(2001) 08 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal A. No''s. 933 to 966, 968, 1131 to 1134 and 1294 to 1313 of 1997, 867 to 873, 874, 875, 905, 906, 1639 to 1664 and 1670 to 1678 of 1998

Enforcement Officer, Provident Fund APPELLANT

Vs

M. Raja Krishore and Others RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 14(A)

Citation : (2001) 2 ALT(Cri) 380

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : R.N. Reddy, SC, for the Appellant; D.V. Reddy, for Respondent 1 and 2 and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—All these appeals arise out of similar orders of the I Additional Munsif Magistrate, Tenali in different S.T.Cs. and C.Cs. dismissing the complaints filed by the appellant under Sections 14(1A) and 14-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act'') read with Para 76 of the Employees'' Provident Funds Scheme, 1952 (for short ''the Scheme'').

2. All the complaints filed by the appellant against the respondents have been dismissed mainly on the ground that the complainant has not filed Form 5-A, which has to be furnished by the employer as provided in Para 36-A of the Scheme mentioning the particulars of the persons, who are in-charge of, and responsible for, the conduct of, the business of the establishment.

3. The complaints are filed against Mr. M. Raj Kishore, Principal of Dr. B.R. Ambedkar Memorial Junior College, Tenali and the said College represented by its Principal Mr. M. Raj Kishore for his prosecution in STC. Nos .150 to 185, 269, 350

of 1989, 24, 133, 134 of 1990, CC. Nos .141, 151 to 166, 168, 169, 171, 173, 174, 178 of 1989 and 61 of 1990. Both the S.T.Cs. and C.Cs. are dismissed by the learned I Additional Munsif Magistrate, Tenali on the ground that he is not responsible for furnishing the returns and for committing the contraventions alleged in the complaints. Similarly, the cases in CC. Nos .63 to 118 and 165 of 1991 are filed against Mr. P. Sangeetha Rao, who is the Correspondent of the College, and all the C.Cs. are dismissed holding that it is not proved that the said accused P. Sangeetha Rao is the in-charge of and responsible for the conduct of the business of the establishment. All these appeals are filed against the aforesaid orders.

4. The only issue involved in all these appeals revolves around the question as to who is the concerned person in-charge of, and responsible for, the conduct of the business of the said College, which is an establishment. It is not in dispute that the College is an establishment and the Act applies to the said establishment. But, the question is who is the responsible person for the conduct of the business of the College putting charge for filing of the returns? It is also stated that after the complaints are filed, the contributions payable by the establishment have been paid. But still, the complainant was prosecuting the cases for punishing the accused for non-filing of the returns within the time and to punish them u/s 14(1A) of the Act read with Para 76 of the Scheme. The ''employer'' as defined u/s 2(e) of the Act in respect of this particular establishment is the person, who has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, or Agent, etc.

5. No doubt, in these cases, orders have been passed after enquiry u/s 7A of the Act by the Authorities under the Act determining the amount due from the employer, i.e. the concerned establishment, which is a College. But, the said orders made u/s 7A of the Act do not specify as to who is the employer of the establishment. Therefore, the only question that arises for consideration is who is the Employer for the purpose of conducting the business of the establishment?

6. Under Para 36-A of the Scheme, every employer of such establishment shall furnish, in duplicate, to the Regional Commissioner in Form 5-A furnishing all the particulars of the branches and departments of the concerned establishment, owners, occupiers, directors, partners, manager or any other person or persons, who have the ultimate control over the affairs of such establishment and also send the intimation of any change in such particulars, within 15 days of such change. Para 37 of the scheme says that on receipt of the information referred to in Para 36, the Commissioner shall promptly allot an Account Number to each employee qualifying to become a member and shall communicate the Account Number to the member through the employer.

7. It is the contention of the learned counsel for the respondents that the order u/s 7A of the Act clearly shows the Permanent Account Number given to the concerned establishment, and therefore, it cannot be said that Form 5-A has not been furnished by the establishment. Even otherwise, if no such Form is

furnished by the establishment, it is a contravention under Para 76(d) of the Scheme; and non-furnishing Form 5-A furnishing the particulars under Para 36-A constitutes an offence u/s 14(1A) of the Act read with Para 76 of the Scheme; and for such contravention also, the concerned person is liable for prosecution; but, no such prosecution has been launched for not furnishing Form 5-A and the particulars as contemplated under Para 36-A of the Scheme; and therefore, it cannot be said that no such particulars have been furnished and no such Form 5-A has been submitted.

8. It is further stated that u/s 14-A of the Act, the concerned person at the relevant time of committing of the offence and was responsible for the conduct of the business of the establishment alone is liable for the prosecution, but not the mere Principal or the Correspondent, if they are not in-charge of and responsible for the conduct of the business of the establishment. In all these cases, as the prosecution has failed to establish that the accused are in-charge and responsible for the conduct of the business of the establishment, the criminal cases have been dismissed, against which, all these appeals have been filed.

9. After hearing the arguments of the learned counsel appearing for the appellant as well as the respondents for 3 days and when the cases are posted today for judgment and while dictating the judgment, the learned counsel appearing for the appellant made a request to permit him to withdraw the appeals and stated that he got instructions from his client to withdraw the appeals.

10. I do not like to express any opinion in the manner in which the appeals are sought to be withdrawn after spending the valuable time of the Court and the concerned parties and their Advocates. But, in view of the aforesaid submission made by the learned counsel for the appellant, I dismiss these appeals as withdrawn without proceeding further.

