

1

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-5/2019

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

Municipal Corporation,
Jabalpur

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Jabalpur and Another

RESPONDENT

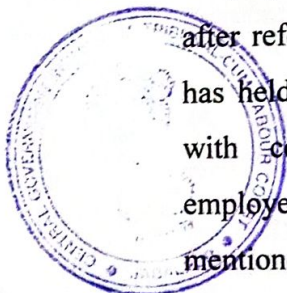
Shri Uttam Maheshwari : **Learned Counsel for Appellant.**

Shri J.K.Pillai : **Learned Counsel for Respondent.**

(J U D G M E N T)

(Passed on this 19-10-2022)

1. The present appeal is directed against the order dated 14-9-2018 passed by the Respondent Authority under Section 7A the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act", wherein the Respondent Authority has held the Appellant Establishment jointly and severally liable with contractors engaged for different cleaning jobs to pay the employees provident fund dues of contract workers for the period mentioned in the impugned order.



2. I have heard argument of learned Counsel Mr. Uttam Maheshwari for appellant and Shri J.K.Pillai for Respondent and have gone through the record.

3. After having gone through the record, in the light of rival arguments, since the facts are not disputed, the following points arises for determination:-

“Whether the finding of the Respondent Authority that the Appellant Establishment being Principal Employer is jointly and severally liable to pay the employees provident fund dues of the contractor workers engaged in different jobs?”

4. . It comes out from perusal of record that these contractors were allotted separate employees provident fund code. They were given contract of cleaning by the Appellant Establishment which they executed but through their workers. Learned Counsel for Appellant has assailed this finding that since these contractors were holding separate employees provident fund code they would be deemed as Principal Employer also for their workers engaged in cleaning of Appellant premises. Learned Counsel has referred to following decisions in this respect:-

A. Panther Security Services Private Limited Vs. The Employees Provident Fund organization and Others(2021) SC 42.

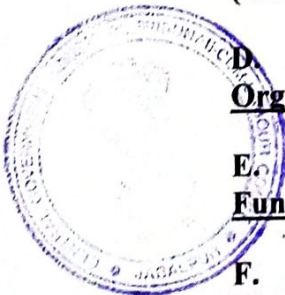
B. M/s Calcutta Construction Company Vs. Regional Provident Fund Commissioner and Others (215) LLR 1023 Punjab & Haryana High court.

C. The Madurai District Central Cooperative Bank Ltd. Vs. Employees Provident Fund Organization (MANU/TN/5285/2011), Madras High Court.

D. Brakes India Ltd. Vs. The Employees Provident Fund Organization(MANU/TN/0277/2015)), Madras High Court.

E. Group 4 Securitas Guarding Ltd. Vs. Employees Provident Fund Appellate Tribunal and Others(MANU/DE/4352/2011).

F. Central Board of Trustees, EPFO Vs. Kendriya Bhandar(MANU/DE/3695/2019), Delhi High Court.

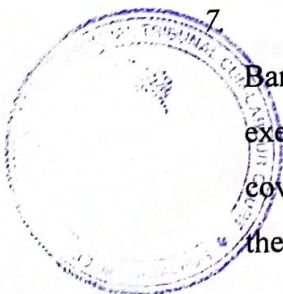


Pae

5. IN the **first case** Panther Security Services Private Limited(supra) the contractor was held liable to pay the employees provident fund dues of its employees engaged by some of its clients as security guards. The contractor was a private security agency engaged in providing security personnel to its clients. The petitioner in the case had taken a case before the Employees Provident Fund Authorities that it was not covered under the Act. It was found that it had 79 workers on its roll and it was covered under the Act. The plea of the petitioner that the clients to whom the security guard were under obligation to pay their employees provident fund dues which was not accepted by the Hon. Court , holding that simply because the payments to security guards engaged were paid by clients to whom they were provided the contractor could not be absolved from its responsibility to pay the employees provident fund dues to its employees.

6. In the **Second case** of M/s Calcutta Construction Company (supra) the Punjab Electricity Board had given the contract to the M/s Thor Power Systems for execution of certain works. It was held by Hon'ble the Punjab & Haryana High Court that for the contract workers of the Sub contractor Thos Power System is petitioner contractor would be deemed to be the Principal Employer and the Punjab State Electricity Board has been rightly held not liable to pay the employees provident fund dues of such workers of sub-contractors. It comes out that an S.L.P.No.23400/2016 against this order was dismissed by Hon'ble the Apex Court.

7. In the **Third case** The Madurai District Central Cooperative Bank(supra), the Principal Employer is the petitioner who was an exempted establishment under Section 17 of the Act, hence not covered under the Act. Hence, it was held that for the employees of the Contractor, the Principal Employer i.e. the petitioner would not



P

be said to be Principal Employer more so when the contractor had a separate Employees Provident Fund Code.

8. IN the **fourth case** of Brakes India Ltd.(Supra), the contractor had supplied labours to the petitioner company for certain civil works. He had separate Employees Provident Fund Code. The Petitioner was not hired at any stage in the proceedings before the Respondent authority. It was issued a notice under Section 14-B requiring to show cause why damages be not imposed on it. This notice was followed by a notice cum levy order dated 31-10-2011. It was held by Hon'ble High court of Madras that in such a situation it was not legal for the Authority to proceed against the Petitioner.

9. In the **fifth case** of Group 4 Securitas Guarding Ltd(supra) the facts are different.

10. In the **sixth case** of Central Board of Trustees, EPFO(supra) it was against the order of Appellate Tribunal granting complete waiver by the Appellant Establishment before the Tribunal in appeal against order Under Section 7A of the Act which was upheld by Hon'ble High Court of Delhi.

11. In the **seventh case** of Venugopala Reddy M. Vs. Hindustan Aeronautics Ltd. And Others(MANU/KA/0623/1998) Karnata High Court also the facts are different. IN this case only contractors having their separate Employees Provident Fund Code and ESI Code were permitted to be participated in the ledger process issued by the Respondent which was held bad in law by Hon'ble High Court.

12. Learned Counsel for the Respondent has referred to certain provisions of the Act which are being reproduced as follows:-





a. Section 2(e) and Section 2(f) of the Employees Provident Fund and Misc. Provisions Act, 1952.

2[(e) "Employer" means-

(i) In relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) In relation to any other establishment, the person who, or the authority which, has been ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing directing or managing agent, such manager, managing director or managing agent;]

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of 3[an establishment] and who gets his wages directly or indirectly from the employer, 4[and includes any person,-

(i) Employed by or through a contractor in or in connection with the work of the establishment;

(ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52) of 1961) or under the standing orders of the establishment];

b. para 30 of the Employees Provident Fund Scheme 1952 which are being reproduced as follows:-

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

Free

equal amount of contribution (in this Scheme referred to as the employer's www.epfindia.gov.in 43 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.

13. These provisions makes it amply clear that for the workers of contractor engaged by the establishment for this work, the establishment shall be there employer i.e. Principal Employer for the purposes of this Act as provident under Section 2e referred to above and these workers will be employees of the establishment of the Principal Employer as mentioned in Section 29(f) of the Act.

14. Para 30 of the Employees Provident fund Scheme,1952 has mentioned above details that the responsibility of the Principal Employer viz a viz contractor in depositing the employees provident fund dues of contractor workers. There may be two situations in this respect in first situation the contractor may not have a separate EPF code in such a case the Principal Employer i.e. the establishment is under Primary obligation to deposit the employees provident fund dues of contractor workers engaged with it. IN the second situation, where the contractor has its separate employees provident fund code, the Principal Employer will ensure deposit of employees provident fund dues of contractor workers by the contractor and if the contractor fails to do that the Principal Employer will be responsible to deposit the employees provident fund dues. In the case in hand, the Principal Employer i.e. the Appellant Establishment failed to discharge its duties under the Act and Scheme, hence the finding of the Respondent Authority that the Appellant Establishment is jointly and severally liable with the contractor to pay the employees provident fund dues cannot be



P
kx

faulted in law and fact. Accordingly this finding is affirmed and point for determination is answered accordingly.

15. The another point which has been raised by the learned counsel for the appellant which relates to the mode of recovery. Section 8 and Section 8A of the Act deals with this point, they are being reproduced as under :-

[8. Mode of recovery of money due from employers.- Any amount due- (a) From the employer in relation to an establishment] to which any Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 5[or under sub-section (5) if section 17] or any charges payable by him under any other provision of this Act or of any provision of the 3[Scheme or the Insurance Scheme]; or

(b) From the employer in relation to an exempted 2[establishment] in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified 6[under section 17 or in respect of the contribution payable by him towards the 7[Pension] Scheme under the said section 17], may, if the mount is in arrear, be recovered 8[in the manner specified in section 8B to 8G.]

[8A. Recovery of moneys by employers and contractors.

- (1) The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme)) and any charge [***] for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to**



Pr

the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section(1) may be recovered in respect of any employee employed by or through him may recover from such employee the employee's contribution 4[under any Scheme] by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

(3) notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

16. These provisions makes it clear that when such an amount is recovered from contractor he may recover it from concerned employees the amount of employees contribution and if it is recovered from the principal Employer it may in turn recover it from the contractor.

17. IN the case in hand, the contractor as separate Employees Provident Fund code though providing separate EPF Code is nothing but an administrative convenience for securing deposit of employees provident fund dues but it ^{would} ~~cannot~~ be fair on the part of the Recovery Officer to make first attempts of recovery from the contractors who had been given separate employees provident fund code for the period from when they were given separate EPF Code, if the recovery is not possible from the contractors for certain reasons, then the Principal Employer be proceeded with the process of recovery.


18. NO other point was pressed.

Prc

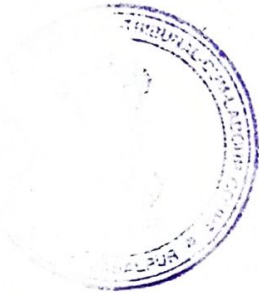
19. In the light of above discussion, the appeal sans merit and is liable to be dismissed.


ORDER

Appeal stands dismissed.


(P.K.SRIVASTAVA)
PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.




(P.K.SRIVASTAVA)
PRESIDING OFFICER

Date:19-10-2022