

(2015) 04 KL CK 0080

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11845/2006(1)

H. Ramakrishnan

APPELLANT

Vs

Regional Provident Fund Commissioner, Thiruvananthapuram
and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Employees Provident Funds Family Pension Fund and Deposit-linked Insurance Fund
Act, 1952 — Section 2(e)(ii), 8B

Citation : (2015) 146 FLR 879 : (2015) LLR 875

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : V. Philip Mathew, for the Appellant; N.N. Sugunapalan, SC and T.N. Girija, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—The petitioner is a Director, who is aggrieved with the proceedings for recovery and the threatened arrest for non-satisfaction of the amounts; assessed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, "EPF & MP Act"). There is no appearance for the petitioner, when the matter was taken up for hearing. I have heard the learned Standing Counsel for the respondent Organisation.

2. The admitted facts are that, the petitioner was the Director of a Private Limited Company, between 18.11.1998 and 14.02.2001, on which later date, he resigned from the Directorship. The petitioner also is said to have intimated such resignation to the Registrar of Companies by Ext. P1.

3. The petitioner was issued with a show cause notice under Section 8B of the EPF & MP Act to show cause as to why the warrant of arrest should not be issued, for default in payment of amounts assessed under the EPF & MP Act as against the said Company. Ext. P3 was the show cause notice issued on the basis of a demand under the EPF & MP Act against M/s. Indosoft Infotek & Service

Limited between the period 12/1999 and 09/2001. The petitioner filed an objection at Exts. P4 and P5, which were not responded to and hence, the petitioner approached this Court. The petitioner's contention is that, the petitioner is not liable to be proceeded, for reason of his resignation from the establishment, whose contribution are sought to be recovered by the respondent Organisation.

4. The learned Standing Counsel for the respondent Organisation contends that, there are no assets of the establishment available and the counter affidavit specifically lists out the various measures taken to recover the sums due. Only on the recovery not fructifying, was the instant proceedings initiated against the petitioner, who is a Chartered Accountant and admittedly a Director of the Company, during the period in which default occurred. The respondent also relies on Ext. R1(a), which is the pro-forma submitted before the respondent Organisation for coverage under the EPF & MP Act, which shows the petitioner to be one of the Directors.

5. The dispute raised by the petitioner has to be considered in the back ground of whether a Director would be liable for a proceeding under the EPF & MP Act. The definition of employer defined under Section 2(e)(ii) of the EPF & MP Act, which is extracted hereunder:--

2(e)(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

6. Hence, the person who has ultimate control over the affairs of the establishment, would be deemed to be an employer and in a case where the said affairs are entrusted to a manager, managing director or managing agent, the employer would be such a person, so entrusted with the management of the establishment. Ext. R1(a) indicates that, the Company has a Managing Director, who has been specifically shown with the said designation. Hence as far as the subject establishment is concerned the Managing Director is the person, who has ultimate control over the affairs of the establishment; and is the employer under the EPF & MP Act. There is no enabling provision entitling the respondent Organisation to proceed against the Directors, of a Company, as per the statute; in the event of default. In such circumstance, the Managing Director would have to be proceeded against and not any of the Directors. Section 8B of the EPF & MP Act, which prescribes for an alternate mode of recovery by arrest of the employer and his detention in prison also speaks of failure to recover the amounts specified from the "establishment" or as the case may be from the "employer". Going by the definition in the Act, despite the inability of recovery expressed by the respondent Organisation for reason of no assets being available, no proceedings can be taken against the Director. The respondent Organisation could definitely take proceedings against the Managing Director since, he is the person deemed to be an employer under the definition clause. The proceedings

initiated against the petitioner has to be set aside. Leaving open the remedy of the respondent Organisation to proceed against the petitioner the employer herein being the Managing Director, the writ petition would stand allowed. No costs.