
(2012) 03 MAD CK 0181

In the Madras High Court

Case No : Writ Petition No. 25666 of 2011 and M.P. No. 1 of 2011

Management of Infosys BPO Limited

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17(b), 17A, 17B, 2(b), 6

Citation : (2012) 4 LLJ 751

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Karthik for T.S. Gopalan and Co, for the Appellant; J. Sathyanarayana Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Management of Infosys BPO Limited has invoked the extraordinary equitable jurisdiction of this Court with a prayer for issuance of a writ in the nature of certiorari, for quashing the order dated October 10, 2011 declining to transfer Provident Fund accumulations of PAN Financial Shared Services India Pvt. Ltd. from the Code No. 53078 to the petitioners Account No. KN/BN/34177 for want of proper account of the actual contribution and due remittance. In the year 2004, a Captive Financial BPO was created as a Division of Philips Electronics India Limited, with its location at Chennai. The eligible employees were covered under the Company's Provident Fund Code No. Mumbai MH 5105.

2. In July 2007, the Captive Financial BPO Company was incorporated as a Private Limited Company under the name of "PAN Financial Shared Services India Private Limited" with its Registered Office at No. 184-187, Block 2, 6th and 7th Floor, Temple Towers, Anna Salai, Saidapet, Chennai 600 015. In view of the incorporation of the Company, a separate code number, i.e. TN/53078 was allotted and the contribution of eligible employees were transferred to the new

Code number.

3. In April 2008, PAN Financial Shared Services India Private Limited was merged with Infosys BPO Limited, Bangalore under the Scheme of Amalgamation sanctioned by this Court and the Hon'ble High Court of Karnataka. The transferee Company, i.e. Infosys BPO Limited is having separate PF Code No. KN/BN/34177, and as per the Scheme of merger, the contribution of eligible employees are to be remitted only under the Code No. KN/BN/34177 allotted to Infosys BPO Ltd.

4. In view of the merger of PAN Financial Shared Services India Private Limited with Infosys BPO Ltd., a letter was addressed to the Regional Provident Fund Commissioner, Chennai for transfer of accumulations of the members of the establishment having Code No. TN/53078 to Infosys BPO Ltd., Bangalore having Code No. KN/BN/34177 maintained by the Regional Provident Fund Commissioner, Bangalore.

5. The Respondent No. 1 failed to take any action on the request made by the petitioner which resulted in inconvenience to the members who left services after April 1, 2009 as they were not able to withdraw the accumulations nor get it transferred to the establishment where they were employed subsequently.

6. The reason for non transfer of the account as disclosed by the Respondent No. 1 is that a notice dated October 6, 2008 u/s 7(a) of Employees Provident Fund Act was issued to PAN Financial Shared Services India Private Limited, claiming contribution on the remuneration paid to employee for the period April 1, 2008 to August 1, 2008. The petitioner therefore, filed W.P. No. 9386 of 2009 to furnish the Inspection Report.

7. In the counter filed to the writ petition, stand was taken that no enquiry was initiated on the Inspection Report. The writ petition was accordingly dismissed on January 20, 2011.

8. On May 30, 2011, a notice for enquiry was issued to the petitioner, and the matter was posted for personal hearing on June 27, 2011. On the date fixed for hearing, a copy of the information dated November 18, 2008 was furnished to the petitioner showing the difference in contribution payable on a wage of Rs. 6,500/- in respect of eligible employees and the contribution actually paid. The direction was also issued by the first respondent to deposit the said amount.

9. The case of the petitioner is that at the time of hearing, it was informed to the petitioner that the contribution can only be transferred after the demanded amount is remitted with the respondent.

10. The petitioner was also informed with the details of contribution payable for the period October 2007 to January 2009. The petitioner filed detailed objection to the claim of additional remuneration as demanded by the respondent, it was submitted that it was open to the authorities to pass a quasi judicial order u/s 7-A of the EPF Act, so as to enable the petitioner to avail their statutory remedy to

challenge the decision in accordance with law. It was also submitted by the petitioner that this should not come in the way of transfer of contribution, to new account, being in the interest of the employees.

11. The Inspector of the respondent office thereafter visited the petitioner establishment, and issued a notice directing the petitioner to furnish records for the period October 2007 to March 31, 2009 and also to remit the contribution of Rs. 3,49,587/- (Rupees three lakhs forty nine thousand five hundred and eighty seven only).

12. The stand of the petitioner is that particulars of employee members who were covered under EPF Act and wages and contribution paid for the period covered by the notice u/s 7A of EPF Act were already furnished to the respondent. Therefore, it was stated that no contribution was payable, and it was open to the respondent to pass appropriate order.

13. The petitioner has undertaken that it shall not question the jurisdiction of the first respondent in 7A proceedings even after transfer of accumulations to the Code number of Infosys BPO Ltd. Management with the third respondent. The petitioner also given an "undertaking that it was willing to face any proceedings which may be initiated by the Respondent No. 3 with regard to the contribution.

14. In spite of the positive stand of the petitioner, the respondents failed to transfer the accumulations to the new code number and therefore, Respondent No. 3 acted against the interest of the employees, the beneficiaries of the Provident Fund as they could not avail monetary benefits due under the E.P.F.

15. The submission of the petitioner is that inspite of the fact that no order u/s 7-A of the E.P.F. Act has been passed, the Respondent No. 1 is insisting on deposit of Rs. 3,49,587/- (Rupees three lakhs forty nine thousand five hundred and eighty seven only) for the period October 1997 to January 2009, as a condition precedent to transfer the accumulations, though the amount claimed as contribution is disputed.

16. The petitioner filed W.P. No. 17441 of 2011 with the prayer for issuance of a writ in the nature of mandamus, directing the first respondent to transfer the accumulations from the Code No. TN/53078 under the control of the first respondent to Code No. KN/BN/34177 under the control of the third respondent.

17. The writ petition was again dismissed with the direction to the respondents to take final decision on the representation filed by the petitioner.

18. The operative part of the order reads as under:

3. In the light of the stand taken by the respondents, it is unnecessary to grant any direction at this stage. It is suffice that the petitioner's representation dated April 16, 2009 is yet to be answered by the respondents. Unless and until the petitioner is clearly given an answer, the petitioner cannot seek for a direction through this Court for transfer of the accumulations from the 1st respondent to

the 3rd respondent. A copy of the said representation addressed to the 1st respondent is found enclosed in pages 30 and 31 of the typed set. It is suffice that the 1st respondent is directed to pass appropriate orders on the representation of the petitioner dated April 16, 2009 in accordance with law and communicate the result to the petitioner. The said exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of this order. Depending upon the outcome of the said communication, the petitioner can work out their rights. With this observation, the Writ petition stands dismissed. No costs. The connected miscellaneous petition is closed.

19. It is in pursuance to the direction issued by this Court, the impugned order was passed which reads as under:

Employment Provident Fund Organisation Ministry of Labour and Employment,
Govt. of India

37, Royapettah High Road, Chennai 600 014.

CCI4/TN/53078/ENF/REGL/2011 Dated October 10, 2011

To

Infosys BPO Ltd.,

(Formerly Pan Financial Shared Services P. Ltd.)

Plot No. 26/3/26/4 & 26/6, Hosur Road,

Electronic City, Bangaluru 560 100.

Sir,

Sub: Employees' Provident Funds and Miscellaneous Provisions Act, 1952
Transfer of P.F. Accumulation from Pan Financial Shared Services India P. Ltd.
(TN/53078) to Infosys BPO Ltd. (KN/BN/34177) Reg.

Ref: Establishment's letter dated April 16, 2009 and letter dated June 27, 2011
(received on 4.7.2011)

With reference to the letters cited, it is informed that the establishment Pan Financial Shared Services (India) Pvt. Ltd., Chennai 15 (TN/53078) has defaulted in the payment of Provident Fund dues on the Basic Wages as per Section 2(b) of the Act read with Section 6 of the same Act. The dues on the escaped wages for the period from October, 2007 to January, 2009 had already been arrived at by the Enforcement officer and the same was also handed over to the representative of the establishment on June 27, 2011, as per their request on the personal hearing afforded subsequent to the dismissal of the Hon'ble High Court of Madras in W.P.No. 9386 of 2009 and in response to the letter dated June 7, 2011 received from the establishment. The establishment was also directed to arrive at the dues on the same Act. The dues on the escaped wages for the period from October, 2007 to January, 2009 had already been arrived at by the

Enforcement Officer and the same was also handed over to the representative of the establishment on June 27, 2011, as their request on the personal hearing afforded subsequent to the dismissal of the Hon'ble High Court of Madras in W.P.No. 9386 of 2009 and in response to the letter dated June 7, 2011 received from the establishment. The establishment was also directed to arrive at the dues on the same analogy for the applicable periods and remit, which the establishment is yet to comply.

The transfer of the accumulations can be effected on the complete remittance of the above dues by the establishment, as otherwise the transfer will be ONLY for part of the dues rather than complete dues, which is not in the best interest of the subscribers involved. Accordingly, you are advised to remit the balance dues and forward the transfer applications at the earliest, to serve the due justice to the subscribers.

Under the circumstances, the request of the establishment to transfer the Provident Fund accumulation of Pan Financial Shared Services India P. Ltd. TN/53078) to Infosys BPO Ltd. (KN/BN/34177) can be effected only on the proper accounting of the actual contributions to the accounts of the member, after due remittance.

(This issue with the approval of RPFC-II(C&R)

Yours faithfully,

Asst. P.F. Commissioner (C&R)

20. The writ petition is contested by the respondents by filing counter, wherein stand taken is that the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) provides social security to the employees working in establishment engaging 20 or more persons on any day. It provides for compulsory deduction of Provident Fund from employees and a contribution from the employer which is deposited in the worker's account in the EPF office. It provides for insurance and pensionary benefits to the; employees.

21. The contributions are required to be deposited by 15th of next month in which the employee has worked and if failed to deposit the legitimate dues of workers, it is open to the respondents to proceed u/s 7A of the Act to initiate recovery and to compel the employer to deposit the legitimate dues of the workers by way of quasi judicial process.

22. The stand of the respondents is that when the letter for transfer of accumulations was received, enquiry u/s 7A of the Act was pending with regard to the default in payment of Provident Fund on the Basic Wages as per Section 2(b) of the Act but the proceedings were suspended due to pendency of the writ petition in this Court.

23. The stand of the respondent is that Enforcement officer has informed that liability of the petitioner is to the tune of Rs. 3,49,587/- (Rupees three lakhs

forty nine thousand five hundred and eighty seven only) for the period October, 2007 to January, 2009. The petitioner was also asked to furnish information about splitting of wages for taking decision u/s 7-A of the Act.

24. The case of the petitioner is that while the proceedings were under process, the petitioner again approached this Court, and the direction was issued to pass orders on the representation filed by the petitioner. It was in pursuance to the order passed by this Court, the impugned order has been passed.

25. The only stand taken by the respondents is that accumulations cannot be transferred to the new account till the enquiry is completed and demanded amount is deposited.

26. The learned counsel for the petitioner vehemently contended that the amount claimed is not payable, in view of the definition of Basic pay under the Act, which excludes from the basic pay, the cash value of any food concession; any Dearness Allowance, House Rent Allowance, Overtime Allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.

27. This question cannot be gone into at this stage, as it will be for the authorities under the Act to take final decision in the enquiry initiated u/s 7-A of the Act.

28. The learned counsel for the petitioner referred to Section 17-A of the Act which deals with transfer of account which stipulates that where an employee, employed in an establishment to which this Act applies, leaves its employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation that Provident Fund permit such transfer.

29. Where an employee is re-employed in another establishment to which this Act applies, then the amount of accumulations to the credit of such employment in the Provident Fund of the establishment left by him if so desires by the employee and the rules in relation to such Provident Fund permits, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

30. The contention of the learned counsel for the petitioner was that once PAN Financial Shared Services India Private Limited stood merged with Infosys BPO Ltd. as per the scheme of merger where the assets and liabilities have been transferred, it is the statutory obligation of the respondents to transfer the accumulations u/s 17-A of the Act, as the petitioner is also covered under the Act.

31. The reference is also made to Section 17-B of the Act which deals with

transfer of establishment in whole or in part which stipulates that when an establishment is transferred, the employer and the person to whom establishment is so transferred is jointly and severally be liable to pay contribution and other sums due from the employer under any provision of this Act or the scheme. The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. There can be no dispute in this aspect. The whole of the liability towards contribution would be that of the petitioner u/s 17(b) of the Act.

32. Therefore, I find force in the contentions of the learned counsel for the petitioner, that there is no justification on the part of the respondent not to transfer the accumulations to the new account, as the liability of the petitioner to pay the contribution as per the order passed u/s 17-A of the Act will not be taken away merely on account of transfer of accumulations as the Act applies to Infosys BPO Limited.

33. The impugned order otherwise also cannot be sustained in law, as it is against the very object of the Act. The Act is to provide social security to the employees working in establishment and by non transfer of accumulations, the sufferers are the employees who are entitled to take benefits of the provident fund standing in the name for want of transfer of accumulations.

34. This is more so, in view of the clear undertaking given by the petitioner that it shall not challenge the jurisdiction of the Respondent No. 1 to proceed with u/s 7-A of the Act. Therefore, no prejudice is likely to be caused to the Respondent No. 1, if the accumulations are transferred to the Code allotted to the petitioner in view of the scheme of amalgamation.

35. It is not disputed that till date, there is no enforceable order passed u/s 7-A of the Act which could entitle the respondent to withhold the accumulations as in case any order is passed against the petitioner, no prejudice is likely to be caused to the Respondent No. 1, as the liability fixed can be passed on the petitioner in terms of Section 17-B of the Act.

36. The impugned order therefore, can be safely said to be totally arbitrary being in violation of statutory provisions of law.

37. Consequently, this writ petition is allowed. The impugned order is set aside. Writ in the nature of mandamus is issued directing the respondent to transfer accumulations from TN/53078 to Code No. KN/BN/34177. In order to settle equities, it is ordered that the petitioner shall furnish surety for deposit of the contribution found finally due u/s 7-A of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

No cost. Connected Miscellaneous Petition is closed.