(2009) 05 KL CK 0076

In the High Court Of Kerala

Case No : OP. No. 22711 of 2000 (D)

Lathika. C.		APPELLANT
	Vs	
The Regional Provident Fund Commissioner		RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

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

Citation : (2009) 05 KL CK 0076

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K. Subash Chandra Bose, for the Appellant; P.S. Sreedharan Pillai, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The dispute raised in these two writ petitions is regarding the liability of coverage under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 in respect of an educational institution.

2. From the facts pleaded in these original petitions, it would appear that a school was initially started by M/s. Sree Narayana Charitable Trust in 1987. The trust deed is Ext.P12 in OP No. 31954/2000. It would appear that the position continued until 1995, when following Ext.P4 in OP No. 31954/2000, the school was entrusted to M/s. Sree Narayana Vidya Bhavan Teachers'' Consortium following a decision taken by the committee of the Trust. It is stated that this position continued until 1996, when the management was entrusted to M/s. Sree Narayana Charitable and Educational Society, the Certificate of Registration of which is Ext.P13 in OP No. 31954/2000.

3. It would appear that while so following an inspection in the School, Ext.P5 in OP No. 31954/2000 was issued calling upon the Secretary of the Society, which run the school, to remit the Provident Fund contribution and that was contested, and finally after an enquiry, as contemplated u/s 7A of the Act, Ext.P8 order was

issued by the Commissioner, upholding the coverage in respect of the establishment overruling the contention that the establishment in question was not in existence for more than three years and that the number of employees were less than 20.

4. It would appear that an original petition was filed before this Court challenging the aforesaid order. That original petition was disposed of relegating the parties to pursue the matter in statutory appeal as provided under the Act before the Employees Provident Fund Appellate Tribunal, New Delhi. Accordingly, appeals were filed and those appeals were rejected by a common order, produced as Ext.P10 in OP No. 31954/2000. Based on Ext.P10, liability was ordered to be discharged and at that stage, these original petitions have been filed challenging the aforesaid orders.

5. Pleadings in the original petitions would show that contentions which were urged before the Commissioner and the Appellate Tribunal are reiterated before this Court also. The main contention is that at the time when coverage was ordered, the establishment, namely, M/s. Sree Narayana Charitable and Educational Society had not completed three years of its existence or in other words, the period of infancy protection had not expired. The other contention raised is that at the relevant time, the number of employees of the establishment in question was less than 20.

6. In so far as the infancy protection that is claimed by the petitioners is concerned, it would appear from the records produced in the original petitions that this plea has been raised before the Commissioner during the course of the enquiry and also before the Tribunal. Both the authorities examined the factual aspects and have concurrently held against the petitioners. The commissioner has held that irrespective of change of hands, the establishment essentially is only a continuation of the original one, and therefore, change of name from a Trust to a Society is of no consequence. It is with that conclusion, the Commissioner has held that mere change of place, structure, management or nature of management, whether it is ownership, lease or otherwise will not alter the liability for payment of contribution due under the Act. This plea was reiterated before the Tribunal and has been overruled in Ext.P10 referred to above.

7. Having considered the orders impugned, I am inclined to agree with the conclusions in the orders of the Commissioner and the Tribunal. If I am to accept the plea now raised, that will be allowing the petitioners to get the infancy protection from the date when the society was formed, and thus enable them to avoid the liabilities for the entire past period. On the basis of the factual conclusions that are arrived at by the Commissioner and also the Tribunal, I am inclined to uphold the findings rendered by the authorities.

8. Yet another contention that was raised before the Commissioner and the Tribunal was regarding the number of employees, which according to the

petitioners was below 20 at the relevant point of time. A reading of the orders show that the attendance registers were produced before the authorities and some of the names were found to have been scored off. It is referring to this document and other records, the coverage in that respect also has been upheld. Having considered these findings also, I see no reason to take a view different from what has been taken by the Commissioner and the Tribunal.

These original petitions fail and are accordingly dismissed.