

(2008) 10 AHC CK 0157
In the Allahabad High Court

Panther Security Services Private Ltd.	APPELLANT
Vs	
Employees Provident Fund Organisation and Another	RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 378

Citation : (2008) 119 FLR 933

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard Shri Rohit Agarwal, learned Counsel for the petitioner and Shri D.K. Pandey, learned Counsel for both the respondents.

2. The question involved in this writ petition is as to whether petitioner's establishment is covered by Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (E.P.F. Act in short) or not.

On 17.5.1971 the Central Government in exercise of powers conferred upon it by Section 1(3)(b) of the Act issued notification which is quoted below:

The Central Government hereby specifies that with effect from the 31st May, 1971, the said Act, shall apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts, and pay roll irregularities to factories and establishments on certain terms and conditions as may be agreed upon between the establishment and the establishment rendering expert services, and employing twenty or more persons.

The job/business of the petitioner is apparent from its name. It supplies security guards to factories and other establishments.

3. The learned Counsel for the petitioner has argued that the words "rectifying pilferage, thefts" denotes that the personnel supplied must be responsible for

detecting and solving theft cases and tracing the stolen property. As the job of the guards supplied by the petitioner to different factories and establishments is to prevent theft and pilferage and not to rectify the same hence it is not covered by the aforesaid notification.

4. In spite of time having been granted twice or thrice no direct authority concerning security services could be cited by any of the learned Counsel.

I do not agree with the contention of the learned Counsel for the petitioner for the following reasons:

(1) As held by Bombay High Court in *Tata Consultancy Services v. R.P.F. Commissioner* 2007 (117) FLR 96, the words "such as" used in the aforesaid notification are meant to be illustrative and not exhaustive. However, the other items not enumerated after the words "such as" must have some relation and resemblance with the items specified after "such as". Accordingly, even if the argument that the purpose of security guards is to prevent the theft and pilferage and not to rectify the same is accepted still prevention would be covered by the aforesaid notification.

(2) It cannot be said that the purposes of security guards is only to prevent theft and pilferage. The main job or atleast equally important job of security guards is to rectify theft and pilferage. The moment an employee of a factory or establishment removes an article from the place/seat where he is required to work with the dishonest intention of taking it with him, the act of theft and pilferage is complete. Successfully taking that item outside the factory premises or the premises of the establishment is not an essential ingredient of theft and pilferage. Accordingly when an employee removes an article with dishonest intention of taking that with him and he is checked at the gate of the factory/establishment and the item is recovered from him, it is pure and simple rectification of theft/pilferage and not prevention or prevention alone.

5. In this regard reference may be made to the definition of theft given u/s 378 IPC which is quoted below:

378. Theft.--Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

6. The following authorities cited by the learned Counsel for the parties have got no direct bearing on the point.

1. *Unnikrishnan Nair Vs. Regional Provident Fund Commissioner*,

2. *M/s. Linge Gowda Detective And Security Chamber (Private) Limited, Bangalore Vs. The Authority Under The Minimum Wages Act And Labour Officer, Davanagere And Others*,

3. *A.V. Prakash Vs. Senior Labour Inspector*,

No other point has been argued by the learned Counsel for the petitioner.

7. Accordingly, I do not find any error in the impugned order dated 28.7.2008 passed by Assistant Provident. Fund Commissioner/Assistant Commissioner, E.P.F. Organisation, U.P. Kanpur. The order has been passed against the petitioner u/s 7-A of the Act holding that the establishment has been rightly covered under the provisions of E.P.F. Act under the head "expert services" and directing the petitioner to pay all statutory dues under the Act from the date of coverage till the date of the order within 15 days.

8. Writ petition is dismissed. However, the time of 15 days granted by the impugned order is extended for another period of 15 days starting from today.