07.08.2024.
Item No. 65.
Court No. 13
ap

F.M.A. No. 635 of 2024
With
I.A. No. CAN 1 of 2018 (Old CAN 7187 of 2018)

Regional Provident Fund Commissioner (Assessing Authority) EPF Organization & Anr.
Versus
M/s. Bata India Limited & Anr.

Mr. Shiv Chandra Prasad.
...For the appellant.

Mr. Ranjay De,
Mr. B. Banerjee,
Mr. A.A. Bose.
...For the Bata India Limited.

1. The instant appeal is directed against the judgment and order dated 17th November, 2017 passed in W.P. 11962 (W) of 2017 by a learned Single Judge of this Court.

2. By the impugned order, an order dated 18th November, 2016 passed by the Regional Provident Fund Commissioner-I (AA) under Sections 7A and 7A(II) of the Employees Provident Fund and Miscellaneous Provisions Act of 1952, was set aside. The provident fund dues of about Rs.2.63 crores were assessed for the period from February 1998 to May 1999.

3. Mr. Prasad, learned Counsel appearing on behalf of the appellants has placed a detailed judgment and order.

4. The brief facts relevant to the case are that the Commission was constituted by the Provident Fund Authorities for the purpose of enquiry under Section

7A of the said Act of 1952. The purpose of enquiry was to ascertain for various periods from 1998, alleged evasion of deposit of Provident Fund dues by M/s. Bata India Limited.

5. The respondent Company purchased finished products from several persons called “Associates” and sells it under its own brand name. The appellants were of the view that for the goods purchased from the Associates and the Provident Fund dues of the Workers engaged in manufacturing such goods, by the said Associates, were the liability of the said Company. The Associates were deemed as “Contractors” , within the meaning of the Act of 1952, and the Company was deemed as the Principal Employer. According to the Provident Fund Authorities, the use of the expression “Associates” is to cover up their actually identity as contractors within the meaning of the Act of 1952.

6. From a careful scrutiny of the impugned order , before the learned Single Judge, it appears that no attempt has been made by the Provident Fund Authorities to establish that the Company was the principal employer within the meaning of the Act of 1952.

7. The order of the appellants dated 18th November, 2016, indicates that there are no records of the employees engaged by the so called Associates. No attempt has been made by the Provident Fund

Authority to identify the said employees engaged by the said Associates. It also appears to this Court that despite powers to impose coercive measures on the Associates, Employees Provident Fund has adopted a shortcut method to first extract a sum of Rs.2.63 crores from the said Company without any just or reasonable cause or on any basis whatsoever.

8. Identification of the beneficiaries, is a condition precedent for any measures under Section 7A of the Act of 1952, as mandated by the Hon'ble Supreme Court of India in the case of ***Food Corporation of India – Vs. – Provident Fund Commissioner & Others*** reported in ***(1990) 1 Supreme Court Cases 68.***

9. Mr. De, learned Counsel appearing for the respondents has referred to a decision of a Single Bench of this Court (one of us sitting singly) in the case of ***Bata India Limited – Vs. – Union of India & Ors.*** reported in ***2019 OnLine SCC Cal 8879*** and the decision of a Division Bench of this Court in the case of ***CPFC Employees Provident Fund Organization & Ors. – Vs. – Kolkata Municipal Corporation & Ors.*** reported in ***2022 LLR 1162*** being the judgment delivered on 14th July, 2022 to argue that similar views have been expressed in similar circumstances against the RPFC Authorities in respect of 7A proceedings taken out by them, inter alia, against the respondent Company.

10. The Provident Fund Authorities appear to have left the elephant and are hanging on to a tail. None of the Associate Companies have been compelled to produce any evidence as regards the number of employees engaged by them and as to why Provident Fund Accounts have not been in the names of such employees and why the Provident Fund has not been deposited by the said Associates till date.

11. It appeared to be convenient for the appellants to scapegoat the available financially sound company and evade their responsibility under the Act.

12. In the above circumstances, this courts directs the appellants to identify both the beneficiaries and take all and every necessary measures including coercive measures against the Associates for elucidating information as discussed hereinabove and in terms of the liberty reserved by the learned Single Judge of this Court. It is only thereafter that the other enquiries may be made as regards any liability of the said company, in accordance with the Act of 1952 and as interpreted by the Hon'ble Supreme Court.

13. F.M.A. No. 635 of 2024 shall stand dismissed. In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2018 shall also stand dismissed.

14. There will be no order as to costs.

15. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)