

(1987) 02 KAR CK 0020
In the Karnataka High Court
Case No : W.P. No. 496 of 1987

M/s. Circle Restaurant

APPELLANT

Vs

Regional Provident Fund Commissioner, Bangalore.

RESPONDENT

Date of Decision : 02-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 1 KarLJ 131

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj, Urs, J.-This is a petition by the owner of Circle Restaurant, Channagiri Road, Bhadravathi directed against the order made by the Regional Provident Fund Commissioner in Karnataka under Sec. 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the Act).

2. The case for the department was that the Circle Restaurant, Bhadravathi, was brought under the provisions of the Act on the basis of the recommendations of the squad of Inspectors who had inspected the premises. The present petitioner furnished a declaration in the prescribed form. A perusal of the report of the inspectors as well as the declaration filed by the proprietor, it was clear that the restaurant was covered by the Act. Despite the advise given by the department, the employer ignored and the provident fund Inspector was compelled to file a criminal complaint for non-submission of statutory returns. The prosecution was launched in the Court of the Additional Munsiff and J.M.F.C., Bhadravathi. The petitioner, however came to be acquitted in those proceedings.

3. It was in that circumstance that the enquiry was commenced under Sec. 7A of the Act. On 22-1-1985 the petitioner acknowledged the notice issued by the Provident Fund Commissioner but remained absent except for sending a telegram followed by a letter stating that the Act is not applicable to him or his establishment as the employment strength of the establishment was only 9 and not 20. The telegram and the letter was accompanied by a xerox copy of the

registration certificate issued by the Labour Inspector in support of that contention. Therefore, it was considered proper by the Provident Fund Commissioner that employer should be heard in person and also to examine the departmental witnesses. In that view of the matter, he adjourned the case to 20-2-1985 at Shimoga to facilitate the employer to attend the enquiry with all the documents in support of his contention. The employer chose to ignore the notice though the venue fixed for enquiry was only 11 miles sway from Bhadravathi. The case was once again adjourned to 28-3-1985 and then to 3-7-1985 and finally to 21-7-1986. On none of those dates the petitioner chose to attend the enquiry. He kept on repeating his stand that his employment strength was only 9 and that the Act was therefore not applicable to his establishment. He refused to co-operate with the field officers when they visited his establishment. He refused production of records on the plea that the same were with the auditors when the Inspectors visited his establishment. It was in that circumstance the enquiry was conducted ex-parte.

4. In the course of his order the Provident Fund Commissioner has observed as follows:

"The employment strength at the crucial point of time was 20 as verified by the Enforcement Officers and admitted by the employer in writing. The employer put forth one excuse after another to evade production of records."

Taking into consideration all the factors including the fact that the establishment had changed its name and the nature of ownership from proprietorship to partnership etc in order to evade the liability under the Act, the Provident Fund Commissioner made the order holding that the Act was applicable and therefore the petitioner should remit the amounts determined as employer's contribution in the sum of Rs. 2551-80. Aggrieved by the same, the petitioner contending inter alia that he deserved once again to chance to adduce evidence that he is not covered by the Act and therefore the order is not enforceable against him, has preyed for quashing the order.

5. The contention is a very strange contention It was brought to my notice that in an earlier judgment of this Court a learned single Judge in some-what similar circumstances had directed a fresh enquiry after setting aside the order. On hearing the decision read by the learned Counsel, I do not agree that the facts are so similar as to warrant the same conclusion in this case also. That case is not a precedence which I should follow. The facts are wholly dissimilar. There, service of notice was in doubt and it was in fact established that the notice had been served on the wrong person. Here it is not the case. The notice has been served on the petitioner but he chose to remain absent when the enquiry was conducted under Sec. 74 of the Act. That conduct is not something which this Court has to ignore under Art. 226 of the Constitution.

6. The next argument is that this Court may look into the merits of the case. That also does not induce me to do so as no material is placed before the

enquiring authority. This Court in such circumstances cannot act as Court of first appeal and receive for the first time the evidence to support the contention of a party who refused to appear before the statutory authority and thereafter give him the relief which he claims.

7. This is not a fit case in which this Court should exercise its discretionary jurisdiction under Art. 226 of the Constitution.

8. The petition is misconceived and it is rejected.

Writ Petition is rejected