

(1997) 08 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 12776 of 1989

Krishna Foods Private Limited, Bangalore	APPELLANT
Vs	
Regional Provident Fund Commissioner in Karnataka, Bangalore	RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 16 (1)
(b), 2 (f), 7 A, 8 A (1)

Citation : (2000) 3 KarLJ 470

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri R. Gururajan, for the Appellant; Sri Harikrishna S. Holla, for the Respondent

Judgement

1. Krishna Foods Private Limited is a factory in which Cookies/biscuits are manufactured. It had started manufacturing activity in the year 1985. After availing infancy protection for the requisite period u/s 16(1)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act" for short), petitioner was liable to be covered under the Act depending upon whether, as from a particular date, the number of employees working therein were 20 or more. By an order dated 28-6-1989 at Annexure-E, and after an enquiry u/s 7-A of the Act, respondent Regional Provident Fund Commissioner held that the petitioner is covered under the Act with effect from 31-3-1988, and that the petitioner is required to implement various provisions of the Scheme under the Act. In this petition under Article 226 of the Constitution, petitioner seeks quashing of the said order at Annexure-E.

2. Petitioner's contention is this.--It had only 16 employees. So far the number of its own employees never came to 20 or above. In passing the order at Annexure-E, respondent has taken into consideration, not only the said 16 employees of the petitioner but also the other employees of M/s. Vijay

Enterprises ("Vijay" for short). Clubbing of the employees of the petitioner and that of Vijay, and thereby concluding that, taking the total number of employees as exceeding 20, petitioner is covered under the Act, as done at Annexure-E, is bad for the reason that firstly that the petitioner has ceased to engage itself in manufacturing activity, and secondly that the entire manufacturing activity in the factory concerned has been taken over by Vijay, firstly under the Agreement dated 4-2-1988, and thereafter under the Agreement dated 16-3-1988, that the petitioner is neither concerned with nor has control over the employees of Vijay for carrying on the said manufacturing activity, and, as such, respondent was in error in taking into consideration the said employees of Vijay along with 16 employees of the petitioner to determine that the number has exceeded 20.

3. As said earlier, petitioner had been engaged in the manufacture of Cookies/biscuits in the factory concerned. Earlier, Voltas Limited used to place orders with the petitioner in respect of manufacture of the said cookies. Not being happy with the uncertainties in respect of the orders being placed by Voltas from time to time, petitioner entered into an agreement with Vijay on 4-2-1986. The overall effect of various terms and conditions of the said agreement is this. Petitioner has found, after running the factory for six months with the orders of Voltas Limited, that it is not in a position to provide continuous employment to all the workmen, and that it is more practical and economical to give the manufacturing activity on contract basis and therefore, it was entering into an agreement with Vijay, the said Vijay specifically being described in the agreement as contractor. The factory is to be handed over to the contractor with effect from 1-4-1986. Petitioner gives on contract the manufacturing activity i.e., manufacturing of cookies in its factory situated at No. 17, Platform Road, Bangalore to the contractor. Petitioner will pay to the contractor the actual expenditure plus five per cent. The contractor will be at liberty to employ as many persons as he wishes and persons of his choice. Petitioner will have no say in that regard. However, apart from keeping in view the security aspect of the matter, the contractor should carry out production as per the instructions of the Company both in respect of quality and quantity, and the petitioner's technical personnel at the factory will keep a check on the quality.

The above said agreement could be understood thus. Petitioner continues to manufacture cookies, but it is unable to provide continuous employment to all its workmen. Therefore, that part of the process in the manufacture of cookies, namely employing of the workmen, is given to the contractor. The contractor shall manufacture cookies of the quality and quantity as specified by the petitioner, for which the contractor would be paid the actual expenditure plus 5 per cent. The product is ultimately of the petitioner. All that the contractor would get is the actual expenditure plus 5 per cent.

4. Petitioner then entered into the next agreement dated 16-3-1988, the terms and conditions of which vary to some extent. Manufacturing activity continued as before, so also the stipulation with regard to the contractor being at liberty to

employ as many employees as he wishes and persons of his choice. Payment, however, is not of actual expenditure plus 5 per cent as before, but it shall be Rs. 1,200/- per metric tonne of goods processed by the contractor. That means, that the factory is of the petitioner, raw materials are of the petitioner, and the ultimate product also is of the petitioner. But the manufacturing process in between, rendering the raw materials into a finished product of cookies, is undertaken by the contractor who has the liberty of employing necessary number of employees and of his choice for the purpose, for which he would be paid Rs. 1,200/- per metric tonne of the processed goods. Whenever the contractor is not processing raw materials of the petitioner for finishing them as cookies, contractor is also at liberty to undertake similar work of other cookie manufacturers in the said factory of the petitioner for which the contractor pays licence fee of Rs. 4,500/- per metric tonne of processed goods.

It is not difficult to conclude even from the latter agreement that, so far as manufacturing of cookies of its own, is concerned, though the manufacturing activity is said to have been transferred to the contractor, petitioner very much retains major aspect of the manufacture, except providing employees to do the job. Factory was of the petitioner, Raw materials were of the petitioner. Finished product was also of the petitioner. All that the contractor had to do was to provide men to do the manufacturing work for which he would be paid Rs. 1,200/- per metric tonne of the finished goods.

5. Sri Gururajan, learned Counsel for the petitioner, urged that the petitioner had no concern at all with the employees brought in by the contractor, nor had he any choice in selecting the personnel. It is true, it is so. But from all other aspects of the activities that were still left to be attended by the petitioner as referred to above, there is no doubt at all that the petitioner did have control over the employees actually working in the factory in the process of manufacturing cookies, inasmuch as the said employees had to do their work to the specifications of the personnel of the petitioner still at the factory, both with regard to quality and quantity. Job of Vijay was only that of a contractor, the description given to Vijay in the two agreements themselves. It is this kind of providing employees by a contractor that Section 2(f) of the Act took care of. The said Section 2(f) inter alia provides that the employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment. Looked at in the background of this definition, those brought in by Vijay were there in the factory working in connection with the work of the establishment, that is manufacturing cookies. They were there employed for wages brought in by the contractor. They were getting their wages, though not directly from the petitioner/employer, but indirectly from the petitioner and through the contractor. The said employees, therefore, were employees within the meaning of Section 2(f) of the Act. Respondent could not be found fault with for including them along with the 16

admitted employees of the petitioner, in concluding that the total number of employees exceeded 20, and, as such, the establishment of the petitioner's factory needed to be covered under the Act.

6. Sri Gururajan, learned Counsel for the petitioner, urged that the contractor himself having liberty of getting employees to work in the petitioner's factory, it would be practically impossible for the petitioner to comply with the provisions of the Act and the Scheme i.e., Employees' Provident Funds Scheme, 1952 ("Scheme" for short), inasmuch as the petitioner will not be in a position to deduct relevant contributions from the wages of the employees. Sri Harikrishna S. Holla, learned Counsel for the respondent, however points to the relevant provisions of the Act and the Scheme which are meant to meet the situation exactly like the present one. Section 8-A(1) of the Act inter alia provides for the employer's contribution as well as employee's contribution, as also the administrative charges in respect of the employees employed by or through the contractor, to be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. Sub-section (2) thereof enables the contractor to recover from the concerned employees, the contribution from the wages payable to the employees by providing that a contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of employees employed by or through him, may recover from such employee, employee's contribution by deduction from the basic wages, dearness allowances and retaining allowances being payable to such employees. Sub-section (3) thereof bars the contractor from recovery of employer's contribution from the wages of the employees brought in by him. Thus Section 8-A of the Act makes it clear that it is primary responsibility of the contractor to collect employee's contribution from the wages of employees, and then add on to it the employer's contribution payable by him, i.e., by the contractor, and then hand it over to the employer like the petitioner herein, to enable the petitioner to comply with the provisions of the Act and the Scheme. Further provisions in this regard in the Scheme lay down further working arrangements. Paragraph 36-B of the Scheme provides that the contractor shall, within seven days of the close of every month, submit to the principal employer, a statement showing the recoveries of the contributions in respect of employees employed by or through him, and shall also furnish all such information as the principal employer is required to furnish under the provisions of the Scheme to the Commissioner. Paragraph 30(2) of the Scheme provides that, in respect of employees employed by or through a contractor, contractor shall recover contribution payable by such employee, and shall pay to the employer the said employee's contribution so deducted, together with the equal amount of contribution called employer's contribution, as also administrative charges. Sub-paragraph (3) of Paragraph 30 then provides that it would be the responsibility of the principal employer to pay both the contributions payable by himself in respect of employees directly employed by him, and in respect of employees employed by or through a contractor, and also

the administrative charges. Thus, so far as employees directly employed by the employer like the petitioner, petitioner would pay the employer's contribution plus employee's contribution recovered from the said employee. So far as the employees brought in by the contractor like Vijay in this case, the said contractor himself would handover to the petitioner, both the employer's contribution payable by the said contractor, and the employee's contribution deducted from the wages of the employees brought in by the contractor, and thereafter, it would be the responsibility of the petitioner to pass on the employer's and employee's contributions to the authority concerned, not only in respect of the petitioner's own employees, but also in respect of the employees brought in by the contractor like Vijay.

7. From the above provisions, it is clear that the contractor, namely Vijay, is under an obligation to continue to contribute the employer's contribution, and then to have the contribution of the employees brought in by Vijay to be collected from out of the wages payable to the said employees, and then to make over the said amount to the petitioner along with a statement under Paragraph 36-B of the Scheme, so that the petitioner, could discharge its responsibility under Paragraph 30 of the Scheme.

8. In the light of the factual position as also the legal position as discussed above, the impugned order at Annexure-E needs to be upheld. Needless to say, this conclusion is confined to determination of the question arising under the Act, and with reference to the provisions of the said Act and the Scheme of 1952.

9. There is no merit in the writ petition and the same is dismissed.