicability thereof, then decide such dispute as well; and for the said purposes, the said authority is also empowered to conduct such enquiry as it deems necessary and for conducting such enquiry, the concerned authority is vested with same powers as are vested in a Court

under the Code of Civil Procedure for trying a suit in respect of the following matters :-

*“(a) enforcing the attendance of any person
or examining him on oath;*

*(b) requiring the discovery and production of
documents;*

(c) receiving evidence on affidavit;

*(d) issuing commissions for the examination
of witnesses;”*

26. In the case of *Himachal Pradesh State Forest Corporation* (supra), the proceedings for deposit of provident fund under 1952 Act were initiated under Section 7A of Act (ibid) for determination of the amounts due from Corporation for the period from 1982 to 1988. The Corporation had raised a plea that the provisions of EPF Act were not applicable to it inasmuch as it was not an industrial establishment under the provisions of Industrial Disputes Act, 1947 as well as under the Industrial Employment (Standing Orders) Act, 1946. It appears that Regional Provident Fund Commissioner passed an order taking a view that the Corporation was covered under 1952 Act and further concluded that the persons employed by the contractor were infact the employees of the Corporation and, therefore, subject to the provisions of the 1952 Act. The said order came to be challenged by way of an appeal before the EPF Appellate Tribunal and the EPF Appellate Tribunal, vide its order dated 15.12.1999, held that the Corporation was indeed covered by the provisions of 1952 Act., however, the matter was remanded back to Regional Provident Fund Commissioner for re-determination of the

amount due with reference to the identifiable employees only. It appears that the Corporation thereafter filed a writ petition before the Himachal Pradesh High Court, however, the said writ petition was dismissed by upholding the order of the EPF Appellate Tribunal. Thereafter, the matter was taken up in an appeal before Hon'ble the Supreme Court. Hon'ble the Supreme Court, while dismissing the appeal, reiterated the recommendation that the amounts due from the Corporation would be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence, by observing as under :-

“5. We have heard the learned counsel for the parties and gone through the record. We do appreciate that the inaction on the part of the Commissioner to initiate proceedings within a reasonable time, has to be deplored. However, as the Corporation has itself submitted that it was covered under the Act and in view of the limited relief granted by the authorities below and by the High Court, we are disinclined to interfere with the matter at this stage. We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference be drawn on this score. With this very small modification, we dismiss the appeals.”

27. It would be apposite to refer to the observations made by the High Court of Calcutta in the case Sheong Shi Tannery and another Versus Regional Provident Fund Commissioner and others, 2020 LLR 222, wherein it was held as under :-

“14. The question here is not whether the Petitioners failed to adduce evidence in support of their contention to the effect that they had not employed 20 persons but had outsourced the entire work to a Contractor and paid a lump sum amount to the Contractor after the job was done. The question is whether the authority, who is a Statutory Authority, had exercised his power vested in him to collect relevant evidence before determining the amount payable by the Petitioners, if at all. In this case, the contention of the Petitioners should have been tested upon Summoning the alleged Contractor and recording his evidence. Also, the persons employed should have been called or in the least the register of the Contractor and other records should have been asked to be produced in order to ascertain whether such amount was deducted from the Wages of the Labourers by the Contractor. Moreover where the Contractor, was the Employer providing services of Manpower, was having control over the personnel being supplied by him to the establishments by way of issuance of Appointment Letters, payment of Wages and other allowances, taking Disciplinary actions affecting their placement, transfer, and Termination of services, the relationship between

such a Contractor and the establishment where the Manpower was supplied by him would be of principal to principal and not that of Employer-Contractor. Such a situation should have also been assessed by the authority in the 7-A proceeding by taking evidence. The Contractor should have been summoned. It is also pertinent to mention that with respect to the Contractors, who were registered with the Provident Fund Department, having the independent code number, they were to be treated as independent Employers. The establishments engaging such Contractors could not be treated to be the Principal Employer. This aspect should have been gone into by the authorities. In the instant case, it appears that the liability was fixed under Section 7-A of the said Act on the assumption that some persons (unknown and unidentified) had been deployed by the Contractor for doing the work of the Petitioners and as such the Petitioners were liable to deposit the amount as stated above.

15. Under the law, the Provident Fund Authorities were required to keep an account of the individual Workmen. Their names, addresses and identities etc. should be available with the authorities and the amount attached could not be kept by the authorities with reference to an alleged Contractor for an unlimited period. Provident Fund dues are not taxes payable by the Petitioners to the authorities. It is an amount to be paid to the Employees as a welfare measure. It

was the duty of the Authority to Summon the said Birendra alleged to be the Contractor by the authorities, in order to assess the correct situation and also to identify the Workers before assessing the final liability of the Petitioners. Reliance is placed to the decision of Mantu Biri Factory (P) Ltd. (supra).

16. Reliance is also placed on the decision of Raj Kumar Gupta (supra), wherein it had been held that the Provident Fund Authorities could not collect or compel contribution to be made by the Employers with regard to faceless, nameless or non-identifiable Workmen on mere head-count or herd count. In the said case, the Court granted liberty to the Employer to claim refund inter alia holding that recovery of the amount against faceless, nameless or non-identifiable Workmen on mere head-count or herd count was not permissible in law.

17. xxxxx xxxxx

18. Reverting to the facts at this case, it appears from the records that the 7-A proceeding was initially initiated with regard to non-payment of Provident Fund dues by the Petitioners between May 2001 and March 2005. After six years, the matter was reopened and decided on the basis of evidence, which was insufficient for the authorities to have come to the conclusion. Moreover, the amount deposited was kept by the authorities against non-identifiable Labourers, which is not permitted under the law, as per the decisions referred to hereinabove.

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xxxxx

21. *The matter is remanded.”*

28. When the peculiar facts and circumstances of cases in hand are considered in the light of the legal position indicated above, it is observed that the contentions of the petitioners in the respective cases should have been tested upon summoning all concerned parties i.e. procurement agency and commission agents. Similarly, the persons employed (workers) should also have been called or at least required information should have been sought from the State Agricultural Marketing Board, who issues license to such Commission Agents to carry out their work and other records should have been summoned from such parties. It is required to be determined as to whether the relationship between procurement agency like FCI etc. and the Commission Agents was in the nature of employer/contractor or in the nature of principal to principal. There may be certain Commission Agents, who are registered with the Provident Fund Department having their independent code number and such like Commission Agents are to be treated as independent employers. In the instant cases, it appears that the liability has been fixed under Section 7-A of 1952 Act on the premise that some persons (unknown and unidentified) have been engaged by the Commission Agents in relation to the work of the procurement agency like FCI etc., accordingly, the procurement agencies (FCI etc.) were liable to deposit the amount on account of EPF contribution/dues.

29. It needs no reiteration that the provident fund authorities are required to keep an account of individual persons, like their names,

address and other details and the amount attached could not be kept by the authorities with reference to alleged Contractors (Commission Agents) for an unlimited period. It is well settled that the EPF contributions are not taxes paid by the establishment to the authorities, rather it is an amount to be paid to the employees as a welfare measure.

30. In view of the above discussion, I deem it appropriate to quash the order dated 18.10.2017 (Annexure P-3 in CWP-12998-2018) and remand all these matters to the competent authority under Section 7-A of 1952 Act, to call upon necessary and affected parties and afford them due opportunity of hearing and decide the matters afresh regarding the amenability/coverability of concerned party i.e. procurement agency like FCI etc. and/or the Commission Agents as regards temporarily engaged manpower/worker under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, in accordance with law by passing a speaking order. It is further directed that till the time of final decision to be rendered by the concerned authority, there shall be a direction to FCI to prepare a list of all the deductions made on account of EPF contributions from the sale bills of the Commission Agents and submit the said list before the concerned authority under Section 7-A of 1952 Act and there shall also be a direction to FCI to deposit the deducted amounts from the bills of the Commission Agents in the form of Fixed Deposit Receipts in any Nationalized Bank and submit the said FDRs before the concerned authority under the 1952 Act. It is made clear that the amounts deposited by way of FDRs on account of EPF contribution shall follow the final

verdict to be rendered in these matters by the concerned authority under the 1952 Act.

31. All the writ petitions are accordingly disposed of in the aforestated terms.

32. All pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

30.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No