

(2009) 03 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition 25701 of 2005

Om Investment Corporation

APPELLANT

Vs

Assistant Provident Fund Commissioner, Employees Provident
Fund Organisation

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3) (a),
2 A, 7 A

Citation : (2009) 123 FLR 411 : (2009) ILR (Kar) 3173 : (2009) 5 KarLJ 125 :
(2009) 4 KCCR 2956 : (2009) 4 LLJ 317

Hon'ble Judges : Huvadi G. Ramesh, J

Bench : Single Bench

Advocate : A.R. Holla, for the Appellant; M.R. Shashidhar, for the Respondent

Final Decision : Dismissed

Judgement

Huvadi G. Ramesh, J.—Petitioner has sought for quashing the order dated 26.9.2005 - annexure B passed by the Employees Provident Fund Appellate Tribunal and also the order dated 30.3.2001 - annexure A passed by the respondent - EPF Commissioner and to direct the respondent to refund the amount deposited by the petitioner in pursuance of the impugned order dated 30.3.2001.

2. Petitioner is a partnership firm carrying on the business in household electrical goods in Bangalore. The respondent initiated proceedings u/s 7A of the EPF Act against the petitioner to determine its liability and assess the contribution payable under the Act. By order dated 30.3.2001, respondent held that petitioner is covered under the EPF Act and assessed the contribution payable by the petitioner at Rs. 9,48,130/-. Petitioner challenged the said order before the EPF Tribunal. The Appellate Tribunal by order dated 26.9.2005, dismissed the appeal filed. Hence, this petition.

3. Heard the Counsel representing the parties.

4. According to the petitioner's Counsel, the two firms i.e., Giria's Investment Corporation & Om Investment Corporation were established on different dates. Om Investment was established independently from Giria's. Giria's is constituted in the year 1990 whereas the petitioner Company was established during 1986-87. According to the petitioner's Counsel, these two establishments are separate and distinct and there is no common partnership or common employees between the two. According to him, the partners of these two establishments are related to each other but they do not belong to one family and the business of these two firms are different. It is stated they never employed twenty persons at any point of time and also both units are functioning differently and, when they were functioning independently, question of extension of EPF & Miscellaneous Provisions Act cannot be made applicable. As such, according to the petitioner's Counsel, the order passed by the Assistant PF Commissioner and the Appellate Authority is non-est without taking into consideration the independent functioning of these two establishments. Rather, only some of the members of the entities are relatives and both the units are totally independent.

5. In support of his contention, Counsel for the petitioner has relied on the decision in the case of Regional Provident Fund Commissioner and Anr. v. Dharsi Morarji Chemical Co. Ltd. 1998 LLJ 1060 wherein the Apex Court referring to the application of the Act i.e., Section 2A and 16(1)(b), has observed that common ownership by itself is not enough unless evidence shows interconnection between the Units so as to allow inference of common supervisory, financial and managerial control.

6. In the case of Small Gauges Ltd. and Others Vs. V.P. Ramaiah, Regional Provident Fund Commissioner, , referring to Section 7A of the Act, it is held that order passed without furnishing report and documents relied on by the Enforcement Officer is not sustainable for violation of audi alteram partem principle and matter was remitted back for fresh inquiry and disposal.

7. In the case of Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and Ors. (1996) SCC 522 referring to Section 1(3)(a), 2A & 7A of the Act, to ascertain whether same establishment or different functioning is indicated, it is observed, the Commissioner has rightly held that they constituted a single establishment and the mere fact that they were separately registered and represented separately by members is inconsequential and the beneficial nature of the Act has to be taken note for reaching such a conclusion. It is also observed that the EPF Act is a beneficial legislation and hence wide definition of "establishment" should be adopted for the purpose of Section 7A and held that High Court was wholly unjustified in concluding that both the firms being registered under the Companies Act as two different individual entities were two independent companies and could not be clubbed together for levying contribution u/s 7A of the Act. Further, noting that the Commissioner recorded as a fact the functional unity and integrality between the two concerns.

Consequently, definition of "establishment" which was widely defined would encompass within its ambit the two units of establishment for the purpose of the Act.

8. Per contra, Counsel representing the respondent submitted that the manner in which the function is carried out as is inspected was almost as one unit using common phone and some of the records were deliberately misplaced. Taking into consideration the money being used by one entity to the other entity and balance sheet and the common transactions that is being carried out and when salary of Rs. 1 lakh per month is shown in the year 1989 itself, the employees cannot be less than twenty in the year 1989 itself and the manner of functioning of these two entities is almost one and the same. Accordingly, it is contended, after conducting inspection the respondent authority having taken note of the facts and the non-production of certain wage register, has come to the right conclusion and that, there is no illegality in the order passed by both die authorities i.e., by the Assessment Authority as well as the Appellate Authority. Further, the decisions relied upon by the petitioner's Counsel particularly, the decision of the Bombay High Court in Small Guages" case noted above would be of not much relevance.

9. In reply, petitioner's Counsel submitted, for the year 1994 wage register has been produced but the same has not been taken into consideration. However, to meet out this argument, respondent's Counsel submitted, certain of the vital documents of the year 1989-90 were not deliberately produced.

10. In the light of the arguments advanced, let me consider whether at the relevant point of time both the units i.e., petitioner company and Giria's Investment Corporation were functioning as one Unit and also the employees together were more than twenty so as to attract the provisions of the Provident Fund Act.

11. In the order of die Appellate Authority, it is noted there is unity of ownership and there was geographical proximity as well between the two firms as they were situate in the same area as also common telephone numbers were used in their letter heads. Finance was taken by one firm to the another. Accordingly, it has opined that these are sufficient factors which can be pressed into service and is sufficient to arrive at the conclusion that the strength of the employees of both the firms taken together is twenty. The main reasoning given by the appellate authority is mat, it is not the case the inquiry was initiated and concluded in a day. The case was adjourned on several dates of hearing and the inquiry commenced in the year 1999 and concluded in 2001. Stating that no such application was filed before the Assistant Provident Fund Commissioner and also noting that complete records were not produced despite several opportunities were given, and thus, observed that the respondent has not committed any error while placing reliance on the report of the Enforcement Officer which remained uncontraverted.

12. Action has been initiated at the instance of the Enforcement Officer and an inquiry was held. Although two different entities were established on different dates, as on the date of inspection, after issuing notice on 8.7.1999 and after posting the matter on several dates of hearing, on the basis of the Enforcement Officer's report, the Assistant Provident Fund Commissioner passed an order. In the reasoning given by the Assistant Provident Commissioner, he has held that the Act is applicable to the establishment from 1.1.1989 and the Wage Register has not been produced. Of course, in this regard the stand taken by the petitioner was that the wage registers were destroyed and they could only produce the Wage Register of 1994. It is the argument of the respondent's Counsel, the respondent authority has come to the conclusion referring to the balance sheet and the salary paid formed the basis for the Assistant Provident Fund Commissioner and the Appellate Authority to hold that the EPF Act is attracted to the petitioner company. It has noted that the salary of more than Rs. 1 lac is paid in the year 1989 as per the balance sheet and accordingly, it is argued by the respondent's Counsel having regard to the nature of the employees employed and the salary paid, necessarily, it should have been more than twenty persons in the absence of production of wage register for the relevant period for the year 1989-90. The contention taken by the petitioner is, it was destroyed as it was kept in the go-down. Even otherwise, the balance sheet has formed the basis to arrive at a conclusion which cannot be lightly brushed aside. At least to prove the case of the petitioner that it was having less than twenty persons in the establishment and both the entities were functioning independently, opportunity could have been availed by the petitioner to say that Girias and petitioner company were functioning independently. But, as a matter of fact finding the Enforcement Officer has given a report and to support that report, even the balance sheet produced strengthens the case of the respondent than that of the petitioner. In all fairness, petitioner could have made an attempt to produce the wage register to avoid certain complications and also to come out of the application of the provisions of the PF Act. In stead, for reasons known to it, it has taken a different stand stating that the documents were destroyed. With due diligence, it would have been able to produce some registers which are available to them to avoid such a complication. Further, a contention is also taken by the petitioner's Counsel that the Certificate issued by the Labour Inspector depicts that the company is having only eight employees. However, what is noted is, as a matter of proximity, common use of phone and the report of the Enforcement Officer formed the basis to the respondent Authority to come to the conclusion that both Giria's and petitioner's concern were functioning together as one Unit and thereby, it exceeded twenty employees as such it would come under the provisions of the EPF Act. In the circumstances, it is difficult to take a different decision as, as a matter of fact finding the Appellate Authority as well as the Enforcement Officer have given a finding. Only if there is any violation of the principles of natural justice or violation of law, that would give rise to a cause of action for the petitioner to a remedy under Article 226 of the Constitution. Both the authorities have arrived at a conclusion in the absence of

the petitioner producing cogent documents and convince the respondent authority. The view taken by the respondent authority cannot be faulted.

13. In the circumstances, petition is dismissed.