CHHATTISGARH HIGH COURT
Hon'ble Mr. Rakesh Mohan Pandey, J.
WPL No. 1027/2011, Dt/– 4-2-2025

Hindustan Petroleum Corporation Ltd.
v.
Asstt. Provident Fund Commissioner

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Sections 2(f) and 7A – Identification of employees – Necessity of – The petitioner awarded contracts to various contractors for the loading / unloading of cylinders from the plant at the dealers' end – The transporters were never engaged as permanent labourers – The petroleum employees' union made an application on behalf of the loading / unloading labourers before the APFC stating that the petitioner is responsible for making them members of the PF Scheme – An enquiry was initiated under section 7A of the EPF Act – It was stated by the petitioner that there was no employer-employee relationship between the labourers and the petitioner – The APFC passed an order holding that the labourers were the employees of the transporters and that the petitioner is the principal employer – An appeal was filed and the appellate tribunal dismissed the appeal holding that the employees employed through contractors for the connected work with the establishment are employees under the EPF Act – Hence, the present writ – Held, the evidence led by the contractors and reply field by the petitioner which shows that they were no permanent employees engaged in loading/unloading the gas cylinders – The respondents failed to call the employees for identification – Even the contractors were not in a position to give details of the employees hired by them – The APFC and the Tribunal have committed an error of law in passing the impugned order – Both orders are quashed – Respondent authorities would be at liberty to initiate fresh enquiry strictly in accordance with provisions of the EPF Act. Paras 18 to 32

For Petitioner: Mr. Yash Mourya, Advocate.

For Respondents: Mr. Ajay Kumar Dwivedi, Advocate.

IMPORTANT POINTS

- **The principal employer would not be responsible for paying PF dues of loading/unloading laborer's, engaged through contractors when they were not permanent and no identification of the employees was done.**
- **EPFO cannot point towards employer-employee relationship when it did not call the employees for identification and when even the contractors were not in a position to give details of the employees hired by them.**
- **The Commissioner is required to conduct the enquiry by enforcing attendance of persons were employees under section 7A of the EPF Act.**
- **There should be an inquiry by the Commissioner to ascertain the status of employees.**
- **There should be documentary as well as oral evidence for the application of the EPF Act.**

Order

Rakesh Mohan Pandey, J. –

1. The petitioner has filed this petition seeking the following relief(s): –

> "10(i) To kindly quash the impugned order dated 26/05/2010 (ANNEXURE P/2.)_passed by the Employees Provident Fund Appellate Tribunal, i.e., the Respondent No. 2 in case No.ATA 625(8)/2001 whereby the Appellate Tribunal has confirmed the order of the respondent No. 1 dated 4/9/2001 (Annexure P/2).
>
> (ii) To kindly quash the order dated 04/09/2001 ANNEXURE P/1 passed by respondent Asst. Provident Fund Commissioner, Raipur, directing the petitioner to produce the records in respect of employees of transporter engaged for loading/unloading workers, holding the same to be bad in law.

(iii) To kindly quash the impugned order dated 26/05/2010 (ANNEXURE P/2.)_passed by the Employees Provident Fund Appellate Tribunal, i.e., the Respondent No. 2 in case No.ATA 625(8)/2001 whereby the Appellate Tribunal has confirmed the order of the respondent No. 1 dated 4/9/2001 (Annexure P/2).

(iv) To kindly quash the order dated 04/09/2001 ANNEXURE P/1 passed by respondent Asst. Provident Fund Commissioner, Raipur, directing the petitioner to produce the records in respect of employees of transporter engaged for loading/unloading workers, holding the same to be bad in law.

(v) To kindly prohibit the respondent from proceeding against the petitioner in pursuance of the aforesaid order vide ANNEXURE P/1 and not to take any other punitive/ coercive action against the petitioner till final disposal of petition. vi. To kindly call for the records of the case from the respondents.

(v) Any other relief as this Hon'ble Court may deem fit and proper."

2. Facts of the present case are as under: –

(a) The petitioner was a private company. In the year 1979, LPG was declared a controlled industry by the Central Government. The LPG plant at Raipur, which was being run by the petitioner company, was taken over by the Central Government.

(b) The HPCL remained custodian of the plant till 2004. In November, 2004, the petitioner company got merged with HPCL and at present, this plant is being called HPCL LPG bottling plant for supplying bottled – gas cylinders to various dealers. The petitioner awarded contracts to various contractors for the loading/unloading of cylinders from the plant at the dealers' end. For arranging loading/unloading, the transporters never engaged permanent labourers. The transporters who were awarded the contract entered the transport contracts with other companies like Bharat Petroleum Corporation Limited & Indian Oil Corporation Company Limited.

(c) The petroleum employees' union made an application on behalf of the loading/unloading labourers before the Assistant Provident Fund Commissioner, Raipur (for short, APFC) on 30-07-1996 to the effect that HPCL is morally responsible for making loading/unloading labourers members of the provident fund scheme. The APFC sent a letter to HPCL on 03-06-1998 directing the extension of provident fund benefits to loading / unloading labourers.

(d) The petitioner's establishment filed a reply and stated that the loading/unloading labourers are neither employees of the petitioner's establishment nor the petitioner is the principal employer. The APFC issued a summons dated 07-08-1998 and initiated proceedings under section 7(a) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the Act, 1952).

(e) The petitioner filed a reply and took a plea that the transporters are free to engage any person of their choice for loading/unloading. The loaders are paid by the transporters as lump sum payments. There is no employee-employer relationship between labourers and the petitioner's establishment. An additional submission was filed on 14-10-1998 to the effect that refilling of gas cylinders would not fall within the definition of the manufacturing process, therefore, the provisions of the Act, 1952 would not attract.

(f) On 08-04-1999, the department examined two witnesses, namely, Sanjay Deshlahra, the Proprietor of Jaideep Gas Agency, Sector-10, Bhilai, (Contractor), who stated that for the purpose of transporting filled cylinders from the HPCL plant at Mandir Hasaud, he takes services of the locally available labourers, who are generally found outside the HPCL gate. This witness further stated that there are no permanent labourers for the purpose of loading/unloading work. He also stated that he was not aware of the whereabouts of labourers. The department also examined contractor Jagdish Chhatwani, who supported the contention made by Mr. Sanjay Deshlahra.

(g) On 21-03-2001, the petitioner submitted additional submissions to the effect that loading/unloading of cylinders is the responsibility of the transporters and they are free to engage persons of their choice.

(h) On 04-09-2001, APFC, passed the order holding that loading/unloading labourers engaged in connection with the work of transportation of cylinders are the employees of the transporters and the petitioner is their principal employer and directed the petitioner to submit all records of loading/unloading workers.

(i) The petitioner preferred an appeal against the order dated 04-01-2001 before the EPF, New Delhi.

(j) On 11-01-2002, the respondents filed their counter affidavit. The appellate tribunal vide order dated 26-05-2010 dismissed the appeal and held that the employees employed through contractors for the connected work with the establishment are employees as defined under section 2(f) of the Act, 1950.

(k) The appellate tribunal treated the loading/unloading labourers as employees of the petitioner's establishment. The petitioner has challenged both orders by filing this petition.

3. Mr. Yash Maurya, learned counsel appearing for the petitioner would submit that the order dated 04-09-2001, whereby the petitioner was directed to produce records of the transport employees is illegal and erroneous. He would contend that APFC ought to have decided the fact as to whether the transporters are liable for the coverage under the Act, 1952, and if so, whether the loaders / unloaders, who are engaged casually are eligible to get benefits under the provisions of the Act, 1952. He would further contend that the petitioner is not the principal employer of loading/unloading labourers and the whereabouts of those labourers are not known. He would also contend that transporters are independent establishments; they provide services to other organizations like BPCL and IOCL etc. He would argue that the APFC never called the labourers for verification and without recording their evidence, the order was passed against the petitioner. In support of his submissions, he placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of *Food Corporation of India* v. *Provident Fund Commissioner and others* , (1990) 1 SCC 68; *Gopi Talkies* v. *Employees' Provident Fund Organization and others* , WP(L) No. 5521/2011, dated 01-02-2022, passed by the Coordinate Bench of this Court; the decision of the High Court of Orissa rendered in *Basanta Kumar Mohanty* v. *State of Orissa* , 1991 SCC OnLine Ori 314; a decision of the High Court of Andhra Pradesh passed in *BOC India Ltd. (formerly known as Indian Oxygen, Ltd* .) v. *Assistant Regional Director, Employees' State Insurance Corporation and another* , 2004 SCC OnLine AP 701; *Springdales Schools and others* v. *Regional Provident Fund Commissioner and another* , 2005 SCC OnLine Del 1457, decided by the High Court of Delhi; *Hindustan Petroleum Corporation Ltd.* v. *Employees State Insurance Corporation, Hyderabad and another* , 2007 SCC OnLine AP 894; and *Sheong Shi Tannery and another* v. *Regional Provident Fund Commissioner and others* , 2019 SCC OnLine Cal 5895.

4. On the other hand, Mr. Ajay Kumar Dwivedi, learned counsel appearing for the respondents would oppose the submissions made by Mr. Maurya. He would contend that an agreement was placed on record during the enquiry, entered into between PITCL and HPCL and its loading and unloading contractors. He would further contend that as per the agreement, the Contractors are bound by the law to comply with various labour laws, i.e., the Minimum Wages Act, 1948, Factories Act, 1948, Industrial Disputes Act, 1947, Contract Labour (Regulation and Abolition) Act, 1970, Occupational Safety, Health and Working Conditions Code, 2020, Payment of Wages Act, 1936, Maternity Benefit Act, 1961, and the Industrial Employment (Standing Orders) Act, 1946.

5. It is submitted that the indemnity bond was also executed which contains nine clauses and particularly, clause four deals with the liability of the petitioner under the Act, 1952. He would contend that the petitioner's witnesses have deposed contrary to the indemnity bond, therefore, the respondent authorities discarded their evidence. He would further submit that an enquiry was conducted by the authority concerned strictly in accordance with the law. He would also contend that according to the definition of 'workmen' provided under section 2(f), the loading and unloading labourers would come within the purview of the labourers engaged by the petitioner. He would further argue that there is a concurrent finding recorded by the EPFC and the learned appellate Tribunal. In support thereof, he placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of *Employees State Insurance Corporation* v. *Harrison Malayalam Pvt. Ltd.,* 1993 LawSuit (SC) 660, and *M/s. ITC Limited Sec* v. *the Employees Provident Fund, New Delhi,* Writ Petition No. 11270 of 2010 and prays that this petition deserves to be dismissed.

6. Heard learned counsel for the parties and perused the documents.

7. In the matter of *Food Corporation of India* (supra), the Hon'ble Supreme Court while dealing with the provisions of section 7(A) of the Act, 1952 held that the Commissioner while conducting an inquiry under section 7(A) has the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit. It is further held that the Commissioner has to exercise powers vested in him to collect the relevant evidence before determining the amount payable under the said Act. The Commissioner is authorized to enforce the attendance of a person and also to examine any person on oath requiring the discovery and production of documents. The Commissioner is under an obligation to determine actual concrete differences in payment of contributions and other dues by identifying the workmen. The relevant paras 7 to 9 are reproduced as under:–

"7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether 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.

8. It is of importance to remember that the Commissioner while conducting an inquiry under section (7A) has the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit. The section reads as follows:

"Section 7(A): Determination of Moneys due from Employer. — (1) The Central Provident Fund Commissioner, any Deputy Provident Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose 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."

9. It will be seen from the above provisions that 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."

8. In the matter of *Gopi Talkies* (supra), the Co-ordinate Bench held that the Commissioner is under an obligation to collect particulars of the employees, earnings of the employees or details of the employees, which are required for the determination of the EPF dues. It is further held that without identification of the employees, the order under section 7A of the Act, 1952 cannot be passed. The relevant paras 11, 12 & 13 are reproduced hereinbelow:–

"11. From perusal of the order passed in section 7A of the EPF & MP Act, 1952, it does not reflect the particulars of the employee, earning of the employee or details of the employee, which are required for determination of the EPF dues. The Hon'ble Supreme Court in the matter *of Food Corporation of In* dia *v. Union of In* dia, (1990) 1 SCC 68 has insisted for identification of the beneficiaries, relevant portion thereof reads as under:–

"It is of importance to remember that the Commissioner while conducting an inquiry under section (7A) has the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit. The section reads as follows:

"Section 7(A): Determination of Moneys due from Employer .—(1) The Central Provident Fund Commissioner, any Deputy Provident Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose may conduct such inquiry as he may deem necessary.

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12. Again the Supreme Court in the matter *of Himachal Pradesh Forest Corporation v. Regional Provident Fund Commissioner* , (2008) 5 SCC 756 has held as under:–

"5.....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."

13. Since the assessment order is silent with regard to identification of the employee, therefore, the order is contrary to the well settled position that identification of the beneficiaries is very much required for assessing the dues as it has to be credited to individual beneficiary who is a member of EPF Act, as such, order under section 7A of the EPF & MP Act, 1952 passed on 27-10-2006 is liable to be and is hereby set aside."

9. In the matter of *Basanta Kumar Mohanty* (supra), the High Court of Orissa held that a permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired in or in connection with the work of any particular establishment. The relevant para 6 is reproduced herein below:–

"6. A workman shall be deemed to have been employed as contract labour when he is hired in, or in connection with a particular work of the principal employer. The determinative factor, therefore, is whether a workman was hired in or in connection with work of an establishment. A permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired in or in connection with the work of any particular establishment. The logic behind this conclusion is that where employment of a person is unrelated with any specific work of any establishment, he is not a contract labour, because his employment has no nexus with any particular work of any establishment. The terms of engagement of one of the security guards were filed as a specimen sample. There is no dispute that similar terms existed for other Security Guards. The document is a part of Ext. A. Conditions 3 and 4 of the appointment order vide No 1878/SDS. Dated July 31, 1982 read as follows:

"3. That you will be whole-time employee of the organization and you will not engage yourself anywhere in any work or profession or employment either honorary or otherwise during your employment with us. You will work with honesty, sincerity and loyalty.

4. That you will be liable to be transferred to any unit of the organization without any extra allowance or benefit." (emphasis by me)

10. In the matter of *BOC India Ltd. (formerly known as Indian Oxygen, Ltd.)* (supra), the High Court of Andhra Pradesh held that working in the premises of the establishment cannot take in its fold the situations of the casual or occasional presence of the persons in the factory. It is further held that the activity of transport involves persons entering the premises cannot be made the foundation for payment of contribution under the Act, 1952. The relevant para 12 is reproduced herein below:–

"12. In the present case, the respondents did not find any persons engaged in the activity of transport of cylinders within the premises of the factory. They only assumed that the activity of transport involves in persons entering the premises. In this regard, it needs to be borne in mind that the term "working on the premises of the establishment", cannot take in its fold the situations of the casual or occasional presence of the persons in the factory. It is true that for the purpose of loading the cylinders and unloading the empty cylinders, the driver of the vehicle and the *hamalies* have to enter the premises. So is the case with various persons who are required to unload the raw material, or even to transport the workers to the premises of

the factory. If mere entry for such purposes alone is to be treated as the yardstick, every person who enters the factory for whatever purpose, deserves to be covered under the definition. It can never be said to be the purport of the expression. The words "person who has undertaken execution on the premises of the factory" employed in the definition, indicate the presence of the persons for execution of the principal activity of the industrial establishment, and not a casual entry."

11. In the matter of *Springdales Schools and others* v. *Regional Provident Fund Commissioner* (supra), the High Court of Delhi held that the two conditions are to be satisfied, first, the employees should be working in or in connection with the work of the establishment; second, their wages are to be paid directly or indirectly by the employer through the contractor. It is further held that an employee would be treated as working in or in connection with the work of the establishment if it can be ascertained that he is discharging his duties exclusively related to the work of the establishment. The relevant paras 6, 7 & 8 are reproduced herein below:–

"6. In the impugned order, the RPFC has observed that the employees employed by the transporter shall be deemed to be the employees of the petitioners and would be treated as employee covered within the meaning of section 2(f) of the PF Act. This section reads as under:

"2(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 (an establishment), and who gets his wages directly or indirectly from the employer, 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."

7. Two conditions, amongst others, which are to be satisfied are as under:

(i) Employees should be working in or in connection with the work of the establishment,

(ii) Their wages are to be paid directly or indirectly by the employer through the contractor.

8. In view of the facts noted above, I am afraid any of these conditions are satisfied in the present case. An employee would be treated as working in or in connection with the work of the establishment if it can be ascertained that he is discharging his duties exclusively related to the work of the establishment. Furthermore, as already pointed out above, in so far as the petitioners are concerned, they were simply giving hire charges which had no causal connection of even remote connection with the payment of wages by the transporter to its employees. The difference would become apparent when compared with a contract which is in the nature of security contract and in an agreement between the employer and the contractor, contractor is to provide security personnel at the establishment of the principal employer. In such contracts, the employee would be deployed at the premises of the principal employer and the agreement generally includes payment in terms of per employee deployed signifying wages which are paid by the employer through the contractor."

12. In the matter of *Hindustan Petroleum Corporation Ltd.* (supra), the High Court of Andhra Pradesh at Hyderabad held that where it is held that working on the premises of the establishment cannot take in its fold the situations of the casual or occasional presence of the persons in the factory. The workers engaged by the contractor only make a casual entry on the premises of the appellant-Corporation's depots for the purpose of loading and they are answerable only to the contractor for due performance of the said work and not to the appellant-Corporation. Paras 21, 22 & 23 are reproduced hereinbelow:–

"21. In a decision *in BOC India Limited v. Assistant Regional Director, Employees State Insurance Corporation and Anr.,* this Court held as follows:

In this regard, it needs to be borne in mind that the term "working on the premises of the establishment", cannot take in its fold the situations of the casual or occasional presence of the persons in the factory. It is true that for the purpose of loading the cylinders and unloading the empty cylinders, the driver of the vehicle and t *he hamalies* have to enter the premises. So is the case with various persons who are required to unload the raw material, or even to transport the workers to the premises of the factory. If mere entry for such purposes alone is to be treated as the yardstick, every person who enters the factory for whatever purpose, deserves to be covered under the definition. It can never be said to be the purport of the expression. The words "person who has undertaken execution on the premises of the factory" employed in the definition,

indicate the presence of the persons for execution of the principal activity of the industrial establishment, and not a casual entry.

22. In the present case also, the workers engaged by the contractor only make a casual entry on the premises of the appellant-Corporation's depots for the purpose of loading and they are answerable only to the contractor for due performance of the said work and not to the appellant-Corporation.

23. In the light of the principles laid down in the above decision and in the facts and circumstances of the present case, the crew engaged by the contractors or the workers engaged by them for the purpose of loading and unloading, do not, therefore come within the meaning of "employee" under section 2(9)(ii) of the Act read with section 2(13) nor can the appellant-Corporation be described as "principle employer" in relation to such workers. Consequently, no liability can be fastened on the appellant-Corporation to collect contribution in respect of such workers under section 40 of the Act. In the circumstances, the finding of the Tribunal is not sustainable and the impugned order dated 24-8-2006 is accordingly set aside."

13. In the matter of *Sheong Shi Tannery* (supra), the High Court of Calcutta concluded that the establishments engaging contractors for loading/unloading could not be treated to be the principal employer in the absence of evidence and enquiry under section 7(A) of the Act, 1952. It is further held that the contractors, who were registered with the Provident Fund Department, having the independent code number, should be treated as independent employers. The relevant paras 14 to 17 are reproduced hereinbelow:–

"14. The question here is not whether the petitioners failed to adduce evidence in support of their contention to the effect that they had not employed 20 persons but had outsourced the entire work to a contractor and paid a lumpsum amount to the contractor after the job was done. The question is whether the authority, who is a statutory authority, had exercised his power vested in him to collect relevant evidence before determining the amount payable by the petitioners, if at all. In this case, the contention of the petitioners should have been tested upon summoning the alleged contractor and recording his evidence. Also, the persons employed should have been called or in the least the register of the contractor and other records should have been asked to be produced in order to ascertain whether such amount was deducted from the wages of the labourers by the contractor. Moreover where the contractor, was the employer providing services of manpower, was having control over the personnel being supplied by him to the establishments by way of issuance of appointment letters, payment of wages and other allowances, taking disciplinary actions affecting their placement, transfer, and termination of services, the relationship between such a contractor and the establishment where the manpower was supplied by him would be of principal to principal and not that of employer-contractor. Such a situation should have also been assessed by the authority in the 7A proceeding by taking evidence. The contractor should have been summoned. It is also pertinent to mention that with respect to the contractors, who were registered with the Provident Fund Department, having the independent code number, they were to be treated as independent employers. The establishments engaging such contractors could not be treated to be the principal employer. This aspect should have been gone into by the authorities. In the instant case, it appears that the liability was fixed under section 7A of the said Act on the assumption that some persons (unknown and unidentified) had been deployed by the contractor for doing the work of the petitioners and as such the petitioners were liable to deposit the amount as stated above.

15. Under the law, the provident fund authorities were required to keep an account of the individual workmen. Their names, addresses and identities etc. should be available with the authorities and the amount attached could not be kept by the authorities with reference to an alleged contractor for an unlimited period. Provident fund dues are not taxes payable by the petitioners to the authorities. It is an amount to be paid to the employees as a welfare measure. It was the duty of the authority to summon the said Birendra alleged to be the contractor by the authorities, in order to assess the correct situation and also to identify the workers before assessing the final liability of the petitioners. Reliance is placed to the decision *of M/s. Mantu Biri Factory(P) Ltd.* (supra).

16. Reliance is also placed on the decision *of Raj Kumar Gupta* (supra), wherein it had been held that the provided fund authorities could not collect or compel contribution to be made by the employers with regard to faceless, nameless or non-identifiable workmen on mere head-count or herd count. In the said case, the Court granted liberty to the employer to claim refund inter alia holding that recovery of the amount against faceless, nameless or non-identifiable workmen on mere head-count or herd count was not permissible in law.

17. The decision of the Hon'ble Apex Court in *Harrison Malayalam Pvt. Ltd.* (supra) is distinguishable on facts. There is no quarrel with the proposition laid down in the said judgment, that the Principal Commissioner was bound to get the necessary details of the employee of the contractor. In the case before the Hon'ble Apex Court, the question was whether the contribution in respect of the employees of the contractor was payable although the contract was completed much prior to the demand for such contribution made by the Corporation. Thus, the facts are distinguishable."

14. In the matter of *Harrison Malayalam Pvt. Ltd.* (supra), the Hon'ble Supreme Court has held that it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer. The relevant para-3 is reproduced hereinbelow:–

"3. We are afraid that the ground given by both the Courts is not justifiable. Under the Act, it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer. On the admitted fact that the respondent-Company had engaged the contractor to execute the work, it was also the duty of the respondent-Company to get the temporary identity certificates issued to the workmen as per the provisions of Regulations 12, 14 and 15 of the Employees' State Insurance [General] Regulations, 1950 and to pay the contribution as required by section 40 of the Act. Since the respondent Company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-Company as to how many workers were employed by its contractor. If the respondent-Company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since the workmen in fact were engaged by the contractor to execute, the work in question and the respondent-Company had failed to pay the contribution, the appellant-Corporation was entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired. The scheme under the Act for insuring the workmen for conferring on them benefits in case of accident, disablement, sickness, maternity etc. is distinct from the contract of insurance in general. Under the Act, the scheme is more akin to group insurance. The contribution paid entitles the workman insured to the benefit under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of the benefits. The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment. What is more, there is no relation between contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risks against which the workman stands statutorily insured. It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. The obligation ceases only when the Act ceases to apply to the factory/establishment. The obligation to make contribution does not depend upon whether the particular employee or employees cease to be employed employees after the contribution period and the benefit period expire."

15. In the matter of *M/s. ITC Limited* (supra), the High Court of Delhi has held that it is the duty of the employer and contractor to maintain the list of employees and to identify the same to the authority. It is further held that the petitioner establishment had engaged contractor to execute work. Therefore, it is the duty of the establishment to get a temporary identity certificate issued to the workmen and to pay the contribution. The relevant para-19 is reproduced as under: –

"19. 1st respondent held that as per paragraph No. 36 of A&B of the Scheme, it is the duty of the employer and contractor to maintain the list of employees and to identify the same to the authority. In *ESIC* v. *Hurrisan Malayan Pvt. Ltd.* in Civil Appeal No. 1133 of 1990, it was held by the Apex Court that it is the duty of the respondent company to get the necessary details of the workmen employed by the contractors at the commencement of the contract since the primary responsibility for payment of contribution is on the principal employer. It is an admitted fact that the petitioner establishment had engaged contractor to execute work. Therefore, it is the duty of the establishment to get temporary identity certificate issued to the workmen and to pay the contribution. Since the company failed to do so, it cannot be heard to say that the workmen are unidentifiable. Thus, the impugned order is a reasoned order."

16. Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is reproduced herein below for reference: –

"7A. 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."

17. Section 2(f) in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is reproduced as under: –

2(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 an establishment, and who gets, his wages directly or indirectly from the employer, 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;

(ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied;

(fff) "exempted establishment" means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein;"

18. In the present case, an order has been passed by the APFC directing the petitioner to submit all the records related to the loading / unloading workers with the establishment. It is also held that the petitioner is the principal employer as loading and unloading workers/laborer's engaged in the transport work are employees of the transporter. The authority concerned placed reliance on the definition of section 2f of the Act, 1952 to arrive at such findings.

19. A bare reading of section 7A of the Act, 1952 would make it clear that the Commissioner is required to conduct an enquiry to determine money due from the employer. The Commissioner, while conducting the enquiry may enforce the attendance of any person; order requiring discovery and production of the document and receive evidence on affidavit.

20. The Commissioner is required to record a finding that the provisions of the Act, 1952 became applicable to the employees of the establishment. The proceedings under section 7A of the Act, 1952 can be initiated thereafter for the determination of quantification of the amount.

21. In the present case, notice was issued by the respondent authorities to the petitioner. The petitioner filed a reply and submitted that the loading and unloading workers are purely engaged by the transporters and the petitioner has no control over them. It is further pleaded that the transporters pay them wages as per the work done by them and they do not maintain any register. The transporters have not engaged more than 20 employees for loading / unloading. Therefore, the question of registration under the Act, 1952 does not arise. It was also pleaded that the workers were free to secure jobs elsewhere.

22. The petitioner examined two contractors to prove its case. Those contractors had executed indemnity bonds and those bonds have been made the foundation of the order impugned. The contractors Sanjay Deshlahra and Jagdish Chhatwan have supported the case of the petitioner.

23. Section 2(i)(c) of the Act, 1952 defines the "manufacture" or "manufacturing process" which means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

24. The APFC held that the petitioner is covered under the definition of the manufacturer or manufacturing process as after the gas exploration and refining, the natural gas establishment transfers it to the cylinders.

25. The learned APFC held that “in or in connection with work” is very important and it is immaterial by whom the employee was employed. The department examined one of the contractors, who stated that he engaged labourers near the site and they are not identifiable. The learned appellate authority in its order has held that the assessment has to be made with regard to the identification of the employees.

26. The Hon'ble Supreme Court in the matter of *Food Corporation of India* (supra), categorically held that the Commissioner is required to conduct an enquiry by enforcing attendance of persons or employees according to section 7A of the Act, 1952. The respondents failed to call the employees for identification and it is also not held that the Act of 1952 would apply in the present matter.

27. In the other judgments cited by the counsel for the petitioner, it has been held that there should be an inquiry by the commissioner to ascertain the status of the employees. There should be a documentary as well as oral evidence for the application of the Act, 1952.

28. In the matter of *Harrison Malayalam* (supra), it is held that it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer.

29. The evidence led by the contractors and the reply filed by the petitioner before the authorities would show that there were no permanent employees engaged in loading / unloading the gas cylinders. The identification of the employees was not possible. Even the contractors were not in a position to give details of the employees hired by them; thus, the judgment cited by the respondent is distinguishable from the facts of the present case.

30. Taking into consideration the above facts and the law laid down by the Hon'ble Supreme Court, in my opinion, the Assistant P.F. Commissioner, Regional Office, Raipur has committed an error of law in passing the order impugned and the learned Employees' Provident Fund Appellate Tribunal, New Delhi also committed an error of law while affirming it, therefore, both orders (Annexure P/1 & Annexure P/2) are hereby *quashed.*

31. The respondent authorities would be at liberty to initiate a fresh enquiry strictly in accordance with the provisions of the Act, 1952, if so advised.

32. No order as to cost(s).

Ref: LLR