



W.P.No.18943 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 20.12.2023

ORDERS PRONOUNCED ON : 24.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

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Assistant Provident Fund Commissioner,
Office of the Regional Provident
Fund Commissioner,
Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore-641 018.

... Petitioner

Vs.

1.M/s.Pavizham Jewellers,
Rep., by its sole Proprietor,
C V Sunny,
Cross Cut Road,
Coimbatore-641 012.

2.The Presiding Officer,
Employees Provident Fund
Appellate Tribunal,
Scope Minar, 4th Floor, Core-2,
Laxmi Nagar,
New Delhi-110 092.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the 2nd respondent relating to the order passed in ATA No.624(13)2011, dated 08.02.2012 and quash the same.

For Petitioner : Mr.C.Kulanthaivel
For R1 : Mr.R.Manoharan
Respondent-2 : Court

ORDER

This writ petition has been filed by the Assistant Provident Fund Commissioner seeking issuance of a writ of certiorari to call for the records relating to and in connection with the order passed by the 2nd respondent in ATA No.624(13)2011, dated 08.02.2011 and to quash the same.

2. The brief facts that are relevant for the disposal of the writ petition are as under:



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Pursuant to the report submitted by the Enforcement Officer of the Office of the petitioner herein, the petitioner herein passed an order dated 27.10.2006 under Section 2A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”) declaring that the 1st respondent herein is having managerial and supervisory control over the other entities viz., Pavizham Galaxy Jewellers India (P) Limited, Pavizham Jewellers India (P) Limited and Pavizham Jewel City, a proprietrix concern determined that the 1st respondent herein, and other three units are part and parcel and the employees employed therein are to be made members of the Provident Fund from the date of joining of each employee in each unit by treating them as the employees employed in the 1st respondent unit. Aggrieved by the said order dated 27th October, 2006, the 1st respondent herein filed an appeal under Section 7A of the Act 1952 before the 2nd respondent. The 2nd respondent, by an order dated 8th February, 2011, allowed the said appeal. Aggrieved by the same, the petitioner filed the present writ petition.



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3. Heard Sri C.Kulanthaivel, learned counsel for the petitioner and Sri R.Manoharan, learned counsel for the 1st respondent and perused the entire material available on record.

4. From the perusal of the order dated 27th October, 2006, and the pleadings on record, it is evident that the 1st respondent herein was established as a proprietary concern in the year 1992, Pavizham Jewellers India (P) Limited was established in the year 1999, Pavizham Galaxy Jewellers India (P) Limited was incorporated in the year 2000 and Pavizham Jewel City, a proprietrix concern, has come into existence later. The Proprietor of the 1st respondent herein, viz., C.V.Sunny had invested the amounts in all the three entities and other entities are all managed by the family members of the Proprietor of the 1st respondent herein. The petitioner herein, after having conducted an enquiry into the matter by issuing due notice to the 1st respondent herein, arrived at a conclusion that the Proprietor of the 1st respondent herein had invested his amounts in all the other three entities and he is also the Managing Director in one of the three entities and



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his family members alone are managing the other three entities and concluded that the employees working in the other three entities are also to be treated as the employees of the 1st respondent herein and passed the order under Section 2A of the Act 1952.

5. Admittedly, the 1st respondent herein is registered with the 1st respondent herein and has been remitting the Provident Fund contributions for the employees, who are working with the 1st respondent up to date. There is no dispute about the factum of the 1st respondent complying with the provisions of the Act, 1952. The petitioner herein, while passing the order dated 27th October, 2006, observed as under:

“The real purpose is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one, if on the contrary they do no constitute one integrated whole each unit is then a separate unit.”

6. The petitioner herein having observed as above, failed to examine the said aspect in the right direction and also failed to record any conclusive



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finding that the establishments that are being run by the other three units are branches or units of the 1st respondent herein. Merely because the 1st respondent herein and the other units have been carrying out the very same business in jewellery, that cannot be the basis to conclude that the other three entities are the branches or the units of the 1st respondent herein. No doubt, the Proprietor of the 1st respondent herein had admittedly invested amounts in the other three entities and the other three entities are being managed by the family members of the Proprietor of the 1st respondent herein. But, the same by itself cannot form the basis to conclude that the other three entities are the units or branches of the 1st respondent herein. In the entire order dated 27th October, 2006 passed by the petitioner herein, there is no specific finding recorded to the effect that the employees, who are working in the other three entities, are being controlled or supervised by the 1st respondent herein or its Proprietor. There is also no finding to the effect that the employees of the other three entities and the employees of the 1st respondent herein are inter-transferable or they can be transferred from one entity to the other entity at any point of time. On enquiry, if it is found that the 1st



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respondent and other three entities are interlinked for their day-to-day conduct of business or inter-dependant of each other and existence or otherwise of the one entity is dependent on the other entity etc., that is, a totally different aspect and in such case, based on such factual matrix, the petitioner can arrive at a conclusion and then pass an order under Section 2A of the Act, 1952. But, in the instant case, the petitioner herein having noticed the relevant factors that are required to be considered, failed to address such aspects and only by considering the fact that the Proprietor of the 1st respondent herein invested in all other three entities and other three entities are being managed by the family members of the Proprietor of the 1st respondent, came to a conclusion that the 1st respondent and other three entities are part and parcel and they are liable to be clubbed under Section 2A of the Act, 1952. The said order passed by the petitioner herein dated 27th October, 2006 was interfered with by the 2nd respondent in an appeal filed by the 1st respondent and the impugned order came to be passed.



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7. The 2nd respondent herein having entertained the appeal filed by the 1st respondent, came to the conclusion that there is no finding of facts recorded by the petitioner herein to the effect that all the four establishments are inter-dependant of each other or any functional integrality exists between all four establishments. As already noted above, there is no factual finding recorded by the petitioner herein in the order dated 27th October, 2006. The 2nd respondent herein having placed reliance on the decision of the Hon'ble Apex Court in *RPFC vs. Dharamsi Morarji Chemical Co. Ltd.* reported in *(1998) 2 SCC 466*, interfered with the order passed by the petitioner herein.

8. This Court, having thoroughly gone through the order passed by the petitioner as well as the impugned order dated 08.02.2011, is convinced that there is no error or illegality in the impugned order passed by the 2nd respondent. No doubt, the learned counsel for the petitioner, raised several new aspects before this Court and also pleaded the same in the affidavit filed in support of the writ petition. However, none of such contentions or



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grounds were subject matter of the order passed by the petitioner herein and the order passed by the petitioner herein is sought to be supported by furnishing reasons by way of affidavit filed in support of the writ petition.

9. It is settled legal position that any order passed by an authority or a quasi judicial authority has to stand on its own and basing on the reasons assigned in the said order. The reasons for sustaining such order can neither be supplemented nor supplanted by way of counter affidavits. The legal position in this regard is well settled by the Hon'ble Apex Court in the case of ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** reported in ***(1978) 1 SCC 405***. The Hon'ble Apex Court, in the said decision, held as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.



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Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”



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Though some of the grounds stated in the affidavit filed in support of the writ petition *prima facie* appears to be the good reasons for passing an order under Section 2A of the Act, 1952, the same were not the considerations before the petitioner herein while passing the order dated 27th October, 2006.

10. In the light of the above, the conclusion arrived at by the 2nd respondent-Appellate Authority, while exercising the power under Section 7A of the Act, 1952 by placing reliance on the decision of the Hon'ble Apex Court in the case of ***Dharamsi Morarji Chemical Co. Ltd.*** (supra), the cannot be found fault. The learned Appellate Authority, in nutshell, considered the factual aspects that are relevant for consideration of the said appeal and also noted the same in brief in the impugned order and thereafter, by following the law laid down by the Hon'ble Apex Court, came to the conclusion that the order passed by the petitioner herein, which was under appeal, as wholly unsustainable and accordingly, set aside the same. This Court, having considered the matter thoroughly, does not find any reason to interfere with the impugned order passed by the 2nd respondent-Appellate



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11. Added to the above, the employees of the other three entities are sought to be brought within the purview of the provisions of the Act, 1952 by treating them as employees of the 1st respondent herein. Admittedly, the other three entities were not put on notice before the petitioner herein passed the order dated 27th October, 2006. No doubt, the 1st respondent herein was put on notice before passing the said order. The representative of the 1st respondent has also categorically made it clear before the petitioner herein that they are not representing the other three entities and they do not have any particulars about the employees or otherwise of the other three entities. The conclusions that are arrived at by the petitioner herein are solely based on the so called Memorandum of Article of Association etc., of the other three entities. Admittedly, the said three entities are the separate legal entities having been registered under the relevant laws and having maintaining a separate assessment registers including income tax assessment etc. Therefore, the action of the petitioner herein in treating the employees of the



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other three entities as the employees of the 1st respondent herein, without even putting the said three entities on notice, is also a fundamental irregularity and illegality in the action of the petitioner in passing the order dated 27th October, 2006.

12. In the light of the above, this Court does not find any merit in the writ petition and the same is, accordingly, dismissed.

13. However, it is made clear that this order shall not be understood as an order preventing the petitioner herein from taking any action against the 1st respondent and other three entities. If the petitioner herein has any substantial material or information to establish that the 1st respondent herein and other three entities are one and the same and satisfy the criteria to treat them as one unit or branches of the one another and there is nothing to differentiate from each other and if the 1st respondent is able to establish that the 1st respondent and other three entities are to be treated as single unit for the purpose of application of the provisions of the Act, 1952, it is open for



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the petitioner herein to take appropriate action in accordance with law by duly putting the 1st respondent and other entities on notice and affording them an opportunity. No costs.

24.01.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, 4th Floor, Core-2, Laxmi Nagar,
New Delhi-110 092.

MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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