
(2022) 12 TEL CK 0044

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 14631 Of 2010

M/S. Gemini Distilleries
Hyd Pvt. Ltd.

APPELLANT

Vs

Theemployees
Provident Fund
Organisation

RESPONDENT

Date of Decision: Dec. 12, 2022

Acts Referred:

- Employees Provident Fund and Miscellaneous Provisions Act, 1952 - Section 2(f), 7A, 7I

Hon'ble Judges: K.Lakshman, J

Bench: Single Bench

Advocate: Vedula Srinivas, T Balaji

Final Decision: Dismissed

Judgement

1. Heard Mrs. Vedula Chitralekha, learned counsel for the petitioner and Mr.T.Balaji, learned counsel for the respondents. Perused the record.

2. This writ petition is filed to quash the order dated 07.09.2001 passed in ATA No.538(1) of 2001 by 2nd respondent.

3. Vide order dated 01.05.2001 under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the

Act'), 1st respondent had determined an amount of Rs.54,99,420/- towards contributions for the period from June, 1997 to July, 2000. Feeling

aggrieved by the said order, the petitioner herein had preferred an appeal vide ATA No.538(1) of 2001 before 2nd respondent under Section 7(I) of

the Act. Vide impugned order dated 26.05.2010, 2nd respondent had dismissed the aforesaid appeal filed by the petitioner herein. Challenging the said

order, the petitioner herein had filed the present writ petition.

4. It is relevant to note that 1st respondent had passed an order dated 01.05.2001 under Section 7(A) of the Act. It was an ex parte order. Therefore,

the petitioner herein had filed a petition on 10.07.2021 to set aside the order. 1st respondent did not consider the said application and therefore, the

petitioner herein had filed a writ petition vide W.P.No.14150 of 2001. This Court vide order dated 24.07.2001 disposed of the said writ petition

directing 1st respondent to consider the said petition dated 10.07.2021 as expeditiously as possible after affording an opportunity of being heard to the

petitioner herein. Till then, the prohibitory order dated 06.07.2001 shall not be enforced.

5. In compliance of the said order, 1st respondent had conducted enquiry and passed orders afresh under Section 7(A) of the Act on 07.09.2021.

6. Perusal of the said order would reveal that the petitioner herein had engaged its Advocate to represent it in the enquiry under Section 7-A of the

Act. Despite giving an opportunity, the petitioner did not produce relevant record. In the said order, it is also specifically mentioned that the petitioner-

employer was only asked to produce his own records including Cash Book Ledger, Balance Sheets etc., for the period under enquiry. The petitioner is

custodian of its record like Ledger and Cash Book etc. It has also reasonably proved beyond doubt that it is in possession of all material information

with it. It has furnished copies of weekly bills paid for labour wages for the period from 4/99 to 3/2000 in respect of one contractor. Therefore, the

petitioner herein has not produced a copy of contract agreement for extension of the contract from April, 1998 to April, 1999.

7. Considering the said facts, basing on the record available, 1st respondent had passed the impugned order dated 07.09.2021 confirming the order

dated 19.06.2001 directing the petitioner to remit the dues immediately. Feeling aggrieved by the said order, the petitioner herein had preferred the

appeal vide ATA No.538(1)/2001.

8. Learned counsel for the petitioner would submit that the Government had imposed prohibition in the State of Andhra Pradesh from January, 1995 to

April, 1997. The said prohibition was lifted in April, 1997. Thereafter, the petitioner had engaged 180 employees through Contractors. Despite the said

fact, 1st respondent did not call for the explanation from the contractors. Therefore, the aforesaid order dated 07.09.2001 of 1st respondent is not on

consideration of actual facts and law. Despite raising a specific ground with regard to the same, 2nd respondent-Tribunal did not consider the same.

9. Whereas, learned counsel appearing for the respondent No.1 would submit that both 1st and 2nd respondents have considered the contentions of

the parties and also definition of "Employee" under Section 2(f) of the Act. 1st respondent has also recorded the principle laid down by the

Apex court in two judgments. Despite granting an opportunity, the petitioner herein did not produce record, whereas, the Trade Union, representing the

Employees of the petitioner Company had filed the details of the employees engaged by the petitioner and pay particulars etc. According to the same,

all the employees are engaged by the petitioner. The said facts were considered by both 1st and 2nd respondents in the impugned order. Therefore,

there is no error in the said orders.

10. As discussed supra, 1st respondent has passed the order on 01.05.2001 under Section 7(A) of the Act. According to the petitioner, it is an ex parte

order. Therefore, the petitioner herein had filed an application on 10.07.2001 to set aside the said order before 1st respondent which was not

considered. Therefore, the petitioner herein had filed the aforesaid writ petition vide W.P.No.14150 of 2001 before this Court and the same was

disposed of directing 1st respondent to consider the said application dated 10.07.2021 and passed an appropriate orders afresh. Till then, the

prohibitory order dated 06.07.2021 shall not be enforced.

11. Thereafter, 1st respondent in compliance of the aforesaid order conducted enquiry and passed impugned order dated 07.09.2001.

Though the petitioner had engaged advocate, it did not produce the details of the contractors and agreements entered with them etc. On the other

hand, the Trade Union has furnished the entire information. The petitioner herein had submitted weekly bills paid for the labour charges for the period

from April, 1999 to March, 2000 in respect of said contractors. Therefore, despite granting opportunity, the petitioner herein did not furnish the details

including the balance sheets etc. Despite obtaining the order from this Court in W.P.No.14150 of 2001, the petitioner herein did not furnish requisite

information before 1st respondent. Therefore, basing on the information available, 1st respondent, vide impugned order dated 07.09.2001, confirmed

the order dated 19.06.2001 and directed the petitioner to remit the dues immediately.

12. In the impugned order, 2nd respondent has specifically considered the contentions of both the parties and also the definition of "Employees"

under Section 2(f) of the Act. 2nd respondent has also considered the letter submitted by the Trade Union along with the list showing that the

petitioner had engaged 260 employees. Thereafter, they have withdrawn letter dated 03.09.2001. Therefore, according to the petitioner, the

information furnished by the Trade Union cannot be considered.

13. As stated above, the aforesaid enquiry was under Section 7(A) of the Act. The said enquiry can be ordered suo-motu or on a complaint either by

the employee or Trade Union. Therefore, withdrawal of letter/information furnished by the Trade Union is nothing to do with the aforesaid enquiry

under Section 7(A) of the Act. 2nd respondent had also considered the principle laid down by the Apex Court in Hussain Bhai Vs. Altaf Factory

Union 1978 SC 1410 and also in ESIC Vs. M/s Harrison Malayam Pvt.Ltd. Civil Appeal No.1130 of 1990 Considering the said facts and also material

available on record, 2nd respondent had dismissed the appeal filed by the petitioner herein. It is concurrent finding. According to this Court, there is no

error in it.

14. The petitioner company has also relied on the principle laid down by the Apex Court in Food Corporation of India Vs. Provident Fund

Commissioner 1990(1) SCC 68 wherein the Apex Court held that the commissioner who is the statutory authority has exercised powers vested in him

to collect the relevant evidence before determining the amount payable under the said Act. It was further held that as per the provisions of that Act,

more particularly, Section 7(A) of the Act, the Commissioner is authorised to enforce attendance in person and also to examine any person on oath.

He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of

law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner

should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the

Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a

particular person. Whereas, in the present case, despite granting opportunity and despite the aforesaid order in W.P.No.14150 of 2001, the petitioner

herein failed to produce any evidence. He did not even requested 1st respondent/authority under Section 7(A) of the Act to call for certain information

from the Trade Union or Employees. Therefore, the petitioner cannot take shelter under the aforesaid judgment.

15. The petitioner herein has also relied upon another judgment of the Apex court in Bharat Heavy Electricals Ltd. Vs. Employees' Union, State

Insurance Corporation (2008) 3 SCC 247 wherein it was held that the ESI Corporation has the requisite jurisdiction to implead the third party or

summon them before it to produce all relevant documents. Whereas, in the present case, there is no such request made by the petitioner herein. The

1st respondent has passed the aforesaid order dated 07.09.2001 basing on the record available and also on consideration of the provisions of the Act.

The same was confirmed by 2nd respondent vide impugned order. Therefore, the aforesaid facts are different to the facts of the present case. Thus,

the petitioner herein failed to make out any case to interfere with the said order.

16. Therefore, viewed from any angle, the writ petition is liable to be dismissed.

17. In the result, the writ petition is dismissed. Miscellaneous Petitions, if any, pending, shall also stand closed.