

(2009) 02 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 14067 of 2002

Kottayam District Co-operative Hospital	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16, 16(1), 16(2), 17

Citation : (2009) 121 FLR 1138 : (2009) 2 ILR (Ker) 706 : (2009) 4 LLJ 763

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : T.A. Shaji and M.A. Asif, for the Appellant; N.N. Sugunapalan, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The prayer in the Original Petition is to quash Exhibits P-1 to P-3 and Exhibit P-5, whereby the question of coverage under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") was answered against the petitioner. The petitioner has also sought for a declaration that the petitioner-Society will not come within the purview of the above Act and for consequential reliefs.

2. The petitioner (Kottayam District Co-operative Hospital Society Ltd.) is a Society registered under the relevant provisions of the Kerala Co-operative Societies Act, which is running a C.T. Scan Unit, a Neethi Medical Store and a Clinical and Pathological Lab. It is the specific case of the petitioner that no treatment is being offered to any patient; that the petitioner is not at all a "Hospital" and hence, that the petitioner will not come within the purview of coverage under the Act and the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the "Scheme").

3. Pursuant to the inspection made by the; statutory authorities, the defects noted were" made known to the petitioner, vide Exhibit P2, pointing out that the petitioner had failed to comply with the various requirements contemplated

under the statute and they were sought to be cured. On receipt of Exts. P1 and P2 proceedings, the petitioner submitted a detailed explanation which was considered by the first respondent and passed Exhibit PJ order, directing the petitioner to implement the provisions of the Act and the three Schemes to all its 20 employees with effect from February, 2001 and to report compliance within the specified time, lest it should lead to quantification of the dues and realisation, to be followed by consequential proceedings including by way of penalty/damages.

4. On challenging Exhibit P-3 proceedings before this Court by filing O.P. No. 25291/2001, it was observed that the petitioner had an alternate remedy by way of review before the very same statutory authority, the first respondent. Accordingly, the Original Petition was disposed of enabling the petitioner to file a review petition before the first respondent within three weeks and directing the said authority to have it considered and finalised by passing a "speaking order" thereon, in accordance with law, of course, with notice to the petitioner. Pursuant to the said verdict, the review petition filed by the petitioner was considered by the first respondent and after threadbare analysis, the first respondent passed a detailed order as borne by Exhibit P-5, which is the subject matter of challenge in the present Original Petition.

5. The specific case of the petitioner, as projected by the learned Counsel for the petitioner, is that the petitioner Society is not an establishment notified u/s 1(3)(b) of the Act and hence it is beyond the purview of coverage. It is further stated that in view of Section 16 of the Act and also the provisions of Sections 61 and 80A of the Kerala Co-operative Societies Act, read with Rule 58 of the Rules, the petitioner cannot be brought within the purview of coverage. The finding and reasoning given by the first respondent for sustaining Exhibit P-5 are also subjected to serious attack.

Learned Counsel appearing for the respondents brought to the notice of this Court that, by virtue of the specific terminology used in the concerned notification issued by the Central Government enabling the Government to bring the desired establishments within the purview of the Act, invoking the power u/s 1(3)(b) of the Act., the petitioner-Society stands very much covered and that the challenge raised in the Original Petition is, totally wrong and misconceived. The learned Counsel also produced copies of the relevant notification bearing No. G.S.R. 1082 dated September 15, 1973 published in the Gazette of India, Part II, Section 3(i) dated September 29, 1973 to sustain the submission. The learned: counsel further states that the petitioner would stand covered under the Act even other wise, by virtue of an earlier notification bearing No. G.S.R. 1393 dated September 17, 1964 issued by the Central Government, invoking the power; u/s 1(3)(b) of the Act, whereby every establishment or medical practitioners and medical specialists in which twenty or more persons are employed, was also brought within the purview of the Act.

6. The power of the Central Government to issue notification invoking Section

1(3)(b) of the Act is admittedly not in dispute. The said power, obviously, enables the Central Government to make the Act applicable to such establishments employing 20 or more persons or class of such establishments, which the Central Government, may, by notification in the Official Gazette, specify in this behalf. The contention of the petitioner is that, though "Hospital" stands notified by the Government, under the said provision, the petitioner's establishment, not being a Hospital or not an establishment giving treatment to patients, but operating only a C.T. Scan Unit, a Neethi Medical Store and a Clinical and Pathological Lab, stands outside the purview of the notification.

7. The relevant notification bearing No. G.S.R. 1082 dated September 15, 1973, as relied on by the first respondent in the order is extracted below for the purpose of convenience of reference:

G.S.R. 1082: In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the Central Government hereby specifies every establishment known as hospital run by any individual, association or institution (other than the establishment covered by Clause (vi) of the notification of the Government of India in the late Department of Social Security No. G.S.R. 1398 dated the September 17, 1964) as the establishment to which the said Act shall apply with effect from the August 31, 1973.

The nature and terminology used in respect of the establishment in the said notification is not the word "hospital" but "every establishment known as hospital" to be within the purview of coverage. This means, the concerned establishment though actually not a Hospital, is very much liable to be brought within the coverage, if it is "known as a hospital." The correctness or justifiability of the said notification is admittedly not under challenge in this Original Petition and as such, the natural consequence which follows there from is very much applicable to the petitioner as well.

8. It is relevant to note in this context, as pointed out by the learned Counsel for the respondents, that even prior to the issuance of notification G.S.R. 1082 dated September 15, 1973, the Central Government, invoking the very same power u/s 1(3)(b) of the Act, had issued a notification bearing No. G.S.R. 1393 dated September 17, 1964 whereby it was stipulated under Sub-clause (vi) that, the Act would be applicable to every establishment of medical practitioners and medical specialists in which 20 or more persons were employed and that such establishments shall have coverage with effect from October 31, 1964. The petitioner's institution, which admittedly is running a C.T. Scan unit, a Neethi Medical Store and a Clinical and Pathological Lab, satisfies the requirements as envisaged thereunder and hence is liable to be covered - asserts the learned Counsel. The authenticity or sustainability of the notifications, as discussed herein before, has not been subjected to challenge and so is the case, with regard to the power of the Government to issue notification in respect of the class of establishments as contemplated u/s 1(3)(b) of the Act-treating all such

establishments which are "known as hospital."

9. It is true that the consequence resulted from Section 1(3)(b) is, of course, subject to the stipulations u/s 16 of Act. Under "Section 16(1)(a)", it is made clear that the Act I will not apply to any establishment registered under the Co-operative Societies Act, 1912 or under any other law, for the time being in force in any State relating to Co-operative societies employing less than 50 persons and working without the aid of power. This, otherwise means, to get the benefit thereunder, the concerned Co-operative Society has to satisfy both the limbs simultaneously as to the requisite number of employees to be "less than 50 and also as to the working of the" establishment "without the aid of the power". In view of the admitted facts and figures, as discussed by the first respondent in Exhibit P-5 order, a sum of Rs. 2,84,400/- is stated as incurred towards the electricity charges for the year 1999-2000 as per the Books of Accounts of the Society and Rs. 3.5 lakhs and Rs. 5 lakhs were stated as expected for the years 2000-01 and 2001-02 respectively. As observed by the first respondent in Exhibit P-5, the admitted, facts and evidence on record, as to the running of C.T. Scan Unit and a fully computerised Clinical and Pathological Lab, would show that the petitioner cannot function without the aid of the power and as such Section 16(1) (a) will not come to the rescue of the petitioner.

10. Section 16(1)(b) is admittedly stated as not applicable to the petitioner's establishment; while, some reliance was sought to be placed u/s 16(1)(c). Even on a plain reading of Section 16(1)(c), it is very much clear that it, will be applicable only in respect of the concerned establishments set up under any central, provincial or state act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits. To put it more clear, the said provision is applicable and relevant only in respect of the J establishments which are rather having a status as a creature of some statute. The law is now well settled that co-operative societies registered under the provisions of the Kerala Co-operative Societies Act is not a creature of the said statute and that the Act and Rules are having relevance as of regulatory in nature. As such, the petitioner cannot have any shelter even u/s 16(1)(c) of the Act.

11. With regard to the availability of the "better scheme" in respect of the employees of the petitioner's Society, the available data has been subjected to meticulous scrutiny by the first respondent while passing Exhibit P-5 order. It is stated that during the course of enquiry by the Enforcement Officer as well as the "7-A" Authority, no such claim was established. It is further stated that the petitioner's establishment is effecting contribution only in respect of the "permanent employees", leaving out the others, which is not the situation envisaged under the Act and the Scheme. Even otherwise, it has been specifically held in Exhibit P-5 that if the petitioner's establishment offers any Scheme which is more beneficial than that of the Employees' Provident Fund Scheme, the petitioner has a right to seek for exemption under the relevant provisions of the

Act and the Scheme.

12. In the above circumstances, the challenge raised against Exhibit P-5 does not have any pith or substance. Absolutely no tenable ground has been brought out to warrant interference of this Court. The Original Petition fails and accordingly, it is dismissed without prejudice to the right of the petitioner to pursue the remedy and course as provided u/s 16(2) or u/s 17 of the Act. No cost.