

(2018) 04 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : OWP Nos. 1179, 1025, 1689, 584, 597, 522, 1812, 566, 1501, 1877, 1379, 1390, 1570, 1543, 1712, 1186, 479, 1772, 1263, 222, 1220, 409, 810, 598, 1499, 958, 771, 269, 1541, 1493, 258, 1676, 1569, 1834, 328, 416 OF 20161020, 1467, 660, 1581, 894, 1870, 142

M/S K.K.CONSTRUCTION CORPORATION

APPELLANT

Vs

UNION OF INDIA AND ORS

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Citation : (2018) 04 J&K CK 0038

Hon'ble Judges : ALOK ARADHE

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1.. In this bunch of writ petitions, the core issue which arises for consideration is with regard to applicability of provisions of Employees Provident

Fund Act, 1952 to the State of Jammu and Kashmir. The factual backdrop in which the aforesaid controversy arises needs mention of few relevant

facts. For the facility of reference, facts from OWP No. 1501/2016 are being referred to.

2. The petitioners in OWP No. 1501/2016 as well as other connected writ petitions are the registered MES Contractors based in the State of Jammu

and Kashmir. It is averred in the writ petition that they have been executing the works allotted to them successfully, however, the respondent No. 2

namely Secretary to Ministry of Labour and Employment, Government of India, issued a circular dated 15.07.2015, the relevant extract of which reads

as under:-

â??With the intervention of the concerned Ministry/Agency awarding the work it

can be ensured that all such construction workers do get their entitled social security benefits. It is, therefore, requested that instructions may be given to the appropriate authorities in respect of the following:-

A. While awarding various contracts, it should be ensured that the contractors shall have Provident Fund Code Number and also a condition be

included in the NIT that any sub contractor engaged should also have Provident Fund Code.

B. The contract conditions should stipulate that all the workers deployed by contractors or sub contractors are enrolled as members of Provident Fund and should be given the Universal Account Number (UAN).

C. While clearing the bills of such contractor, certificates be obtained that all workers employing directly or indirectly by him are registered for EPF and the due contributions have been credited into their account.â???Â

3. From the perusal of the circular, it is evident that in the aforesaid circular a clear distinction has been made between the agency and the contractor.

It is the case of the petitioners that the contractors who are registered with MES are based in the State of Jammu and Kashmir and are not liable to

provide a Provident Fund Code in terms of the aforesaid circular, as the aforesaid circular has been issued under the provisions of Employees

Provident Fund Act, 1952, which is a Central Enactment and does not apply to the State of Jammu and Kashmir, as the State is governed by the

provisions of J&K Employees Provident Funds (And Miscellaneous Provisions) Act, 1961.

4. In pursuance of the aforesaid circular, the respondent No. 5 issued an order dated 06.11.2015, by which it was directed that during the evaluation of

etendering, uploading of copy of Provident Fund Code Number in addition to other documents required shall be mandatory. It was further provided

that in case the Provident Fund Code Number is not mentioned, the technical bid shall be rejected and the financial bid shall not be opened. It was

further submitted that on receipt of the aforesaid order, the petitioners in OWP No. 1501/2016 had submitted a representation to the office of

Provident Fund Commissioner, Jammu, however, they were informed that there is no such scheme under the J&K Employees Provident Funds (And

Miscellaneous Provisions) Act, 1961 for issuance of Universal Account Numbers to the subscribers, who are employed by the petitioners for

execution of various contract works. In the aforesaid factual background, the petitioners have approached this Court.Â

5. Learned senior counsel for the petitioners as well as counsels appearing in other connected matters have submitted that the circular dated

15.07.2015 and the consequent instructions dated 06.11.2015 do not apply in the case of the petitioners, as the petitioners are the registered

contractors based in the State of Jammu and Kashmir and are governed by the provisions of J&K Employees Provident Funds (And Miscellaneous

Provisions) Act, 1961 and the schemes framed there under. It is also pointed out that under the aforesaid scheme there is no provision for providing

Universal Account Numbers. In this connection, learned senior counsel for the petitioners has invited the attention of this court to letter No. PFC/1694,

dated 25.01.2016Â issued from the office of the Provident Fund Commissioner, Jammu, in which it is stated that the Universal Accounts Numbers as

is issued by Central Fund Organization to its subscribers has not been adopted by the Jammu and Kashmir Government, as in the State of Jammu and

Kashmir, there is a separate legislation, namely J&K Employees Provident Funds (And Miscellaneous Provisions) Act, 1961 and, therefore, the

technical bids of the petitioners cannot be rejected on account of non-furnishing of the Universal Account Numbers and the Provident Fund Numbers.

However, it was fairly submitted by the learned senior counsel for the petitioners that since the provisions of the Employees Provident Fund Scheme is

a social welfare legislation and in case the State Government takes a decision to amend the Scheme to incorporate the provisions for issuance of

Universal Account Numbers to its subscribers, as has been done in the rest of the country, the petitioners shall comply with the provisions and shall

apply for the Provident Fund Account Numbers. However, till such exercise is undertaken by the State Government, technical bids which may be

submitted by the petitioners should not be rejected.

6. On the other hand, Mr. Manuj Mahajan, learned counsel for the respondent/ State submitted that the State Government shall work out the modalities

for providing Universal Account Numbers as issued by Central Fund Organization to its subscribers, as has been adopted in other parts of the country

and shall make necessary amendment in the J&K Employees Provident Funds (And Miscellaneous Provisions) Act/Scheme, 1961 providing for

issuance of universal account numbers.

7. Mr. R.S.Jamwal and Mr. Sumit Bhatia, learned Central Government Standing Counsel have submitted that in case suitable amendments are made

by the State legislature by amending the Provident Fund Act and the Scheme, which is applicable to the State of Jammu and Kashmir, the petitioners

should be asked to comply with the requirements of providing Universal Account Numbers and the Provident Fund Code.

8. I have considered the submissions made on both sides. In view of the statement made by Mr. Manuj Mahajan, learned counsel for the State

Government that the State Government shall take necessary steps for making a provision for providing Universal Account Numbers to its subscribers,

as has been done by the Central Fund Organization by suitably amending the provisions of J&K Employees Provident Funds (And Miscellaneous

Provisions) Act, 1961 as well as scheme framed thereunder, I am inclined to direct that till the suitable amendment in J&K Employees Provident

Funds (And Miscellaneous Provisions) Act, 1961 and the Scheme is made by the State Government by enacting a provision for providing Universal

Account Numbers, the technical bids submitted by the petitioners shall not be rejected on account of non-furnishing of the Provident Fund Code.

Needless to state that the State Government shall be at liberty to make a suitable amendment in the J&K Employees Provident Funds (And

Miscellaneous Provisions) Act, 1961 and the Scheme framed thereunder and to make a provision for issuance of Universal Account Numbers to its

subscribers, as provided by the Central Fund Organization, as expeditiously as possible. In case such an amendment is made, the petitioners shall apply

for obtaining Universal Account Numbers and thereafter, shall also apply for obtaining Provident Fund Code.

9. With the aforesaid directions, the writ petitions are disposed of along with connected MPs.