

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 3381 OF 2011

M/S.NEVEDAC PROSTHETIC CENTRE ... APPELLANT(S)

VERSUS

REG.PROV.FUND COMMISSIONER & ANR. ...RESPONDENT(S)

O R D E R

In this appeal the appellant has questioned the correctness of the order passed by the Division Bench of the Punjab and Haryana High Court in L.P.A. No. 3 of 1997 dated 17.03.2009 wherein the order of the learned Single Judge of the High Court dated 24.05.1996 passed in C.W.P. No. 3336 of 1982 was affirmed.

The Order which was challenged by the appellant in the writ petition proceedings was the Order of the Regional Provident Fund Commissioner dated 14.05.1981 as confirmed by the order of the Legal Advisor dated 15.05.1982 holding that the appellant's establishment is engaged in manufacture of artificial limbs to meet the requirement of disabled individuals. It employed more than 20 persons in the establishment. The Regional Provident Fund Commissioner by his Order dated 14.05.1981 applied the provisions of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") after overruling the objections taken by the appellant that it is a hospital and falls under the category of hospitals and, therefore, exempted from the applicability of the provisions of the Act. The further contention that it is not an industrial establishment as specified in Schedule-I of the Act was also negatived by the High Court after examining the finding of fact recorded by the Regional Provident Fund Commissioner on the basis of fact and material evidence on record.

The appellant's establishment questioned the correctness of the Order passed by the Legal Advisor to the Central Government seeking certain advice in the matter whether the provisions of the Act applies to the appellant's establishment or not.

The Regional Provident Fund Commissioner determined the quantum of contribution payable by the appellant to its employees for the period February, 1982 to May, 1996 under Section 7-A of the Act. It is stated, as above, by Mr. Nidhesh Gupta, learned senior counsel appearing for the appellant's establishment, that pursuant to the determination of the contribution

payable by the appellant's establishment to its employees, the amount determined under Section 7-A of the Act by the Regional Provident Fund Commissioner was paid by the appellant all the provident fund contributions. However, the application of the appellant-establishment under Section 16(2) of the Act is pending before the concerned Authority.

This Court while granting leave passed the interim order to the following effect: "In the meantime, operation of the impugned judgment shall remain stayed."

It is contended by the learned senior counsel for the appellant's establishment that when the interim order was subsisting, the Regional Provident Fund Commissioner has passed the Order under Section 14-B of the Act, awarding damages payable to the Provident Fund Commissioner for non compliance of the provisions of the Act for the aforesaid period. He further contended that the interim order was passed in this appeal by this Court in the presence of the respondents counsel, therefore, he would request this Court that the order passed under Section 14-B of the Act may be set aside.

The learned senior counsel for the appellant's

establishment submitted that pursuant to the Order of the High Court in affirming the order of determination of the Provident Fund Contribution payable by the appellant's establishment to its employees, though it is challenged before this Court, the said contribution is already paid.

The applicability of the provisions of the Act is the Order passed by the Commissioner and affirmed by the High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution. The order was passed by the Provident Fund Commissioner after adverting to various provisions of the Act and after considering the objections filed by the appellant and also referring to the opinion of the Legal Advisor of the Central Government given to him with regard to the applicability of the Act on the application submitted by the appellant seeking exemption from the applicability of the Act. The Provident Fund Commissioner's Order is a well considered order. He has examined the relevant provisions of the Act with reference to the fact situation stated in the Statement of Objections and rightly held that the provisions of the Act are applicable to the appellant-establishment. The same has been correctly affirmed by the High Court by recording valid and cogent reasons, therefore, we do not find any good reason either on the ground of

erroneous reasoning or any error of law for exercise of the appellate jurisdiction by this Court.

It was brought to our notice that during the operation of the interim order of stay granted in this appeal by this Court, the respondent-Regional Provident Fund Commissioner had passed an Order under Section 14-B awarding damages against the appellant. To the said contention, the learned standing counsel appearing on behalf of the respondent, on the basis of the record maintained by the Authority, submitted that the final Order dated 26.05.2015 passed by the Regional Provident Fund Commissioner under Section 14-B of the Act was reverted back on 24.07.2015 till the disposal of the appeal by this Court. It is communicated to the appellant by a communication dated 2.11.2015. The said Order is not in the file. In this view of the matter, there is no need to pass any order in this regard except making an observation that it is open for the respondent to take such action in the matter in this regard in accordance with law.

Learned senior counsel for the appellant, at this stage, since the orders passed by the Provident Fund Commissioner both under Sections 7-A and 14-B of the Act for the period payable by the appellant is not challenged, seeks liberty to challenge the same. We do

no want to express any opinion in this regard. It is open for the appellant to avail any remedy as is provided to it under the statute in accordance with law.

The appeal is disposed of in the abovesaid terms. This order shall not be treated by the Authority to take appropriate action in the matter in accordance with law.

.....J.
(V. GOPALA GOWDA)

.....J.
(AMITAVA ROY)

NEW DELHI,
NOVEMBER 3, 2015

ITEM NO.101

COURT NO.10

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3381/2011

M/S.NEVEDAC PROSTHETIC CENTRE

Appellant(s)

VERSUS

REG.PROV.FUND COMMISSIONER & ANR.
(with office report)

Respondent(s)

Date : 03/11/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE AMITAVA ROYFor Appellant(s) Mr. Nidhesh Gupta, Sr. Adv.
Ms. Nidhi Gupta, Adv.
Ms. Rachna Gandhi, Adv.
Ms. S. Janani, Adv.For Respondent(s) Ms. Shrabani Chakrabarty, Adv.
Mr. Avijit Bhattacharjee, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

(S. K. RAKHEJA)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)