

(2018) 11 MP CK 0007
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8038 Of 2012

Employees Provident Fund

APPELLANT

Vs

M/S. Saraswati Ucchattar Madhyamik Vidhyala

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1)(d), 2(1)(d)(ii), 2(1)(O)
Constitution Of India, 1950 — Article 227

Citation : (2019) 1 MPLJ 417

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : S.L. Gupta, Amit Lahoti

Final Decision : Dismissed

Judgement

1. Supervisory jurisdiction of this court under Article 227 of the Constitution of India is invoked to assail the final order dated 18/4/12 passed in case No. 335/10 by District Consumer Dispute Redressal Forum Guna allowing the complaint u/S. 12 of Consumer Protection Act, 1986 preferred by the respondent herein holding the petitioner herein to be liable for rendering deficient services, as a result of which compensation of Rs. 3000/- alongwith Rs. 1000/- for mental pain and litigation expenses of Rs. 500/- in favour of respondent herein with further direction of furnishing requisite forms under the Employees Provident Funds & Miscellaneous Provisions Act 1952 to the respondent herein for obtaining necessary information about employer's share of provident funds and thereafter to render the services of payment of interest to the employees/teachers of the respondent/institution.

2. Learned counsel for the employees provident funds organization has raised singular ground that the petitioner organization being creature of statute i.e. Employees Provident Funds & Miscellaneous Provisions Act 1952 does not render any "service" as defined in section 2 (1)(o) of Consumer Protection Act, 1986 and therefore, is not amenable to the rigorous of the 1986 Act. It is submitted

that the said jurisdictional issue was not considered by the District Consumer Redressal Forum and therefore, the order impugned is bereft of jurisdiction and is liable to be set aside.

3. The aforesaid singular submission of petitioner EPF Organization deserves to be rejected at the very outset in view of the categorical decision rendered by the Apex Court in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi AIR 2000 SC 331 which was followed in Regional Provident Fund Commissioner Vs. Bhavani AIR 2008 SC 2957, relevant paragraphs of both these judgments for ready reference are quoted below:-

In the case of Shiv Kumar Joshi (supra) in Para , it is observed:-

"11. We cannot accept the argument that the Regional Provident Fund Commissioner, being Central Government, cannot be held to be rendering 'service' within the meaning and scheme of the Act. The Regional Provident Fund Commissioner, under the Act and the scheme discharges statutory functions for running the scheme. It has not, in any way, been delegated with the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the 'service' under the Act. The Commissioner is a separate and distinct entity, it cannot legally claim that the facilities provided by the 'scheme' were not "service" or that the benefits under the scheme being provided were free of charge. The definition of "consumer" under the Act includes not only the person who hires the 'services' for consideration but also the beneficiary, for whose benefit such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiary within the meaning of that word used in the definition of consumer. This Court in *M/s. Spring Meadow Hospital & Anr. vs. Harjol Ahluwalia through K.S. Ahluwalia & Anr.* [JT 1998 (2) SC 620, to which one of us (Saghir Ahmad.J) was a party has already held that the "consumer" means a person who hires or avails of any services and includes any beneficiary of such service other than the person who hires or avails the services. The Act gives comprehensive definition of 'consumer' who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term "consumer" even a member of the family of such 'consumer' was held to be having the status of 'consumer'. In an action by any such member of the family of beneficiary of the service it will not be open for a trader to take a stand that there was no privity of contract. In this regard this Court specifically held:

"In the present case. we are concerned with clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the

definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such - services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act."

In the case of Bhavani (supra) in para 20 and 21, it is observed:-

"20. Dr. Padia's submissions regarding the non-applicability of the Consumer Protection Act to the case of the respondent must also be rejected on account of the fact that the Regional Provident Fund Commissioner, who is the person responsible for the working of the 1995 Pension Scheme, must be held to be a 'service giver' within the meaning of Section 2(1)(o) of the Consumer Protection Act. Nor is this a case of rendering of free service or rendering of service under a contract of personal service so as to bring the relationship between the appellant and respondent within the concept of 'master and servant'. In our view, the respondent comes squarely within the definition of 'consumer' within the meaning of Section 2(1)(d)(ii), inasmuch as, by becoming a member of the Employees' Family Pension Scheme, 1971, and contributing to the same, she was availing of the services rendered by the appellant for implementation of the Scheme. The same is the case in the other appeals as well.

21. In fact, the same proposition has been explained in Regional Provident Fund Commissioner vs. Shiv Kumar Joshi [2000 (1) SCC 98], wherein in relation to the operation of the Consumer Protection Act to the Employees' Provident Fund Schemes it was held as follows:

"A perusal of the Scheme clearly and unambiguously indicates that it is a 'service' within the meaning of Section 2(1)(o) and the member a 'consumer' within the meaning of Section 2(1)(d) of the Act. It is, therefore, without any substance to urge that the services under the Scheme are rendered free of charge and, therefore, the Scheme is not a 'service' under the Act. Both the State as well as the National Commission have dealt with this aspect in detail and rightly come to the conclusion that the Act was applicable in the case of the Scheme on the ground that its member was a 'consumer' under Section 2(1)(d) and the Scheme was a 'service' under Section 2(1)(o)."

4. Moreso, the aforesaid view continues to hold the field which is evident from a division bench decision of State Consumer Dispute Redressal Commission in First Appeal No. 380/17 (EPF Organization & Anr. Vs. Complainant & Anr.) rendered on 22/11/17.

5. In view of above, the solitary argument of learned counsel for the EPF Organization raised in support of the challenge to the impugned order passed by DCDRF, Guna is untenable in the eyes of law.

6. Consequently, this court declines interference and dismisses this petition sans cost.