

(2006) 01 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 12901 of 1997

Nallaperumal Stores (Firm)

APPELLANT

Vs

Regional Commissioner, Employees' Provident Fund and
Another

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2006) 110 FLR 1193 : (2006) 1 MLJ 554 : (2006) WritLR 216

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : S. Ravindran and T.S. Gopalan, for the Appellant; K. Gunasekaran, ACGSC, for the Respondent

Judgement

R. Sudhakar, J.—The writ petition has been filed by the petitioner challenging the summons issued u/s 7-A of the Employees' Provident

Funds and Miscellaneous Provisions Act, 1952 in summons No. TN/29465/TNY/ENF 1(4) of 1997, dated July 23, 1997, calling upon the

petitioner to appear in the enquiry so as to determine the amount due from the petitioner under the provisions of the Act for the period from

November, 1985 to September 1989. As per the summons, the petitioner was directed to appear on August 12, 1987 and represent the case. As

against this summons the writ petition has been filed.

2. The case of the petitioner is that it is a partnership firm formed in the year 1985 engaged in the sale of textile goods and that the petitioner had

employed less than 10 workmen till July, 1989 and August, 1989 the strength of the workmen crossed 20 and therefore the petitioner voluntarily

got covered under the provisions of the Act. The petitioner was also allotted code number by the authorities. By an order, dated July 22, 1992, it

appears that the first respondent held that the petitioner and two other establishments would constitute one establishment. As against the same the

petitioner filed W.P. No. 12544 of 1993. The petitioner also filed miscellaneous petition for stay. By order of Court in W.P.M.P. No. 19191 of

1993 a separate code number was allotted and the petitioner has been paying contributions with effect from October, 1989, However, during the

pendency of the W.P. No. 12544 of 1993, the impugned notice, dated July 23, 1997, came to be passed. Therefore, the writ-petitioner

approached this Court challenging the summons u/s 7-A as the issue regarding clubbing of the units, as per order, dated July 22, 1992, was under

challenge before this Court in W.P. No. 12544 of 1993 and therefore the summons was legally unjustified, prematured and without jurisdiction.

When the present writ petition came up for final disposal, the learned Counsel for the petitioner produced additional typed set of papers, enclosing

the order, dated June 14, 2000, in W.P. No. 12544 of 1993, where this Court held as follows:

During the course of arguments, learned Counsel for the petitioner stated across the Bar that in the year 1993 when the writ petition was filed, the

appellate Tribunal was not in existence. But in the meantime, the Appellate Tribunal for Employees Provident Fund (Appeal) has been established

at New Delhi and it is for the petitioner to approach the competent authority.

(ii) In the result, this writ petition is disposed of with an observation that is for the petitioner to approach the competent authority for the relief

sought for, but not invoking Article 226 of the Constitution of India by way of writ. No costs.

3. It is represented that pursuant to the order of the High Court, the writ-petitioner had filed an appeal to the Appellate Tribunal, Chennai camp

and the same was taken up on file in Appeal No. ATA-398(13) 2000 by an order, dated November 6, 2000, it is held as follows:

Only because the partners of the appellant firm are family members of partners of Nallaperumal and Sons, the second firm i. e., Nallaperumal

Stores cannot be taxed with the liability arising out of the activities of their family members. Likewise, if one of the Managing Partner is managing

some other firm, other partners of the firm cannot be made liable for his activities in that firm. The liabilities are restricted and one can be made

liable for the acts of the other only if he is an authorized agent. On keeping this judicial principle in mind, the two firms cannot be clubbed together.

Two establishments owned by two different firms can never be treated as branch or department of one another. Therefore on the facts of the case

the appellant establishment cannot be clubbed with the establishment of Nallaperumal and Sons and Nallaperumal and Sons cannot be made liable

to pay provident fund dues for the employees of appellant establishment. Although the appellant cannot be said to be directly aggrieved from the

order of 7A authority, but under the garb of liability of Nallaperumal and Sons, their goods and properties may be seized and sold. Thus the appeal

succeeds.

4. In view of the order of the appellate Tribunal the learned Counsel for the petitioner submitted that the summons in 7A cannot be sustained for

the period in question.

5. Learned counsel for the respondents was earlier served with the additional typed set of papers containing the order of this Court passed in W.

P.No. 12544 of 1993 and the order of the Appellate Tribunal, dated November 6, 2000, earlier. Learned counsel for the respondents informs the

Court that he has already forwarded the same to the authorities concerned. However he submitted that the petitioners can very well go before the

authorities and produce the order of the Tribunal and canvass all the issues agitated in the writ petition. In this connection, he produced an order of

the Allahabad High Court in Midlands (Pvt.) Ltd. Vs. Regional P.F. Commissioner and Another, , which reads as follows at p. 1233:

13. Normally, the jurisdiction under Article 226 of the Constitution India is to be exercised against final order and not against an interim order. In

the present case, no final order about the applicability of the Act has been passed ; rather just an enquiry was in progress and the records were

being summoned from the petitioner which was being avoided on one pretext or the other. The conduct of the petitioner in that respect cannot be

appreciated. Whenever any record was required with a view to reach the conclusion about the applicability of the Act, petitioner must have been

candid enough to furnish details of all documents so that correct decision must

have been arrived at. It is open to the petitioner to lead any evidence to his choice on the date fixed but documents required under Annexure 3 and other orders and directions must be passed in the matter preferably by July 31, 1993. The petitioner must co-operate in the enquiry and furnish all the documents required on the next date fixed. But there is no justification to issue the writ direction or order prayed for. Hence, this Court finds no justification for interfering with the impugned summons.

6. Learned counsel for the petitioner undertakes to produce the order of the appellate Tribunal before the authorities and canvass the issue on merits in the proceedings. The second respondent shall consider the claim of the petitioner on merits, taking into consideration the order of the appellate Tribunal, dated November 6, 2000, and deal with the matter in accordance with law.