

(2003) 11 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 5892 of 1998

M. Abdul Samad Sahib Sons

APPELLANT

Vs

Presiding Officer, Employees Provident Fund Appellate
Tribunal and Regional Provident Fund Commissioner, Tamil
Nadu and Pondicherry States

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(F), 8A

Citation : (2003) 11 MAD CK 0044

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : Habibullah Basha, for E.S. Govindan, for the Appellant; Vibhishanan, for the Respondent

Judgement

1. The petitioner seeks to challenge the order of the first respondent dated 17.02.1998 in No.S-35011/13(14) 78/452. By the impugned order,

the first respondent has disposed of the petitioner's application which was filed originally u/s 19A of the E.P.F.Act before the Central Government.

The said application was filed on 8.12.1977. The petitioner is a Beedi manufacturer. The second respondent issued a notice dated 2.3.1977 by

allotting a code number in order to cover the employees of the petitioner under the provisions of the E.P.F. Act. The second respondent sought for

such coverage from 31.5.1977. In the application filed u/s 19-A of the E.P.F. Act, the petitioner contended that it does not employ the required

number of employees in its establishment for the purpose of coverage under the Act and that the rolling of Beedis was being carried out through

independent contractors who are employers by themselves and therefore the employees employed through those contractors cannot be construed

as employees of the petitioner in order to seek coverage under the Act.

2. The first respondent Tribunal came to be constituted u/s 7-D of the E.P.F. Act and started functioning with effect from 1.7.1997. Consequent

upon the constitution of the Tribunal by virtue of the provisions of the Act, the application filed u/s 19A got transferred to the file of the first

respondent and that is how the first respondent treated the petitioner's application as an appeal and disposed of the same by the impugned order

dated 17.2.1998.

3. Challenging the said order of the Tribunal, the main contention raised on behalf of the petitioner was on the premise that in the judgment of the

Hon"ble Supreme Court in the case of P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, , a distinction has been shown in

respect of certain independent contractors who treat the workers as their own employees and the employees of such contractors cannot be

brought within the definition of "employee" u/s 2(f) of the Act and in the case of the petitioner also, the different contractors with whom the

petitioner has entered into various agreements were all of such type of Contractors referred to by the Hon"ble Supreme Court and in respect of the

employees of such contractors, no liability can be fastened on the petitioner. In support of the above said submission, reliance was placed upon

paragraph 3 of the above referred to judgment of the Hon"ble Supreme Court which is to the following effect:

3.The petitioners are engaged in the manufacture and sale of beedis. The labour employed in the manufacture of beedis consists of different

categories. At the factory, which constitutes the formal establishment, there is an administrative and clerical staff, accountants, packers, checkers

and bhattimen. The work of rolling the beedis itself is done by one or the other of different categories of workers. The work may be entrusted by

the manufacturers directly to workers who prepare the beedis at home after obtaining a supply of the raw material consisting of tobacco, beedi

leaves and thread from the manufacturers. Another category consists of workers employed by the manufacturers through contractors, and the

manufacturers pass on the raw material to such workers for rolling the beedis in their dwelling houses, and there is, in a sense, a direct relationship

between the manufacturers and those workers. The third category of home

workers are those to whom the work is entrusted by independent contractors who treat the workers as their own employees and get the work done by them either at their own premises or in the dwelling homes of the workers in order to fulfil and complete contracts entered into with the manufacturers for the supply of the finished product from the raw material supplied by the manufacturers to the contractors. According to the manufacturers the home workers attend at the factories within specified hours every day and collect the raw material for taking to their homes for rolling beedis. While that is true of home workers employed directly by the manufacturers or who have been placed in employment through contractors with the manufacturer, in the case of home workers employed by independent contractors that may not be so in the case of home workers who hold a direct relationship with the manufacturers, the rolled beedis are brought by the home workers to the factory and the beedis which conform to the standards envisaged by the manufacturers are accepted while those which do not are rejected. The acceptance or rejection is effected in the presence of the home worker to whom the work was entrusted. The staff at the factory maintains registers in which regular entries are made of the raw material supplied to home workers and of the rolled beedis which are delivered by them at the factory. The payment of wages to such home workers may be made directly or distributed through the contractors engaged by the manufacturers for engaging them. In the case of contracts between the manufacturers and independent contractors, the manufactured product is collected by the contractors from their home workers and delivered to the manufacturer. It is evident that the manufacturer is concerned only with payment under the contract to the contractors and the payment of wages to the home workers is a matter between the contractors and the home workers." (underlining is mine)

4. Mr. Habibullah Basha, learned Senior Counsel appearing for the petitioner stressed on the above highlighted portion of the above referred to judgment and submitted that the Hon'ble Supreme Court has carved out a category of contractors from others in respect of whose employees no liability by way of Provident Fund contribution can be fastened on the petitioner as Principal Employer. According to the learned Senior counsel in the case on hand, the petitioner went before the first respondent with a specific

case to the above said effect and also filed its submission with supporting affidavits of the independent contractors and in the circumstances, when the first respondent himself has reached a conclusion on this aspect to the effect that it is a question of fact as to who is the independent contractor, in all fairness, either the first respondent should have decided that issue in detail by rendering a specific finding or should have relegated the said function to the second respondent while directing the second respondent to determine the contribution payable. Learned Senior counsel therefore contended that the impugned order is liable to be set aside and either the first respondent himself or there should be a direction to the second respondent to decide the said question, after giving due opportunity to the petitioner.

5. As against the above said submission, Mr.Vibishanan, learned counsel appearing for the respondents would contend that the submission made on behalf of the petitioner does not merit any consideration. According to the learned counsel Section 2(f) of the Act read along with Section 8A of the Employees Provident Fund and paragraphs 30, 32, 36-B and 38 of the Employees Provident Fund Scheme would show that the petitioner as Principal Employer was squarely responsible in respect of the employees of any type of contractors and even if the contractors had been allotted a separate code number that by itself would not avoid the coverage and the contribution in respect of the employees employed by different contractors. Learned counsel would therefore, contend that based on the case pleaded before the first respondent, when the decision came to be rendered by the impugned order by holding that the petitioners are liable to meet the contribution payable in respect of the employees of its contractors, the only question that remains to be considered is as to whether at all the contributions have been duly paid by the respective contractors in respect of the employees employed by them or any more contributions are to be determined in respect of those employees.

6. Having heard the learned counsel for the respective parties, I find that u/s 2(f) of the E.P.F. Act, "employee" has been defined "to mean 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 who gets his wages directly or indirectly from the employer and includes any person,--

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii)

Under Section 8A the second respondent has been empowered to recover the amount of contribution both employer as well as employees paid or

payable by an employer in respect of an employee employed by or through a contractor from the Principal Employer. Again as pointed out by the

learned counsel for the respondent, under paragraphs 30, 32, 36-B and 38 it has been specifically provided that the primary responsibility was on

the Principal Employer in the first instance to pay the contribution by himself in respect of any employee employed on his behalf either directly or

through a contractor. It is also provided that every contractor, within seven days of the close of every month, should submit to the principal

employer a statement showing the recoveries of contributions in respect of the employees employed by or through him and shall also furnish such

information as the principal employer is required to furnish under the provisions of the Scheme to the second respondent.

7. Therefore, a reading of the provisions of the E.P.F. Act and the scheme framed thereunder, makes it clear that it will have to ensure that the

coverage of the employees either employed directly by the principal employer or through any contractor and that the contributions are duly

recovered and paid along with the employer's contribution to the second respondent. It will have to be born in mind that it is a welfare legislation

meant for the benefit of the employees concerned and therefore, every attempt should be made to ensure that the purport of the enactment is not

defeated by resorting to any unfair means to deprive the benefit of Provident Fund to the employees concerned.

8. With the above view in mind, if the case on hand is scrutinized, the contention of the petitioner is that the various contractors engaged by them

are all independent employers themselves having their own employees on their rolls who are also covered independently under the provisions of the

Act and therefore, the petitioner should not be in any way roped in in respect of the employees employed by such contractors in regard to the

payment of contributions payable under the provisions of the E.P.F. Act. It is true that in the judgment of the Hon'ble Supreme Court, the third

category of home workers employed by such independent contractors have been referred to. But, if the judgment of the Hon''ble Supreme Court is closely read in full, it can be seen that the Hon''ble Supreme Court was concerned with the case of a Beedi manufacturer in respect of whom claim came to be made at the instance of the Provident Fund Organisation to cover the home workers who were directly reporting to the said manufacturer. While dealing with the said fact situation, the Hon''ble Supreme Court ultimately held that such home workers, who were engaged in the manufacture of beedis in their respective homes cannot be held to be not coming within the definition of "employee" as defined u/s 2(f) of the Act and that the crucial test viz., the right of the manufacturer to reject the ultimate product of beedis manufactured by such home workers would be sufficient enough to bring those home workers within the definition in order to confirm coverage of such employees as employees of the said Beedi manufacturer. Significantly no case of a manufacturer of the type viz., the third category referred to in para 3 of the said judgment was really dealt with in the said judgment in order to straight away reach a conclusion that such third category of contractors if they exist in any Beedi manufacturing establishment could be differently dealt with while applying the definition of "employee" as defined u/s 2(f) of the Act and the responsibility of the beedi manufacturer as a principal employer can be excluded from the purview of the Act, leaving it to the discretion of such contractors themselves with regard to coverage of such employees employed by them. I am unable to accept such submission put forth by the petitioner by relying the judgment of the Honourable Supreme Court referred to above. On the other hand, going by the definition of Section 2(f) read along with other provisions of the E.P.F. Act, it can be straight away held that irrespective of the nature of terms between the petitioner and its contractors so long as the contractors engaged by the petitioner are involved in the manufacture of beedis to be supplied to the petitioner that single circumstance would bring within its fold all employees employed by all such contractors of the petitioner to be duly covered u/s 2(f) of the Act and consequential provisions relating to payment of contributions set out under the provisions of the Act. Therefore, any kind of stress on the stray observation made by the first respondent in the order impugned in the writ petition will be of no avail to the petitioner in order to reopen the

issue once over again to be agitated before any other Forum. 9.I am convinced that the petitioner as principal employer is squarely responsible to ensure that contributions in respect of the employees directly employed by it as well as employed through its contractors are to be purely accounted for and deposited with the second respondent without any deviation. When once I reach the above said conclusion, the other question to be considered is only to what extent the remittal ordered by the first respondent in the impugned order to be carried out by the second respondent is to be made. Having regard to the conclusion reached as regards liability of the petitioner to ensure payment of contributions, in respect of the employees employed by its contractors, it will have to be held that before the second respondent it will be open for the petitioner to place necessary materials to satisfy the second respondent that all its contractors whether they have been issued with independent code numbers or not, have duly paid their contributions both employer as well as employees in respect of the employees employed by them right from 31.5.1977 till this date and continue to pay for the future period also. In the event of the petitioner satisfactorily establishing before the second respondent that the contributions had been duly paid by its contractors, the second respondent should give due credit to such payments and can only look upon the petitioner for whatever balance that may be due and payable by the petitioner from the records produced by the petitioner. 10.For carrying out the above said exercise, the second respondent shall issue due notice to the petitioner giving sufficient time for the petitioner to produce the materials to establish its stand as regards payment of contributions for the employees of the contractor. The writ petition is disposed of confirming the order of the first respondent and issuing directions in regard to the determination of contribution to be made by the second respondent in the manner set out above.