

**(2014) 05 KAR CK 0045**

**In the Karnataka High Court**

**Case No : Writ Appeal No. 5694 of 2012 (L-PF)**

M/s. Hotel Roopa A Registered Partnership Firm Balmatta  
Road Mangalore

**APPELLANT**

**Vs**

The Employees Provident Fund Appellate Tribunal and the  
Assistant Provident Fund Commissioner Epf Organization Sub-  
Regional Office

**RESPONDENT**

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**Date of Decision : 13-05-2014**

**Acts Referred:**

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

**Citation : (2014) 3 KarLJ 621**

**Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J**

**Bench : Division Bench**

**Advocate : Pundikai Ishwara Bhat, Advocate for the Appellant; Harikrishna S. Holla, Advocate for R1 and R2, Advocate for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Pradeep D. Waingankar, J.—This Writ Appeal is filed questioning the validity and correctness of order dated 03.07.2012 passed by the learned Single Judge in Writ Petition No. 4898/2007.

2. The appellant-M/s. Hotel Roopa is the Registered Partnership Firm represented by its Managing Partner, running a hotel in Mangalore. The squad led by respondent No. 2-the Assistant Provident Fund Commissioner inspected the establishment on 06.09.2000 and found that in all more than 20 persons were working in the hotel from September 1998 onwards. So, a Coverage Memo was issued to the Managing Partner of the appellant-M/s. Hotel Roopa on 15.09.2000 under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act"). A reply was given to Coverage Memo denying that more than 20 persons were working which led to initiation of proceedings u/s 7A of the Act by the respondent No. 2-the Assistant Provident Fund Commissioner, who in turn conducted an enquiry and held that in all 21

persons have been working in the hotel. The appellant was called upon to pay the PF contributions in respect of 21 employees for the period September 1998 April 2001 amounting to Rs. 1,91,771.20/- by an order passed by respondent No. 2.

3. Aggrieved by the order passed by the respondent No. 2, the appellant preferred an appeal in ATA No. 709(6)/2001 before Employees Provident Fund Appellate Tribunal, New Delhi. On merits, the appeal came to be dismissed by order dated 25.01.2007. Against the dismissal of the appeal by the Appellate Authority, the appellant filed Writ Petition No. 4898/2007, which came to be dismissed by order 03.07.2012 by the learned Single Judge. Challenging the order of dismissal of the Writ Petition by the learned Single Judge, this appeal is filed on the ground that the Assistant Provident Fund Commissioner-respondent No. 2 and the Employees Provident Fund Appellate Tribunal-respondent No. 1 have wrongly come to the conclusion that in all more than 20 employees were working in the hotel which is without any basis. It is also contended that the respondent No. 2-Assistant Provident Fund Commissioner and the respondent No. 1-Appellate Authority have not given proper opportunity to the appellant to put forth their case and the learned Single Judge without assigning proper reasons dismissed the Writ Petition while ratifying the order passed by the respondent Nos. 1 and 2.

4. We have heard both the learned counsel appearing for the appellant and the respondent Nos. 1 and 2. Perused the entire material placed on record and the impugned order passed by the learned Single Judge in a Writ Petition.

5. The learned counsel appearing for the appellant would submit that though less than 20 persons are working in the hotel the Assistant Provident Fund Commissioner respondent No. 2 and the Appellate Authority respondent No. 1 have wrongly held that there are in all more than 20 employees working in the hotel and that the appellant is due to pay a sum of Rs. 1,91,771.20/- towards their PF contribution. The learned counsel would further submit that no proper opportunity has been given to the appellant to put forth their case and thereby the impugned order passed by the respondent Nos. 1 and 2 and also by the learned Single Judge in Writ Petition No. 4898/2007 have led to miscarriage of justice and hence, the learned counsel sought to set aside the order and remand the matter to the Original Authority for reconsideration.

6. The learned counsel appearing for respondent Nos. 1 and 2 would contend that after closer scrutiny of all the relevant documents maintained by the appellant such as Muster Register, Wage Slips, Attendance Register pertaining to 21 employees and the documents" relating to disbursement of the salary which were seized by the squad during inspection, the respondent Nos. 1 and 2 have rightly come to the conclusion that in all 21 persons were working in the hotel and that the appellant failed to pay the provident fund to these employees and thereby the appellant has contravened the provisions of the Act. Further, learned counsel would contend that the learned Single Judge upon going through the

order passed by the respondent Nos. 1 and 2 has rightly dismissed the Writ Petition holding that the Writ Petition is devoid of merits. Hence, the learned counsel has sought for dismissal of the appeal.

7. The perusal of the order passed by the respondent Nos. 1 and 2 and the order passed by the learned Single Judge in Writ Petition No. 4898/2007, it is evident that the squad headed by the respondent No. 2-Assistant Provident Fund Commissioner inspected the hotel premises of the appellant and went through all the relevant documents maintained by the appellant-Establishment such as Wage Register, Muster Register, Wage Slips, Attendance Register and the document pertaining to the disbursement of salary and found that in all 21 persons were working with the appellant in the hotel since many years and as such, having employed more than 20 persons the appellant is liable to implement the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the schemes framed thereunder with effect from September 1998. The appellant failed to implement the provisions of the Act. As such, the respondent No. 2 initiated proceedings u/s 7A of Employees Provident Fund and Miscellaneous Provisions Act, 1952 against the appellant. The appellant denied that there were 21 persons working in the hotel. To that effect, the appellant filed a statement of objections before the respondent No. 2, who in turn conducted an enquiry and held that more than 21 persons were working in the hotel and thereby, by an order dated 16.10.2001 directed the appellant to pay a sum of Rs. 1,91,771.20/- as dues from the appellant towards provident fund payable to the workers for the period from September 1998 to April 2001. The appeal filed by the appellant before the Appellate Authority against the order passed by the respondent No. 2 also came to be dismissed on merits by a detailed considered order. The appellant preferred Writ Petition No. 4898/2007 before the learned Single Judge which also came to be dismissed. The learned Single Judge formulated the following points for consideration:

1. Whether the records seized by the department are true records of establishment or false and fabricated as alleged by the employer.
2. Whether Sri. Govind Rao is the manager of the establishment.
3. Whether the list of employees submitted by the manager was obtained under coercion or under influence.

8. The learned Single Judge answered the above points based on the oral and documentary evidence placed on record by both the parties. Moreover, all the records produced on behalf of the department were the records seized from the appellant at the time of inspection of the premises. The oral evidence of one Govinda Rao examined on behalf of the appellant before the respondent No. 2 during the enquiry has been rejected by the learned Single Judge by assigning the proper reasons as he spoke quite contrary to the records that were seized from the premises of the appellant at the time of the inspection. The plea of the appellant that all those records have been fabricated by the department is also

rightly rejected by the learned Single Judge for the reason that the Managing Partner vide his letter dated 14.11.2000 has categorically admitted that all the records produced in the case were seized by the department during the search conducted on 6.09.2000. Yet another contention taken by the appellant that no proper opportunity has been given to the appellant to put forth his defence before the respondent-Authority is also not accepted by the learned Single Judge as the learned Single Judge found that ample opportunity has been given to the appellant and after hearing the counsel for both the parties, the Writ Petition came to be dismissed. The finding of the respondent No. 2 that in all 21 persons have been working with the appellant is based on the registers, pay slips and other documents maintained by the appellant. It is impossible to believe the contention of the appellant that more than 21 persons were not at all working in the hotel at any point of time. The said contention is contrary to the evidence placed on record and as such, it has been rightly rejected by respondent Nos. 1 and 2 and by the learned Single Judge in the Writ Petition. The Appellate Authority in its order has given in detail the strength of the employees working in the hotel right from the month of September 1998 to August 2000. The strength is always more than 20 employees. Even then, the appellant having failed to implement the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the schemes framed thereunder has contravened the provisions of the Act, which resulted in directing the appellant to pay a sum of Rs. 1,91,771.20/- towards Employees Provident Fund. We do not find any error committed by the learned Single Judge while dismissing the Writ Petition. The appeal is devoid of merits. Hence, we proceed to pass the following order.

The appeal is dismissed.