



2024:DHC:2797



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 9th January, 2024

Pronounced on: 8th April, 2024

+ W.P.(C) 8237/2014, CM APPL. 19151/2014 & CM APPL.
33769/2022

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata
Singh and Mr. Mahendra Vikram
Singh, Advocates for RPFC (EPFO)
Mr. P. S. Patwala, Sr. Advocate with
Ms. Amita Gupta, Ms. Bhawna Bhati,
Mr. Vivek Alathia, Mr. S. P. Sood
and Mr. Arvind Sood, Advocates for
R-2

+ W.P.(C) 6954/2014, CM APPL. 16368/2014 & CM APPL.
33614/2022

**FOOD CORPORATION OF INDIA FSD LAKHEWALI
(MUKTSAR)**

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 1 of 61



2024:DHC:2797



versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)

+ W.P.(C) 6964/2014 & CM APPL. 30332/2022

FOOD CORPORATION OF INDIA, BHAWANIGARH SANGRUR (PB.)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER, BATHINDA (PB)

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)

+ W.P.(C) 7972/2014, CM APPL. 18682/2014 & CM APPL. 42486/2018

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 2 of 61



2024:DHC:2797



REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)
Mr. P. S. Patwala, Sr. Advocate with Ms. Amita Gupta, Ms. Bhawna Bhati, Mr. Vivek Alathia, Mr. S. P. Sood and Mr. Arvind Sood, Advocates for R-2

+ W.P.(C) 7987/2014, CM APPL. 18710/2014 & CM APPL. 30185/2022

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)
Dr. Anindita Pujari and Ms. Radhika Mohapatra, Advocates

+ W.P.(C) 8051/2014 & CM APPL. 18814/2014

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 3 of 61



2024:DHC:2797



REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)
Mr. P. S. Patwala, Sr. Advocate with Ms. Amita Gupta, Ms. Bhawna Bhati, Mr. Vivek Alathia, Mr. S. P. Sood and Mr. Arvind Sood, Advocates for R-2

+ W.P.(C) 8203/2014, CM APPL. 19117/2014 & CM APPL. 30340/2022
FOOD CORPORATION OF INDIA, AHMEDAGARH, SANGRUR (PB)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER, BATHINDA (PB)

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC(EPFO)
Mr. P. S. Patwala, Sr. Advocate with Ms. Amita Gupta, Ms. Bhawna Bhati, Mr. Vivek Alathia, Mr. S. P. Sood and Mr. Arvind Sood, Advocates for R-2
Dr. Anindita Pujari and Ms. Radhika Mohapatra, Advocates



2024:DHC:2797



+ W.P.(C) 8303/2014, CM APPL. 19255/2014, CM APPL. 30186/2022
& CM APPL. 30333/2022

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata
Singh and Mr. Mahendra Vikram
Singh, Advocates for RPFC(EPFO)
Mr. P. S. Patwala, Sr. Advocate with
Ms. Amita Gupta, Ms. Bhawna Bhati,
Mr. Vivek Alathia, Mr. S. P. Sood
and Mr. Arvind Sood, Advocates for
R-2

+ W.P.(C) 4944/2015, CM APPL. 36106/2017 & CM APPL.
47394/2019

FOOD CORPORATION OF INDIA, PATRAN, DISTRICT,
PATIALA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER,
CHANDIGARH

..... Respondent

Signature Not Verified

Digitally Signed By: SARIK BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 5 of 61



2024: DHC: 2797



Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC (EPFO)
Mr. Yadunandan Bansal, Advocate for Respondent Employees
Mr. Braja Bandhun Pradhan, Advocate

+ W.P.(C) 8235/2014, CM APPL. 19146/2014 & CM APPL. 30335/2022

FOOD CORPORATION OF INDIA FSD, LADHUKA, FEROZPUR (PB)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER, BATHINDA (PB)

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata Singh and Mr. Mahendra Vikram Singh, Advocates for RPFC (EPFO)

+ W.P.(C) 8310/2014, CM APPL. 19262/2014 & CM APPL. 30341/2022

FOOD CORPORATION OF INDIA, FSD FAZILKA, FEROZPUR (PB)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Rajeev Sharma, Advocate

versus

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 6 of 61



2024:DHC:2797



REGIONAL PROVIDENT FUND COMMISSIONER, BATHINDA
(PB)

..... Respondent

Through: Mr. P. S. Patwala, Sr. Advocate with
Ms. Amita Gupta, Ms. Bhawna Bhati,
Mr. Vivek Alathia, Mr. S. P. Sood
and Mr. Arvind Sood, Advocates for
R-2
Dr. Anindita Pujari and Ms. Radhika
Mohapatra, Advocates

+ W.P.(C) 8321/2014, CM APPL. 19282/2014 & CM APPL.
30283/2022

FOOD CORPORATION OF INDIA (MUKTSAR) Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER-II

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata
Singh and Mr. Mahendra Vikram
Singh, Advocates for RPFC(EPFO)
Mr. P. S. Patwala, Sr. Advocate with
Ms. Amita Gupta, Ms. Bhawna Bhati,
Mr. Vivek Alathia, Mr. S. P. Sood
and Mr. Arvind Sood, Advocates for
R-2

+ W.P.(C) 109/2015 & CM APPL. 167/2015

FOOD CORPORATION OF INDIA Petitioner

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 7 of 61



2024: DHC: 2797



Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Braja Bandhun Pradhan,
Advocate

+ W.P.(C) 995/2015, CM APPL. 1759/2015 & CM APPL. 32541/2022

FOOD CORPORATION OF INDIA, NIHAL SINGH WALA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Braja Bandhun Pradhan,
Advocate

+ W.P.(C) 1399/2015 & CM APPL. 2453/2015

FOOD CORPORATION OF INDIA KHANAURI, SANGRUR (PB.)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 8 of 61



2024:DHC:2797



REGIONAL PROVIDENT FUND COMMISSIONER BATHINDA
(PB.)

..... Respondent

Through: Mr. Braja Bandhun Pradhan,
Advocate

+ W.P.(C) 1646/2015

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Braja Bandhun Pradhan,
Advocate

+ W.P.(C) 1911/2015

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: Mr. Braja Bandhun Pradhan,
Advocate

+ W.P.(C) 1922/2015 & CM APPL. 30336/2022

Signature Not Verified

Digitally Signed By: SARIK
BHAMOO VERMA
Signing Date: 13.04.2024
19:35:11

W.P.(C) 8237/2014 & 17 other connected matters

Page 9 of 61



2024:DHC:2797



FOOD CORPORATION OF INDIA DISTRICT, MOGA (PB.)

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Rajeev Sharma,
Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER BATHINDA
(PB.)

..... Respondent

Through: Mr. Avnish Singh, Ms. Pushplata
Singh and Mr. Mahendra Vikram
Singh, Advocates for RPFC (EPFO)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant batch of petitions has been filed by various units of the Food Corporation of India in the State of Punjab (hereinafter "FCI") against the various orders of the Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter "Appellate Authority/EPFAT"). In all the writ petitions, the respective FCI units (petitioner) have challenged various orders of the EPFAT which upheld various orders passed by the different Regional Provident Fund Commissioner/Assistant Provident Fund Commissioner (hereinafter "RPFC/APFC") under Section 7-A of the



2024:DHC:2797



Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter "the Act").

2. The petitioners herein are the units of FCI, established under the Food Corporation of India Act, 1964 and primarily engaged in the business of procurement, storage, and distribution of good grains throughout the country in order to effectively implement the food policy of the Government of India. The FCI functions through five different zonal offices in north, east, west, south and north-east. Each zone is divided into various regions and districts, and each district has got several depots which are run by the concerned area managers for the convenience of administration. The workers in the instant batch of petitions were working with the FCI engaged through various contractors.

3. With regard to the non-payment of Employee's Provident Fund (hereinafter "EPF/PF") dues, multiple assessment orders, district wise, were passed by the RPFC which had determined the liabilities of various FCI depots under Section 7-A of the Act, and accordingly issued directions to the petitioner to deposit the dues of the workers.

4. Assailing the above said orders, the FCI approached the High Court of Punjab & Haryana in writ petition bearing W.P (C) no. 4619/2008, which was disposed of vide order dated 19th August, 2006, remanding the matters back to the respondent RPFC with directions to pass fresh orders.

5. Against the order dated 19th August, 2006 passed by the learned Single Judge, the petitioner filed an appeal before the Division Bench of High Court of Punjab & Haryana which appeal was disposed of vide order



2024:DHC:2797



dated 14th January, 2008 the appeal by reiterating the order of the learned Single Judge. Thereafter, the petitioner filed an appeal before the Hon'ble Supreme Court against the said order of the Division Bench, which was allowed vide order dated 28th July, 2009, thereby, setting aside the judgment dated 14th January, 2008 and remanding back the matter to the High Court of Punjab & Haryana.

6. Vide order dated 1st November, 2010 passed in LPA bearing no. 214/2007, High Court of Punjab & Haryana remanded back all the matters to the concerned respondent RPFC/APFC of Punjab for *de novo* consideration.

7. In view of the above said direction of the High Court of Punjab & Haryana, the respondent RPFC/APFC issued fresh notices under Section 7-A of the Act and thereafter passed orders against the petitioner and in favour of the workers.

8. The petitioners herein are aggrieved by the above said orders and have approached this Court seeking setting aside of the same. Since the grievance of the petitioners in the instant batch of petitions involves common questions of law, this Court deems it appropriate to decide the same by way of this common judgment.

9. Hence, for the sake of convenience and for the purposes of adjudication of the peculiar issues involved, this Court has culled out the facts from writ petition bearing W.P. (C) No. 8237/2014.

10. The writ petition bearing No W.P. (C) 8237/2014 has been filed under Articles 226 and 227 of the Constitution of India seeking the following reliefs:



“(a) pass an appropriate Writ, Order or direction in the nature of certiorari or any other appropriate writ, order or direction in the nature thereof for quashing/setting aside the Order dated 19.09.2014 forwarded by letter dt. 23.09.2014 forwarded by letter dt. 9.9.2014 passed by Hon'ble EPF Appellate Tribunal in ATA No. 872 (11)2013; and

(b) pass an appropriate Writ, Order or direction in the nature of certiorari or any other appropriate writ, order or direction in the nature thereof for quashing/setting aside the Order No. COMP-I/PB/BTI/12584/8540 DATED 22.10.2013 forwarded by letter dt. 29.10.2013 passed by the respondent under Section 7A Employees Provident Fund & Miscellaneous Provisions Act 1952; and demand made by the respondent.

(c) award cost of the petition; and

(d) pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case...”

FACTUAL HISTORY

11. The respondent RPFC issued a notice to the petitioner and raised a demand for the period December, 1980 to January, 1988 and May, 1990 to April, 1991 and without impleading the contractor as a party, it decided the case against the petitioner and determined Rs.46,38,332/- as PF dues payable in respect of the contractual employees of FCI Jalalabad (W), District Fazlika, Punjab. As stated above, vide order dated 1st November, 2010, passed in LPA bearing no. 241/2007, the High Court of Punjab & Haryana



2024:DHC:2797



remanded back the matter to the respondent RPFC for fresh adjudication by duly summoning the contractors.

12. Subsequently, the respondent issued a fresh notice to the petitioner under Section 7-A of the Act, to appear before the authority in relation to the EPF dues for the period from December, 1980 to January, 1988 and May, 1990 to April, 1991. The petitioner appeared before the authority and filed the list of contractors engaged by them for the above stated period and made a specific request to summon all the contractors in order to identify the workers in view of the order dated 1st November, 2010, passed in LPA bearing no. 241/2007, by the High Court of Punjab & Haryana. Accordingly, notices were issued to the contractors, through the petitioner, seeking their appearance, however, the notices returned with the report stating 'non-traceable/wrong address. Eventually, the notices to the contractors to appear before the authorities were issued vide publication of proclamation in the newspaper, yet no one appeared.

13. Further, the respondent directed the labour union to appear and to produce the documents required in the proceedings before it. The union appeared and filed a list of workers (313 workers) along with the affidavit.

14. Thereafter, the respondent, vide order bearing no. COMP-I/PB/BTI/12584/8540 dated 22nd October, 2013 forwarded by letter dated 29th October, 2013 directed the petitioner to deposit Rs.46,38,332/- as PF dues in respect of contractor's employees of FCI Jalalabad (W), District Ferozepur, for the period from December, 1980 to January, 1988 and May, 1990 to April, 1991.



2024:DHC:2797



15. The above said order was challenged by the petitioner before the Appellate Authority and the learned Appellate Authority dismissed the petitioner's plea vide order dated 19th September, 2014 forwarded by letter dated 22nd September, 2014 and upheld the order of the respondent RPFC.

16. Being aggrieved by the impugned order dated 19th September, 2014, the petitioner has approached this Court seeking setting aside of the same.

PLEADINGS

17. The petitioner had filed the instant writ petition on 17th October, 2014 and submitted the below stated arguments:

“(A) Because the order dated 19.09.2014 forwarded by letter dt. 22.09.2014 passed by the Ld. Appellate Tribunal as well as Respondent order dated 22.10.2013 forwarded by letter dt. 29.10.2013 are contrary to the directive of the Hon'ble Supreme Court of India passed vide Order dated 28.07.2009 in the matter of Civil Appeal No. 7482 of 2003 titled; Food Corporation of India Versus Regional Provident Fund Commissioner & Anr; passed the impugned Order without examining the definition of 'employee' in the light of the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Steel Authority of India Limited Versus National Union Waterfront Workers (2001) 7, SCC,1 and further without considering the aspect of issuance of notice to the contractors, as required under the decision of the Hon'ble Supreme Court in the case of Bharat Heavy Electricals Ltd. Versus ESI Corporation, reported in (2008) 3, SCC, 247.

(B) Because the Ld. Appellate Tribunal and respondent RPFC passing the impugned Order did not take into account of the fact that the records of the contractors' laborers could not have been in the possession of the Petitioner as under Rule 74, 75 of



the Contract Labour (Regulation) and Abolition Central Rules, it is only the contractor who has the details of the workmen.

(D) Because the Ld. Appellate Tribunal and respondent failed to appreciate that the record can be only available either with the Contractor as under Rule 74 and 75 of the Contract Labour (Regulation) & Abolition Act, 1970, which clearly says that "Principal employer shall maintain a register of the Contractor in Form XII and as per Rule 75 every Contractor shall maintain the record of the employees of Contract Labour or with the License Authority, who issued the License under Rule 18 and 21 of the CLRA Act to the Contractor to hire the contract labour, but instead of asking the contractor or the Licensing authority to produce the record, directed the Petitioner to produce the record of the year 12/1980 to 01/1988 & 05/1990 to 04/1991 like the Attendance Register at Depot and wrongly illegally shifted the onus upon the petitioner.

(M) BECAUSE the Ld. Appellate Tribunal and Respondent in spite of the fact that all the contractors did not appear in the proceedings and despite that identification of the workers had not been done in accordance with the directions of the Hon'ble High Court of Punjab & Haryana, arbitrarily completed the proceeding and passed the impugned Order No. COMP-1/PB/BTI/12584/8540 DATED 22.10.2013 forwarded by letter dt. 29.10.2013 , whereby the Ld. Respondent erroneously re-determined a sum of Rs.46,38,332 / as P.P. dues payable in respect of Contractors' Employees of FCI, Jalalabad (W), Distt. Fazilka for the period 12/1980 to 01/1988 & 05/1990 to 04/1991 and thereby directed the Petitioner to deposit the said amount of Rs. 46,38,332 / immediately on the receipt of the Order and submit copies of Bank Challans duly receipted by the Bank authorities failing which the action to recover the same under the Provisions of Section 8B to 8G of the Employees' Provident Funds & Misc. Provisions Act, 1952 will be initiated after 15



days of the receipt of the Order and the same will be without prejudice to any other action that may be taken under Statutory Provisions of Law including the levy of Damages under ' Section 14B and to claim interest under Section 7Q of the Act on belated payments for which separate orders will be issued to the Establishment and further that the Establishment will be liable to pay the escaped amount also, if any, noticed at any subsequent stage, under the provisions of the Section 70 of the Act and any of the action as deemed necessary as per Law....”

18. In response to the writ petition, the respondent no. 1, i.e., RPFC filed its counter affidavit refuting the petitioner’s case, relevant portion is as under:

“..viii) That it is often seen that employer/establishment resort to filing the petition in the Court once the recovery process has been started, which in any case start after default of the legitimate dues have been committed by such employer. The employers file such cases with a view to defeat the object of the social security legislation, which provides for a lump sum payment to the employees on their retirement so that they can spend their retired life with some element of comfort.

ix) That the Hon'ble Supreme Court in the matter RPFC Vs. Shibu Metal Works, 1964 65(27) FJR 491 upheld that in construing the material provisions of the Act, if two views are reasonably possible, the Courts' should prefer the view which helps the achievement and furtherance of the object. In the matter of State Vs. Girdhari Lai Bajaj, 1962 II LU 46 (Bom.DB), the Hon'ble Court observed that when there is doubt about their meaning, it is to be understood in the sense in which it best harmonizes with the subject of the enactment and the object which the legislature has in view.



It is, therefore, prayed that the Hon'ble Court may kindly consider the purpose behind the legislation (EPF & MP Act, 1952) as enumerated above while considering the petition of the employer.

It is humbly submitted that the case was remanded back by Hon'ble High Court for deciding the dues after duly summoning contractors for identification of beneficiaries.

It is humbly submitted that summons was issued to the contractors, appellant and workers union. However, summons issued to the contractors were returned back from postal authorities with remark "non traceable/incomplete address". Summons were also served through appellant and appellant reported that summons to none of the contractors could be served due to incomplete/wrong address. Even after issue of proclamation under Order V Rule 20, neither any of the contractors appeared during proceedings nor any record of the contractors was produced.

The details provided by workers' Union mostly tallies with returns submitted for the year 1986-87 by the Appellant itself and thus Identification of workers is available. The workers submitted during proceedings that wages were equally distributed amongst them. Returns submitted by Appellant for the year 1986-87 was also examined wherein it was observed that equal amount of contribution has been credited to each worker. The dues decided can also be credited to individual workers account on the same pattern. It is further submitted that these dues pertain to 12/1980 to 01/1988 & 05/1990 to 04/1991 long period has already lapsed and workers are still deprived of their legitimate right



2024:DHC:2797



19. The petitioner has also filed rejoinder dated 10th April, 2015 denying the arguments of the respondent RPFC.

20. Counter affidavit dated 22nd July, 2019 filed by the respondent no. 2, i.e., workers union Jalalabad (hereinafter “respondent union/worker union”) is also on record where the following submissions have been made:

“....I That Enforcement Officer, Fazilka informed that he visited FCI Jalalabad for inspection of records of contractors but no records were produced by FCI. He issued letters to FCI to produce attendance/wages registers /records to identify the workers for Provident Fund benefits.

J That High Court of Punjab and Haryana in LPA No. 214 of 2007 has held that that it is beyond any doubt that FCI is the Principal Employer and under legal obligation to deposit Provident Fund dues of employees engaged through various contractors.

M That the case has been remanded at the instance of Assistant Manager, FCI, Jalalabad and as such the onus to prove directly relies on Assistant Manager, FCI, FSD, Jalalabad to the effect that assessed dues were actually not payable or lesser amount of dues become payable with reference to Registers and records statutorily required to be maintained !by contractors and FCI as per provisions of V.3- Section 29(2) of The Contract Labour (Regulation and Abolition) Act, 1978 i.e. Every Principal Employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.



7(i) Contents of para 7 (h) are matter of record that Respondent no.1 had directed petitioner to deposit Rs.46,38,332/- towards Provident Fund dues from December, 1980 to January 1988 and May, 1990 to April, 1991 of 313 Labourers. It is, denied, that these 313 labourers were not working with petitioner during the relevant period. It is, denied, that Respondent did not take steps for contractors to attend the proceedings for or no action was taken under Section 7A of the Act for the *** attendance of the contractor -will ***** o submitted in detail above. It is, denied, No dues Certificate was issued to Contractor or that proceedings and order of Respondent is against the spirit of the order of the Hon'ble High Court of Punjab and Haryana and Hon'ble Supreme Court of India.

F) Contents of ground (F) are wrong and denied that affidavit submitted by Worker Union was not supported by any evidence. It is, denied, that Affidavit submitted by Worker Union was not supported by any evidence or there was no basis of these workers having worked during the period in dispute with the petitioner. The liability of payment of Provident Fund has been rightly fastened on the petitioner....”

21. The petitioner, the respondent RPFC and workers union have also filed their written submissions dated 4th January, 2023, 9th January, 2023 and 26th October, 2022 respectively and the same is on record.

SUBMISSIONS

(submissions on behalf of the petitioner - FCI)

22. Mr. Sukumar Pattjoshi, learned senior counsel appearing on behalf of the petitioner FCI submitted that the learned Appellate Authority erred in passing the impugned order as it failed to take into consideration the entire



2024:DHC:2797



facts and circumstances of the instant dispute and the errors of law committed by the respondent RPFC.

23. It is submitted that the respondent RPFC passed the order determining the liability of the petitioner without appreciation of evidence and the learned Appellate Authority erred in considering the legal issues raised by the petitioner.

24. It is submitted that the impugned order is merely a copy and paste and the learned Appellate Authority failed to appreciate the intricate legal flaws present in the order passed by the respondent RPFC.

25. It is submitted that copy paste, line to line, word to word is bad in law and there is nothing on record to suggest that the findings recorded by the Authority under Section 7-A of the Act have been independently assessed by the learned Appellate Authority.

26. It is submitted that the Hon'ble Supreme Court in ***Bhanwarlal Dugar & Ors. v. Bridhichand Pannaal & Ors.***¹ has held that copying the contents of the order of a lower Court by an appellate Court without any independent application of mind and assessing the evidence, is against the law.

27. It is submitted that the learned Appellate Authority failed to exercise its appellate jurisdiction by not appreciating the factum that the respondent RPFC did not exercise the powers under Section 7-A of the Act to ensure the presence of the contractors.

¹ 2010 AIR SCW 4288



2024:DHC:2797



28. It is submitted that without giving any proper notice to the contractor, the respondent RPFC directed the petitioner to produce the record of the contract labour for the period December, 1980 to January, 1988 and May, 1990 to April, 1991 and decided the case. The same is bad in law as the petitioner cannot be directed to produce such records as the same is the responsibility of the contractors.

29. It is submitted that although notice/summons was issued, the same was a mere formality as no contractor appeared and despite the respondent RPFC vested with the powers under Section 7-A, no steps were taken by it to ensure the contractors' appearance.

30. It is submitted that the respondent RPFC erroneously accepted the version of the respondent workers union that 313 workers were employed during the period in question. It is submitted that neither the workers appeared before the respondent RPFC nor any opportunity to cross examine the workers was given to the petitioner.

31. It is submitted that the respondent RPFC as well as the learned Appellate Authority failed to consider that under the Contract Labour (Regulation) & Abolition Act, 1970 and Contract Labour (Regulation And Abolition) Central Rules, 1971 (hereinafter "CLRA"), the record of the contract labour, hired by the contractor, can only be available with the concerned contractor.

32. It is submitted that under Rule 75 of the CLRA, the contractor is bound to maintain the details of the contract labour and as per Rule 74 of the



2024:DHC:2797



CLRA, the petitioner, being the principal employer, has to maintain the details of the contractor.

33. It is also submitted that Rule 74 of the CLRA clearly mentions that a principal employer is required to maintain a register of the contractors in Form XII, which would contain only the information of the contractor and as per Rule 75 of the CLRA, every contractor would maintain the record of the employees of contract labour. Reliance in this regard has been placed on the judgment titled *Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha*² where the Hon'ble Supreme Court explained Rule 75 of the CLRA as above. The respondent RPFC as well as the learned Appellate Authority Tribunal wrongly shifted the burden upon the petitioner to produce records which were more than 35 years old and actually maintained by the contractors.

34. It is submitted that the respondent RPFC failed to discharge its statutory duties conferred under Section 7-A of the Act by failing to ensure the contractors' appearance, collect the evidence from the contractors to ascertain eligibility of the contract labour, number of days workers worked during the period or number of days work was available with the petitioner during the period, and the same could not be done without impleading the contractors as a party as the proceedings under Section 7-A can be done only against the employer i.e. the contractors.

² AIR 1995 SC 1893



2024: DHC: 2797



35. It is submitted that the learned Appellate Authority failed to consider the factum that the liability to pay contribution pertaining to the provident fund of the workers engaged by the contractors can only be fastened on the petitioner after determining the liability of the contractors.

36. It is submitted that the reasoning given in the impugned order is perverse, arbitrary, irrational, and has no basis whatsoever in law, equity or justice.

37. It is submitted that in light of the above submissions, it is evident that the learned Appellate Authority erred in appreciating the settled law and hence, there is illegality in the impugned order making it liable to be set aside.

38. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs may be granted as prayed for.

(submissions on behalf of the respondent - RPFC)

39. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

40. It is submitted that the present petition is liable to be dismissed on the grounds that the petitioner has failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Appellate Authority.



41. It is submitted that the learned Appellate Authority has taken into consideration the entire facts and circumstances and only after such due consideration, it reached to the conclusion determining the petitioner's liability to pay PF dues.

42. It is submitted that the case was remanded back by the High Court of Punjab and Haryana to decide the same after duly summoning the contractors for identification of beneficiaries.

43. It is submitted that it is wrongly alleged by the petitioner that the respondent RPFC did not follow the mandate of Section 7-A of the Act. In fact, the summons were issued to the contractors, however, the same returned back from postal authorities with remark "non-traceable/incomplete address".

44. It is submitted that summons were also served through the petitioner and the petitioner reported that summons to none of the contractors could be served due to incomplete/wrong address.

45. It is further submitted that even after issue of proclamation under Order V Rule 20 of the Code of Civil Procedure, 1908, neither any of the contractors appeared during the proceedings, nor any records of the contractors was produced.

46. It is submitted that the list of the workers as produced by the workers union has been challenged by the petitioner before this Court, however, the same has not been contradicted with any alternative list of workers. The petitioner has admitted that the work was done during the enquiry period and



2024:DHC:2797



since the petitioner had no direct employees for lifting of bags, there must have been matching set of workers who carried out this work.

47. It is submitted that as per the workers union, they had been working continuously with the petitioner since the year 1979. The contractor used to get changed but the workers remained the same till their retirement or death.

48. It is submitted that Returns of contribution in Form 3A/6A were filed for the first time by the petitioner for the year 1986-1987. On comparison of the same with the list of workers provided by the workers union, it was found that most of the workers, out of list provided by the workers union, appeared in Form 3A/6A. In view of the same, the list of workers submitted by the workers union was thus found reliable for the identification of workers.

49. It is submitted that the petitioner has all the records such as entry gate register, id cards, rolls for the payment, EPF schedule in respect of the contributions deposited with concerned RPFC by the contractors of the FCI as the case may be etc.; which are necessary to enable the identification of workers but it has not produced the same to evade its lawful liability.

50. It is submitted that the petitioner's head office issued a circular dated 31st March, 1978, stating that FCI would deduct EPF dues directing its units to report compliance in respect of contract labour under the Act. It is further submitted that the petitioner not only failed to report the compliance but is also depriving the workers of their legitimate rights.

51. It is submitted that the petitioner's contentions are baseless due to the reason that the learned Appellate Authority has exercised its jurisdiction in



2024:DHC:2797



accordance with the settled legal propositions and there is no infirmity in the impugned order passed by it.

52. Therefore, in view of the submissions made above, it is submitted that the instant petition being devoid of any merits may be dismissed.

(submissions on behalf of the respondent no. 2 - workers union)

53. Mr. P. S. Patwala, learned senior counsel appearing on behalf of the workers union vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

54. It is submitted that the impugned order has been passed in accordance with law and by way of the present petition, the petitioner is merely misusing the process of law.

55. It is submitted that the respondent RPFC sent summons to the petitioner and all the contractors through the petitioner who worked with it for the period in question to produce attendance and wage register etc. and the respondent no. 1 also took steps to summon the contractors through proclamation published in 'Daily Ajit' on 10th September, 2012 and 'Punjab Kesri' on 5th October, 2012, in order to ensure the contractors' attendance for the purposes of identification of the workers.

56. It is submitted that more than 24 opportunities such as on 1st July, 2011, 29th July, 2011, 26th August, 2011, 23rd September, 2011, 14th October, 2011, 4th November, 2011, 13th December, 2011, 27th December, 2011, 10th January, 2012, 7th February, 2012, 13th March, 2012, 27th March, 2012, 24th April, 2012, 15th May, 2012, 29th May, 2012, 12th June, 2012, 26th June, 2012, 10th July, 2012, 23rd July, 2012, 20th August, 2012, 27th August 2012,



2024:DHC:2797



10th September, 2012, 25th September, 2012 and 22nd October, 2012 etc. were given by the respondent RPFC to produce the records, however, neither FCI nor its contractors produced any records.

57. It is submitted that the workers used to mark their attendance at the entry gate of the concerned FCI depot which register used to be maintained by the assistant manager of the depot as part of the permanent record.

58. It is submitted that High Court of Punjab and Haryana, in appeal bearing no. LPA 214/2007, has held that it is beyond any doubt that FCI is the principal employer and under legal obligation to deposit PF dues of employees engaged through various contractors.

59. It is submitted that in view of the above the instant petition may be dismissed being devoid of any merit.

SCHEME OF THE ACT

60. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a legislation enacted in order to provide social security to the employees working in any establishment engaging twenty or more persons on any day. It provides for compulsory deduction of provident fund from employees and a contribution from the employer which is deposited in the worker's account in the EPF office. The Act further provides for provisions with respect to insurance and pensionary benefits to the employees.

61. The dispute in the instant petition pertains to Section 7-A of the Act and this Court deems it appropriate to discuss the same. The relevant extracts of the said provision is as under:



“...7-A. 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 sub-section (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.*



[(3-A) 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 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.]

62. A bare perusal of Section 7-A of the Act shows that in case of failure to deposit the legitimate dues of workers, the authority prescribed therein



2024:DHC:2797



may initiate recovery action for the purpose of compelling the employer to deposit the legitimate dues of the workers through a *quasi-judicial* process.

63. The Act is a unique substantive law with an ultimate goal to provide within itself means and procedure for its enforcement. One such provision is Section 7-A, wherein, the concerned authority (RPFC/APFC) is empowered to initiate an inquiry for determination of any deficit in the contributions remitted by any establishment under the provisions of the Act.

64. Under the above said provision, the authority has been granted powers with regard to enforcement of the attendance of any person of examination of the person on oath, discovery and inspection of documents, receipt of evidence on affidavit etc. similar to that of a Civil Court. The scope of the said provision is extensive and the purpose behind the same is to ensure protection of the interest of the employees as well as the employers in various instances.

65. Given that the authority under the Act has enormous powers, its misuse may be possible, however, bearing in mind the said extensive powers, this Court is of the view that while initiating the recovery process under the Act, the authority concerned must exercise it reasonably, fairly and in accordance with the principles of natural justice.

66. One such common instance of possible misuse of the above stated inquiry provisions under the Act is '*initiation of recovery action without identification of worker*'. The same is also one of the limbs of arguments advanced by the petitioner in the present case.



67. In this regard this Court is of the view that the collection of dues under Section 7-A is for the benefit of the specific eligible employees. Given the same, it becomes imminent that the said employees are necessarily identified. A corollary to this is that unless the beneficiaries of the dues assessed by the PF authorities are identified, any amount collected pursuant to a proceeding under Section 7-A would not benefit the eligible employees and therefore, fail to serve the purpose of the Act.

68. The Hon'ble Supreme Court in *H.P. State Forest Corpn. v. Regl. Provident Fund Commr.*³, while commenting upon the aspect of identification of workers observed that dues can be determined with reference to only the identifiable employees whose entitlement can be proved on the evidence. The relevant paragraphs of the same is as under:

“4. Mr M.N. Rao, the learned Senior Counsel for the appellant has at the outset very fairly pointed out that as of today and in the light of the fact that the Corporation itself had voluntarily submitted that it was covered by the provisions of the Act the question of a dispute with regard to the liability of the Corporation was now largely academic, but has pleaded that as the employees in question were seasonal employees and the matter pertained to a long-gone period i.e. 1982-1988, the record pertaining to the employees was not available either with the Corporation or with the contractors and that in many a case those who stood to benefit were not even traceable, it would be appropriate that the impugned orders be quashed as they would not serve any useful purpose. It has also been pleaded that although there was no limit prescribed under the Act within which proceedings under Section 7-A could be

³ (2008) 5 SCC 756



initiated, but under the broad principle that a reasonable period ought to be read into the statute, the present delay of 16 years from 1982 could not be justified. The learned counsel for the respondents has, however, argued that the Tribunal and the High Court had granted a limited relief to the employees inasmuch that the examination of the claim was to be limited only to those employees who could be identified and that as the authorities below had exercised their authority with respect to a beneficent legislation for the weaker sections, it would be inappropriate to interfere with the impugned orders.

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...”

ANALYSIS AND FINDINGS

69. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter,



2024:DHC:2797



judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

70. The petitioner's case is that the learned Appellate Authority erroneously determined the petitioner's liability to pay contribution to the provident fund pertaining to the workers engaged by the contractors since the same could only be fastened on the petitioner after determining the liability of the contractors. The petitioner contends that for the purpose of the work entrusted by them, only the contractors are in a position to supply the list of workers engaged, however, in the present case no such material was collected. The respondent RPFC simply issued the summons and thereafter, no efforts were made to check whether it was served or not, even where it was served, no power given under section 7-A of the Act was exercised to force the contractor to produce the record. Therefore, the liability of the petitioner was decided without determining the particular contractor's liability and the same is completely against the well settled principle of law laid down by the Hon'ble Supreme Court in the matter of ***Bharat Heavy Electricals Ltd. v. ESI Corporation***⁴.

71. In its rival submissions, the respondent RPFC refuted the arguments advanced by the petitioner contending to the effect that the petitioner itself holds all the necessary records required to identify the workers, however, it did not produce the said records despite the fact that the respondent RPFC took all the steps to ensure the contractor's appearance and the same is

⁴ AIR 2008 SC 1449



2024:DHC:2797



merely an excuse to evade its liability towards the workers' PF dues. It has been further contended that the details provided by workers union mostly tallies with the Returns submitted by the petitioner for the year 1986-1987 and thus, the identification of workers is available and has been rightly done.

72. During the proceedings before it, the workers union had submitted that wages were equally distributed amongst them and Returns submitted by the petitioner before it for the year 1986-1987 was also examined, wherein, it was observed that on an earlier occasion also equal amount of contribution has been credited to each worker. The dues decided can also be credited to individual worker's account on the same pattern. Therefore, taking the same into consideration, the liability of the petitioner was determined for the period of December, 1980 to January, 1988 and May, 1990 to April, 1991 and the same has been rightly upheld by the learned Appellate Authority.

73. The respondent – workers Union was impleaded as a party to the instant case and it has been submitted on its behalf that the petitioner had maintained all the relevant record with it such as attendance and the wage register. Furthermore, it has been contended that the respondent RPFC took all the steps to ensure the presence of the contractors for production of the relevant records, however, none of the contractors appeared despite issuance of proclamation in various newspapers. Even after taking note of the same, the petitioner failed to produce the records for the identification of the workers in an attempt to evade its responsibility towards the PF dues of poor workers. Therefore, the instant petition is liable to be dismissed being devoid of any merit.



74. The learned Appellate Authority vide its order dated 19th September, 2014 had passed the impugned order where it upheld the order dated 22nd October, 2013 passed by the respondent RPFC. The relevant extracts of the impugned order is as under:

“...2. The Respondent passed the impugned Order under the directions issued by the Hon'ble High Court of Punjab & Haryana in CWP No. 4619 of 1988 followed by LPA No. 214 of 2007 and 39 connected appeals. The Hon'ble High Court of Punjab & Haryana while disposing of the appeal observed that the determination of PF liability of FCI would require and identification of the contractors' employees to be made. Such identification, normally, has to be on the basis of acceptable documents like register, etc. as held by the Apex Court in the case of FCI's case (supra)'. The Hon'ble High Court further observed that the exercise of determination of PF dues shall be conducted only after giving due and adequate notice to the contractors'. Pursuant to the above said directions of the Hon'ble High Court of Punjab & Haryana, the Respondent conducted fresh proceedings under Section 7A of the Act. Due notices were issued to the parties. The Respondent after hearing the taking note of the evidence led by the parties concluded that the identity of the workers is known. The workers have submitted on oath that they were employed during period under question. As supporting evidence, workers have submitted wage slip. The appellant has however assailed the same by submitting that no relevant and material records have been produced -with regard to their eligibility as workers. The Respondent has also observed that the appellant is in possession of the best evidence as to the beneficiaries but had not disclosed to counter the view point of workers, and had therefore took an adverse inference against the appellant. In this regard the Respondent had cited the case of Attar Singh Vs The Presiding Officer, Labour Court, Hissar, (P & H) 2001



2024:DHC:2797



SOT 273 wherein it was held by the Hon'ble High Court of Punjab 85 Haryana that:.....

3. The Respondent has also held that as per law, FCI as principal employer was required to ensure that dues of workmen were distributed to its satisfaction and the FCI, Jalalabad, Dist. Fazilka, Punjab was statutorily mandated to do so. Thus in terms of Para 30 and the EPF Scheme the employer is required to pay in the first instance the dues in respect of the contractors labour also and the contractor is also duly bound as Para 36-B of the Scheme to submit to employer within 7 days of every month a statement recoveries in respect of contractors employees along with other required information. Therefore, the appellant employer allowed to first perpetuated this violation was mainly statutory and this to get with the some at the cases of the poor workers and fitting the various foundation of situation justification as embodying the constitution.

4. The appellant has assailed the impugned Order of the respondent by contending that the appellant cannot be fastened with the liability to pay PF contribution in respect of employees engaged through contractors. Ld. Counsel for the appellant relied on the case of Steel Authority of India Vs. Northern water from worker [2001. (7) SCC 1] wherein Hon'ble Supreme Court of India in the case of has held that the workers employed through contractors cannot be treated as its own employees. However, by virtue of Section 1(f) of the Act, which defines the expression "employee" is comprehensive enough to cover the workers employee directly or indirectly and a phrase is included in Section 2(f) of the Act specifically provides "a person employed by through a contractor". In the case of M Venugopal Reddy Vs. Hindustan Aeronautical Ltd., 1999 111 LLJ 1206, Hon'ble High Court of Karnataka held that "...Therefore, the Principal employer has to discharge the duty prescribed u/s. 40 and 41 of the Act and the cannot compel a



contractor to have his own account in respect of employees engaged by him to discharge the work of principal employer. Such a duty or obligation is not cast upon a contractor under the ESI Act also. Consequently, the condition imposed in Annexure-A on the petitioner to furnish his own separate account of ESI cannot be sustained as the same is not prescribed under the Act." Thus, the principal employer shall be held liable for PF contribution in respect of contractor's workers.

5. The another contention raised by the appellant is that the beneficiaries are not identified in fair manner. It is however not disputed that the workers have been engaged by the appellant through the contractors and the appellant is liable to pay PF contribution for the workers engaged. But dispute raised is as to the identity of the workers. In this regard cooperation of the appellant is necessary in identification of the workers. While engaging the worker's, the appellant is expected to know the details of the workers supplied by the contractors. Secondly, the appellant is also expected to issue gate pass to all the workers entering its premises for work. The appellant has miserably failed to extend its cooperation in identification of the workers. It can also be taken as if the appellant had permitted the workers without gate pass. The appellant is also expected to maintain the records as the requirement of workforce from different contractors. Notwithstanding the above said, the contractors had also not cooperated in identification of the workers. Under Section 15 of the Private Security Agency Regulation Act, 2005 and rule 74 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 it is clearly mandated that register of contractors only are to be maintained by the principal employer whereas register of employees of the contractor, muster roll, wage register are to be maintained by the contractor in terms of rule 75 and 78 of the Contract Labour (Regulation and Abolition) Central Rules, 1971. It is



settled legal position that until and unless, the beneficiaries are not identified, the determined dues would not help the workers as the money would not reach to them till the time they are identified. The burden to identify the employees is initially on the respondent authority which it be correct as well as by exercising the powers conferred under Section 7A (2) of the Act. The burden thereafter shifted on the contractor, as per legal requirement. The appellant had shown its inability to produce the records in relation to the contractors' workers. The Food Corporation of India is a public undertakings and principal employer in this case has not fulfil his responsibility as required under the Act. The beneficiaries have already been identified by the RPFC on the basis of available record submitted by the parties.

6. In view of the above discussions, there is no infirmity in the impugned order. The appeal is accordingly dismissed. The appellant is directed to deposit the EPF dues as assessed by the RPFC, Bhatinda. Copy of the order be sent to both the parties. File be consigned to the record room....”

75. Upon perusal of the above extracted paragraphs of the impugned order, it is observed that after remanding back the matter to the respondent RPFC, fresh proceedings were conducted under Section 7-A of the Act whereby fresh notices/summons were issued to the parties including the contractors and the workers union. After the evidence was adduced, the respondent RPFC concluded that the identity of the workers is known.

76. However, the petitioner assailed the respondent RPFC's order before the learned Appellate Authority on the ground that no relevant material with regard to the eligibility of the workers was produced before the respondent.



2024:DHC:2797



With respect to the same, the learned Appellate Authority while upholding the decision of the respondent RPFC held that the petitioner was expected to know the details of the workers supplied by the contractors as it had issued gate pass to enter the premises.

77. The learned Appellate Authority also held that in terms of Rule 75 and 78 of CLRA, the petitioner, being the principal employer, is mandated to maintain the register of employees of the contractors, muster roll, wage register etc., therefore, even if the contractors failed to appear and produce the records regarding the workers, adverse inference can be drawn against the petitioner due to its failure to produce the above said records.

78. The learned Appellate Authority further held that the burden to identify the workers was initially upon the respondent RPFC which was discharged after it had taken all the measures to collect evidence and inspecting records. Thereafter, the burden shifted upon the contractors which did not appear before the respondent RPFC despite issuance of notices, summons and publishing of proclamation in the leading newspapers. Subsequently, the burden was shifted upon the principal employer, i.e., the petitioner, however, the petitioner failed to produce the records and accordingly, adverse inference was drawn against it.

79. Considering the same, the learned Appellate Authority was of the view that the respondent RPFC had duly taken all the measures to comply with the statutory mandate prescribed for the proceedings under Section 7-A of the Act and upheld the order directing the petitioner to deposit the EPF dues.



2024:DHC:2797



80. It is pertinent to mention herein that the dispute in the instant batch pertains to the enquiry period of 1980s and multiple rounds of litigations have been already conducted between the parties. In regard to the same, multiple facts and arguments have been advanced before this Court.

81. Therefore, the limited legal issues before this Court are *whether the respondent RPFC rightly determined that the petitioner being the principal employer is liable to pay the dues and whether the respondent RPFC erred in holding the petitioner liable to deposit the EPF dues in the absence of contractors?*

82. It has been contended by the petitioner that the respondent RPFC had wrongly determined the petitioner's liability as the principal employer to pay the EPF dues.

83. In India, Contract labourers are protected under CLRA and in the said Act, a contract labour is defined as one who is hired in connection with the work of an establishment by the principal employer through a contractor. While a contractor is the supplier of labour for the organization, a principal employer is responsible for the control of the establishment.

84. Clause 30 of the Employees' Provident Funds Scheme, 1952 (hereinafter "Scheme, 1952") states the provision *qua* the payment of contributions where the principal employer is liable to pay the contribution for the workers employed through the contractors. The same is reproduced as under:

"..30. Payment of contributions



(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation: For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix..."

85. Sub Clause (3) of the above stated Clause 30 of the Scheme, 1952, particularly casts an obligation upon the principal employer to pay both the contribution payable by itself in respect of the employees directly employed



by it and also in respect of the employees employed by or through a contractor. Also, Clause 36 of the Scheme, 1952 further imposes duty upon the employer to prepare a contribution card in terms of Form 3 or Form 3A.

86. Form 3A and Form 6A as per Scheme, 1952 and the Employees' Pension Scheme 1995 at Clause 19, is filed by the employers to bring on record the details of contribution towards the EPF dues. The data submitted therein includes account number, name of the subscriber, name and address of the factory/establishment, statutory rate of contribution etc.

87. The respondent RPFC has filed a letter dated 9th January, 1986 which is appended as Annexure –II with the counter affidavit. The relevant extract of the same is as under:

“..(i) The provisions of the EPF Act, 1952 without any exemption are implemented.

(iii) Whenever a contractor is appointed in future [including in the case of present contractors], details of period of contract employees/labourers employed by the contractor alongwith details of their date/s of appointment etc. be obtained and furnished to concerned EPFO. In case of existing contractors, this information should be furnished to concerned EPFO before 28.2.1986.

(v) Contractor's labour wages should be got disbursed in the presence of Assistant Manager (Depot) concerned as envisaged in the contract terms and after making necessary deductions towards the employees/contributions from the wages of employees/labourers and sent to RPFC concerned alongwith the employers' [contractors] contributions. Such remittance to the RPFC should be accompanied by the schedule containing



2024:DHC:2797



name of the employees, his/her individual Provident Fund account No. if any, the date of his initial appointment etc.

(vi) As the provisions of EPF are statutory and Corporation being the Principal employer,; SRM/RM/JM [FQ] concerned may immediately direct District Manager's concerned to implement the provisions of the EPF Act, which have also been included in the tender documents and keep on reviewing the position on a monthly basis without fail..."

88. The above stated letter dated 9th January, 1986 was issued by Food Corporation of India, Head Quarters, New Delhi to all the Senior/Regional Manager/Joint Managers of FCI. Upon perusal of the above mentioned clauses of the letter, it is observed that FCI had stated itself to be the principal employer and mentioned that it is the duty of FCI to pay the contribution in terms of the Act.

89. In view of the express provisions under CLRA and Schemes framed thereunder, this Court is of the view that the petitioner being the principal employer is liable to pay the EPF dues and it cannot shy away from its obligations.

90. With regard to the other limb of the petitioner's arguments, it has been submitted that the learned Appellate Tribunal failed to appreciate that the respondent RPFC did not discharge its statutory duties conferred under Sub Section (2) of Section 7-A of the Act to ensure the appearance of the contractors for the identification of the workers to whom the EPF dues are to be disbursed eventually. The same is against the statutory provisions as well



2024:DHC:2797



as the mandate of the Hon'ble Supreme Court passed in a catena of judgments.

91. It is a settled position of law that an order passed under Section 7-A of the Act is not sustainable if the employees' provident fund contributions, etc. have been determined without identification of actual beneficiaries. In case the authority under the said provision passes an order, determining the EPF to be remitted by the employer without identification of beneficiaries, it would not be appropriate. Further, in case the authority under the said provision fails to exercise the modes prescribed by law to identify the actual beneficiaries, it would be construed that the order is without application of mind and not sustainable.

92. The Hon'ble Supreme Court has held that the determination of the exact liability on part of the contractors is necessary keeping in view the fact that they or some of them may not be under the control of the principal employer. It has been held that sufficient opportunities must be afforded to the parties subjected to the enquiry proceedings to determine the names and particulars of the contractors as well as the workers. The said principle was enunciated in *H.P. State Forest Corpn. (Supra)* and the same has been discussed in the foregoing paragraphs.

93. Under Section 7-A of the Act, the authority has been given powers similar to that of a Civil Court which includes enforcing attendance of any person or to examine him on oath, requiring the discovery and production of documents, receiving evidence on affidavit, issuing commissions for the examination of witnesses. The said provision also states that any enquiry



thereunder shall be deemed to be a judicial proceeding and that no order shall be passed unless the employer concerned has been given reasonable opportunity of representing the case.

94. This Court is of the view that the authority holding the 7-A enquiry has been granted sufficient powers to ensure the compliance of the statutory regulations and pursuant to the same, reasonable efforts must be made by the authority with respect to the production of evidence and witnesses. Therefore, the question is not whether one failed to produce evidence, but whether the statutory Authority, i.e., the respondent RPFC had exercised powers vested in it to collect the relevant evidence before determining the amount payable under the said Act.

95. The High Court of Bombay has also taken a similar view in ***Bharat Sanchar Nigam Ltd. v. Regional Provident Fund Commissioner-I***⁵. Relevant paragraphs of the same reads as under:

“13. Second limb of argument of learned counsel for the petitioner pertains to the procedural aspect of the matter. According to him, neither proper procedure was followed nor power conferred upon the Commissioner under section 7-A were effectively exercised in ascertaining the number of beneficiaries and their identities. According to learned counsel for respondent, proper procedure has been followed.

14. The order of Commissioner dated 9-11-2009 makes an elaborate discussion of the matter and also reflects upon the procedure followed by it while holding an inquiry under section 7-A of the PF Act. It laments how several opportunities granted

⁵ 2014 SCC OnLine Bom 2896



to the petitioner to produce on record relevant material were wasted by the petitioner. It also discusses the statements of contractors who denied the averment that no contributions towards provident fund dues were remitted. The order further shows that the request of the petitioner to make contractors parties to the inquiry was also granted by the Commissioner on 16-9-2008 and that thereafter the petitioner was directed to submit the record from the year 1997 together with financial statements, payments made to contract employees and unit wise payments made to contract employees with attendance and wage register.

15. The order of the Commissioner further shows that Enforcement Officers were directed to visit some exchanges of petitioner to ascertain the number of contract workers working there. The order notes not so happy state of affairs at the exchanges of the petitioner when it says that it was reported by the Enforcement Officers after paying visits that incharge of Miramar and Panaji exchanges did not give any information and that they found seven persons to be working there who were apparently contract workers. The Commissioner has further noted that even though the contractors denied the allegation, the contractors did not support their denial with documentary proof such as financial statements and so on.

16. On the other hand, as seen from the order of the Commissioner, Workers Union submitted individual affidavit of 172 workers disclosing details of their engagement for carrying out the works in connection with the business of the petitioner.

17. This would only show that the Commissioner has made reasonable efforts to establish the number and identity of the workers and has also given reasonable opportunity to the petitioner to rebut the evidence produced on record by the



complainant Goa Trade and Workers Union. It also shows that power conferred upon the Commissioner under section 7-A of the Act was properly exercised by the Commissioner. Therefore, I find that the Commissioner has followed the proper procedure in establishing the number and identity of the beneficiaries of the Regional Provident Fund Scheme ...”

96. Reference to Sub Section (3-A) of Section 7-A of the Act shows that the authority conducting the enquiry has the powers to decide the applicability of the Act or to determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such enquiry and other documents available on record, in the event an employer, employee or any other person required to attend the enquiry fails to attend such enquiry without assigning any valid reasons.

97. This Court is of the view that the purpose behind granting powers to the authority under Section 7-A of the Act is to ensure that the employee from whose wage EPF has been deducted receives the said deducted amount. In order to do the same, the collection of evidence such as the attendance and wage register, entry gate ID cards, pay slip, etc. as well as witnesses for deposition, is necessary.

98. In the present case, the petitioner has vehemently argued that the contractors through whom the workers were engaged are liable to produce the evidence which is necessary for identification of the workers to whom the EPF dues are owed. It has been submitted that the respondent RPFC failed to ensure the presence of the contractors and therefore, the workers have not been identified which makes the impugned order bad in law.



2024:DHC:2797



99. In this regard, this Court is of the view that after the remand back of the matter, the respondent RPFC had issued notices and summons to the contractors and the same were also served through the petitioner as per the addresses provided by the petitioner itself. However, the summons could not be served to the contractors as the same were returned by the postal authorities with the remarks '*non traceable/incomplete address*'.

100. Thereafter, a proclamation under Order V Rule 20 of the Code of Civil Procedure, 1908, was published in 'Daily Ajit' on 10th September, 2012 and also in 'Punjab Kesri' on 5th October, 2012, and the said steps were taken in order to ensure the contractors' attendance for the purposes of identification of the workers.

101. Admittedly, neither any of the contractors appeared during the proceedings, nor any record of the contractors with regard to the workers was produced. However, the workers union had produced a list of workers submitting to the effect that the workers employed through the contractors are part of the said union and although the contractors get changed at every few years, the workers remain unchanged until their retirement or death.

102. Furthermore, the workers union had produced a list of 313 workers which worked with the petitioner for the year 1979 and the petitioner had filed the Returns of the EPF dues for the period of year 1986-1987 in terms of Form 3A/Form 6A of the Scheme, 1952 and 1995. The said documents were compared by the respondent RPFC and since the petitioner had not disputed the said list of workers, the respondent RPFC determined that the workers stand identified and accordingly, in view of the undisputed fact that



2024:DHC:2797



the workers remain unchanged until their retirement or death, it held that the contractual workers stand to be identified and the petitioner is liable to pay the EPF dues.

103. Perusal of the record reveals that due to non-appearance of the contractors, it was observed by the respondent RPFC as well as by the learned Appellate Authority that the burden to produce the record finally shifted upon the petitioner as both the contractor and the principal employer, i.e., FCI, are required to maintain the records of the workers employed through the contractors under the CLRA and as per the letter dated 9th January, 1986.

104. Perusal of the record further reveal that sufficient opportunities were afforded to the parties, particularly, the petitioner herein on various dates such as 1st July, 2011, 29th July, 2011, 26th August, 2011, 23rd September, 2011, 14th October, 2011, 4th November, 2011, 13th December, 2011, 27th December, 2011, 10th January, 2012, 7th February, 2012, 13th March, 2012, 27th March, 2012, 24th April, 2012, , 29th May, 2012, 12th June, 2012, 26th June, 2012, 10th July, 2012, 23rd July, 2012, 20th August, 2012, 27th August 2012, 10th September, 2012, 25th September, 2012 and 22nd October, 2012, 15th May, 2015 etc. to produce the records, however, neither FCI nor its contractors produced any records.

105. The petitioner has submitted before this Court as well as before the learned Authority that in terms of the CLRA, it was the responsibility of the contractors to maintain the records of the contractual employees and



therefore, the direction of the respondent RPFC, whereby, it directed the petitioner to produce the records for identification of workers is bad in law.

106. At this stage, it is imperative to refer to Rule 74 of CLRA which states that the principal employer shall maintain the records in respect of the register of contractors and Rule 75 states that every contractor shall also maintain the record with respect to each contract labour. Both the Rules reads as under:

“..74. Register of contractors.—Every principal employer shall maintain in respect of each registered establishment a register of contractors in Form XII.

75. Register of persons employed.—Every contractor shall maintain in respect of each registered establishment where he employs contract labour a register in Form XIII...”

107. Upon reading of the above stated Rules, this Court observes that the CLRA imposes obligation to maintain the records upon both the contractor as well as the principal employer.

108. A letter dated 9th January, 1986, filed by the respondent RPFC is appended as Annexure –II with the counter affidavit, relevant extracts of which is as under:

“..(iii) Whenever a contractor is appointed in future [including in the case of present contractors), details of period of contract employees/labourers employed by the contractor alongwith details of their date/s of appointment etc. be obtained and furnished to concerned EPFO. In case of existing contractors, this information should be furnished to concerned EPFO before 28.2.1986...”



2024:DHC:2797



109. Perusal of the above extracted Clause (iii) states that the FCI had directed its units to maintain the details of the labourers employed through the contractors in case of the future appointment of contractors and in case of existing contractors, FCI had directed to furnish details of the contractors and details of appointment to the EPFO before 28th February, 1986.

110. Therefore, in terms of the explicit statutory provisions, referred to hereinabove as well as the letter dated 9th January, 1986, there is no *iota* of doubt with respect to the fact that the petitioner is also mandated to keep the records which could be referred to as evidence to identify the workers to whom the EPF dues is liable to be paid.

111. Furthermore, admittedly, the petitioner has not denied that it had engaged the workers through various contractors. Taking note of the petitioner's conduct where it did not produce the records despite the same being in its possession and the factum that it did not dispute the list of workers provided by the workers union, the learned Appellate Authority upheld the adverse inference drawn against the petitioner.

112. Here, it becomes prudent to understand the principle of adverse inference. In this regard, this Court has relied upon the judgment passed by the Hon'ble Supreme Court in ***R.M. Yellatti v. Asstt. Executive Engineer***⁶. Relevant extracts of the same reads as under:

“..13. In *Municipal Corpn., Faridabad v. Siri Niwas* [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] the employee had worked from 5-8-1994 to 31-12-1994 as a tubewell operator. He

⁶ (2006) 1 SCC 106



alleged that he had further worked from 1-1-1995 to 16-5-1995. His services were terminated on 17-5-1995 whereupon an industrial dispute was raised. The case of the employee before the Tribunal was that he had completed working for 240 days in a year; the purported order of retrenchment was illegal as the conditions precedent to Section 25-F of the Industrial Disputes Act were not complied with. On the other hand, the management contended that the employee had worked for 136 days during the preceding 12 months on daily wages. Upon considering all the material placed on record by the parties to the dispute, the Tribunal came to the conclusion that the total number of working days put in by the employee were 184 days and thus he, having not completed 240 days of working in a year, was not entitled to any relief. The Tribunal noticed that neither the management nor the workman cared to produce the muster roll w.e.f. August 1994; that the employee did not summon muster roll although the management had failed to produce them. Aggrieved by the decision of the Tribunal, the employee filed a writ petition before the High Court which took the view that since the management did not produce the relevant documents before the Industrial Tribunal, an adverse inference should be drawn against it as it was in possession of best evidence and thus, it was not necessary for the employee to call upon the management to do so. The High Court observed that the burden of proof may not be on the management but in case of non-production of documents, an adverse inference could be drawn against the management. Only on that basis, the writ petition was allowed holding that the employee had worked for 240 days. Overruling the decision of the High Court, this Court found on facts of that case that the employee had not adduced any evidence before the court in support of his contention of having complied with the requirement of Section 25-B of the Industrial Disputes Act; that apart from examining himself in support of his contention, the employee did not produce or call for any document from the office of the



management including the muster roll (MR) and that apart from muster rolls, the employee did not produce the offer of appointment or evidence concerning remuneration received by him for working during the aforementioned period. It is in this light that this Court, speaking through Hon'ble Sinha, J., has held as follows: (SCC pp. 198-99, paras 15-16)

“15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.

16. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational.” ...”

113. As per the settled legal proposition, despite the possession of the best evidence, if a party does not produce the same, adverse inference may be



drawn against the said party depending upon the facts of the case. The aforesaid judgment states that the presumption as to the adverse inference for non-production of evidence is not a mandate and the same has to be drawn in regard to the peculiar facts and circumstances involved in the *lis*.

114. This Court is of the view that an adverse inference may be drawn only when the non-production of the best evidence is intentional and unjustified. Similar view has also been taken by the Hon'ble Supreme Court in ***Union of India v. Ibrahim Uddin***⁷, relevant paragraphs of which are as under:

“...24. Thus, in view of the above, the law on the issue can be summarised to the effect that the issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be

⁷ (2012) 8 SCC 148



2024:DHC:2797



examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary...”

115. At this juncture, this Court shall briefly revisit the scope of its power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a particular kind.

116. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

117. Tersely stated, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can



conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice.

118. With regard to the facts of the instant matter, the Statute as well as the judgments of the Hon'ble Supreme Court state that the authority must take all the steps to indentify the workers in an enquiry under Section 7-A.

119. In this regard, this Court is of the view that even if it is accepted that the contractors did not produce the records as required, the petitioner also failed to do the same and hence, the adverse inference drawn against it by the respondent RPFC, is right and there is no illegality or irregularity thereto. The decision of the respondent RPFC cannot be regarded as incorrect just because the contractors did not appear.

120. The respondent RPFC had issued summons to the contractors through the petitioner and upon non-appearance, it had issued proclamation in two leading newspapers. Despite the said steps, none appeared. Therefore, it is observed that the respondent RPFC had taken all the reasonable steps to ensure the identification of workers and the decision passed by it is in



2024:DHC:2797



accordance with the law. The same is also correct in terms of Sub Section (3-A) of Section 7-A of the Act which grants power to the authority conducting the enquiry to pass an order on the basis of the evidence adduced during such enquiry and other documents available on record, in the event an employer, employee or any other person required to attend the enquiry fails to attend such enquiry without assigning any valid reasons.

121. Further, in the judgment passed in the case of ***Rushi Guman Singh v. State of Orissa and Ors.***⁸, the Hon'ble Supreme Court has held that a Court of law does not ordinarily substitute its own views on the evidence, unless some error of law or principle is found. Even as per Section 106 of the Indian Evidence Act, 1872, where any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

122. With regard to the 'adverse inference' drawn against the petitioner, the respondent RPFC had specifically observed that since the contractors have not appeared, it is the petitioner who is in possession of the best evidence required to indentify the workers. Therefore, taking into account that identification of the workers is necessary and that none of the contractors appeared before the respondent RPFC, the onus to produce the records ultimately lied upon the petitioner and even after multiple opportunities being afforded to it with the specific direction to bring on record the documents such as gate entry card, wage and attendance register etc., the petitioner did not bother to produce the records and stood adamant

⁸ 2013 (11) SCC 266



2024:DHC:2797



on invoking the liability of the contractors to produce the same. In the considered opinion of this Court, the respondent RPFC, as per the evidence available before it, had rightly drawn the adverse inference against the petitioner in view of the inaction on the part of the petitioner to produce the best evidence, i.e., the record pertaining to the workers, despite multiple directions.

123. The respondent RPFC's decision, whereby, it held the workers to be identified does not suffer from any illegality since the workers stand deemed to be identified as it is observed that the same set of workers worked for the period 1986-1987, for which period the petitioner had filed Returns in terms of Form 3A/6A and as per the records, the EPF dues for the period of 1986-1987 stands paid for the same set of workers and also that the same has not been disputed by the petitioner.

124. It is pertinent to state here that during the course of arguments, learned counsel for the respondents in some petitions had averred that the facts are different in their petitions since some of the contractors appeared before the respondent RPFC. With respect to the same, it is made clear that in view of the above discussions, the petitioner's arguments in this regard already stands defeated.

125. Therefore, this Court is inclined to hold that the respondent RPFC had taken all the necessary steps which it ought to do in order to comply with the statutory mandate of the Act to ensure that the workers stands identified.

126. Considering the above, this Court does not find infirmity in the impugned order which merits the interference of this Court.



2024:DHC:2797



127. In light of the same, the impugned order dated 19th September, 2014, passed by the learned Appellate Authority, New Delhi, in case bearing no. ATA 872(11)2013, is upheld.

CONCLUSION

128. The dispute raised by the petitioners in the instant batch of petitions is that the respondent RPFC did not take necessary steps to ensure the presence of the contractors for identification of workers which is in contravention of Section 7-A of the Act.

129. This Court is of the view that the petitioner itself failed to comply with several statutory mandates pertaining to the workmen EPF dues as per the Act which is a social welfare legislation and after lapse of several decades, when it is nearly impossible to trace the contractors and its records, the petitioner is adamant upon insisting the production of records.

130. The petitioner, being a huge government entity, operating its units throughout the country is evading its responsibility to produce the records on one hand and on the other, it is expecting the contractors, who are informal private organization to maintain and produce the records which are decades old. The petitioners have been dragging the poor workers in an endless litigation since several decades making them fight for their dues which they are lawfully entitled to.

131. Considering the observations made in the lead writ petition, it is held that the petitioners in the instant batch of petitions have failed to put forth any propositions to make out a case in their favour.



2024:DHC:2797



132. In view of the foregoing discussions of facts as well as law, this Court does not find any merit in the instant batch of petitions and is of the considered view that it is the petitioners' responsibility to deposit the EPF dues of the workers to which they are rightfully entitled to.

133. Since there is no error apparent on the face of the impugned orders passed by the learned Appellate Authority, therefore, all the contentions of the petitioners advanced against the respondents are rejected.

134. In view of the aforesaid terms, this Court is inclined to uphold the impugned orders in all the writ petitions.

135. Accordingly, the instant batch of petitions stands dismissed along-with the pending applications, if any.

136. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

APRIL 8, 2024
gs/ryp/av