

(2009) 11 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 9378 of 2008

Best and Crompton Engineering Ltd.

APPELLANT

Vs

Assistant Provident Fund Commissioner, E.P.F. Organisation
and Another

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7 A, 7 C

Citation : (2010) 124 FLR 271 : (2010) 2 LLJ 818

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.C. Prabhakar and Bhoopalan Law Associates, for the Appellant;
Vijaya R. Hanmantgad, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The 1st respondent - Assistant Provident Fund Commissioner, in exercise of jurisdiction u/s 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 for short "Act", initiated proceedings against Arr Cee Enterprises, the 2nd respondent and 12 other institutions, including the petitioner, on the premise that they were principal employers of the 2nd respondent for not having remitted the provident fund contribution in respect of employees of the 2nd respondent. After an enquiry the 1st respondent passed an order dated August 21, 2007, Annexure "F" directing the 2nd respondent to remit the balance amount of Rs. 25,96,234, while recording a finding that the petitioner amongst other employers did not produce records and that the dues in respect of the principal employers including the petitioner will be assessed to determine the escaped amount u/s 7-C of the Act. This order was followed by a notice dated June 16, 2008, Annexure-G informing the petitioner that a recovery certificate for Rs. 25,96,234 was issued and failure to pay said sum, within 15 days, coercive action would be taken to recover the said sum together with cost, charge, expenses etc. Hence this petition aggrieved

by the said order and notice at Annexures F and G, respectively.

2. There is considerable force in the submission of the learned counsel for the petitioner that the 1st respondent in exercise of jurisdiction u/s 7-A of the Act, without material Constituting substantial legal evidence that the petitioner was one of the principal employers of the 2nd respondent, which had failed and neglected to pay provident fund contribution of its employees, was liable to be subjected to a further enquiry u/s 7-C of the Act to determine the escaped amount.

3. Learned counsel for the 1st respondent Provident Fund Commissioner when asked "whether the 1st respondent had in fact in its possession an iota of evidence to substantiate the fact that the 1st petitioner was a principal employer of the 2nd respondent institution?", submits that it is for the petitioner to prove that it had no business or other connection with the 2nd respondent institution. This submission in my opinion is a fantastic plea. I say so because, the petitioner when notified to appear in an enquiry u/s 7-A of the Act, before the 1st respondent, cannot be asked to prove that it had no connection with the 2nd respondent, i.e., to prove the negative. If the 1st respondent did have relevant material, then it ought to have put it across to the petitioner to have its say, which admittedly is not the position. In the absence of the relevant material or clinching evidence, the petitioner could not have been held to be the principal employer of the 2nd respondent. As a consequence, the finding in the operative portion of the order, Annexure-G that further action would be initiated u/s 7C of the Act against the petitioner to determine the escaped amount, is arbitrary and illegal. As a sequel, the recovery certificate referred to in the notice dated January 16, 2008. Annexure-G cannot but demanding payment, be said to be arbitrary and illegal and cannot be unsustainable.

4. In the result, the writ petition is allowed. The order Annexure-F of the 1st respondent and the intimation Annexure-G as also the recovery certificate No. 18 of 2008 dated April 10, 2008 to recover Rs. 25,96,234 from the petitioner in respect of the balance of provident fund contribution payable by the 2nd respondent are quashed.

5. It is needless to state that if the 1st respondent secures credible information on the basis of the relevant material, implicating the petitioner as one of the principal employers of the 2nd respondent, it is open to initiate such action as is available in law.