(2014) 10 KAR CK 0102

In the Karnataka High Court

Case No : Writ Petition Nos. 30671-74 of 2014 (L-PF)

Hotel Soundarya Residency APPELLANT

Vs

The Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(2)

Citation : (2014) 10 KAR CK 0102

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Sampath Anand Shetty, Advocate for the Appellant; G.M. Anand and B.L. Asha, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Having heard the learned counsel for the parties, perused the pleadings and the orders impugned, it is appropriate that the matter be remitted to the Regional Provident Fund Commissioner for consideration afresh.

2. Petitioners when issued with a notice of proceedings under Section 7-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, for short ''Act'', stating that the report of the Enforcement Officers disclose that the four petitioners'' establishments were not independent establishments but there was functional integrity as between the two establishments, each, petitioners opposed the same by filing objections inter alia contending that there was no functional or financial integrity. The Regional Provident Fund Commissioner without ensuring the presence of the Vigilance Officers who filed a report on spot inspection, for cross-examination so as to test the veracity of the said report proceeded on the assumption that the report contained gospel truth and accordingly by the Order of even date 16.6.2011 Annexure-B1 and B2 held that establishments were functionally and financially interdependent, and held that the Act applied to the Establishments and accordingly determined the amounts due from the employer under the Act. Those orders, when, called in question in

ATA No. 550-552(6) and 553(6) of 2011, before the Employees'' Provident Fund Appellate Tribunal, for short ''Tribunal'' the Appeals stood dismissed by orders dated 1.4.2014 and 2.4.2014 Annexures-A1 and A2, respectively. Hence these petitions.

3. The short point for consideration is: Whether the Regional Provident Fund commissioner exercised powers vested in him in the matter of collection of relevant evidence before determining the applicability of the Act and the amounts payable under the Act ?

4. The orders Annexures-B1 and B2 of the Commissioner disclose that M/s. Soundarya Residency and Soundarya Resturant, together, were functionally interdependent, so also Hotel Soundarya Deluxe and M/s. New Soundarya Deluxe were also functionally interdependent, on the basis of the report submitted by two Vigilance Officers who claim to have visited the establishments and recorded observations. Indeed petitioners claim to have maintained separate records required by labour legislation in respect of each of their establishments, as also separate accounts, since assessed to taxes separately. It is no doubt true that if each of the petitioners engaged employees in excess of 20 persons, are bound to be covered under the Act and liable to pay contributions, both employer and employee. In the teeth of the objections of the petitioners, it was the obligation of the Regional Provident Fund Commissioner to ensure the summoning of the two Vigilance Officers, the witnesses who submitted the report, for cross-examination by the petitioners. That procedure was not followed by the Commissioner.

5. It is relevant to notice that the Commissioner while conducting an inquiry under Section 7-A has the same powers as that of a Court under the Civil Procedure Code for trying a suit, since Section 7-A(2) provides for such a procedure.

6. Thus it will be seen that the Commissioner is authorized to enforce the attendance in person and also to examine any person on oath, and the power requiring the production of documents. This power, as observed by the Apex Court in Food Corporation of India Vs. Provident Fund Commissioner and Others, , is invested in the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. It is further observed that the Commissioner should exercise all his powers to collect entire evidence, collate all material, before coming to a proper conclusion and that is the legal duty of the Commissioner. Their lordships having regard to the facts of the said case and placing reliance upon the statutory provision held that it would be failure to exercise the jurisdiction, particularly when a party to the proceedings requests for summoning evidence from a particular person.

7. Applying the very same principles to the facts of this case, it was incumbent on the part of the Commissioner to have examined the two witnesses being the

Vigilance Officers who made certain observations and submitted a report, which was objected to by the petitioners in their statement of objections.

8. In the result, the orders of the Commissioner, Annexures-B1 and B2 and the orders of the Appellate Tribunal Annexures-A1 and A2 are unsustainable in law and are accordingly quashed. Proceedings are remitted to the Commissioner for consideration afresh after extending reasonable opportunity of hearing to the petitioners including that of summoning the attendance of the witnesses and to pass orders strictly in accordance with law.

