

(2024) 12 KL CK 0015

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.21299 and 21338 Of 2023

Sree Narayana Guru Memorial Educational & Cultural Trust

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 02-12-2024

Acts Referred:

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

Citation : (2024) 12 KL CK 0015

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : P.Ramakrishnan, Preethi Ramakrishnan, C.Anil Kumar, Asha K.Shenoy, Pratap Abraham Varghese, Gokul Krishna, Sajeev Kumar K.Gopal

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. Sree Narayana Guru Memorial Educational and Cultural Trust is the petitioner in these writ petitions. The petitioner is aggrieved by the proceedings of the Employees Provident Fund Organisation Authorities.

2. In W.P.(C) No.21299/2023, the petitioner states that the establishments run by the petitioner except its Engineering College are covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 with Code No.KR/KC/21344. The Engineering College is covered under another Code number. Enforcement Officer visited their establishments during September-October 2011. Reports were submitted by the Enforcement Officer alleging that certain employees eligible to become members of the Fund during the period from 04/2011 to 08/2011 have not been brought under coverage. Consequentially, Section 7A proceedings were initiated. Ext.P1 order was issued determining ₹ 26,59,540/- as the dues payable by the petitioner. The petitioner filed appeal against Ext.P1 before the Employees Provident Fund Appellate Tribunal. By Ext.P2 order, the Tribunal directed the respondents to redetermine

the dues to the employees under Section 7C, after verification of records.

3. Thereafter, the petitioner was issued with Ext.P3 notice fixing an enquiry under Section 7C. As per Ext.P4 order, the 1st respondent determined ₹ 19,89,672/- for the period 8/2005 to 5/2006, 6/2007 to 7/2007, 12/2007 to 3/2008, 9/2009 to 12/2009, 5/2010 to 11/2010 and 5/2011 to 12/2011. By Ext.P5 order, the 1st respondent determined ₹ 24,49,123/-for the period 6/2006 to 5/2007, 8/2007 to 11/2007, 4/2008 to 8/2009, 1/2010 to 4/2010 and 12/2010 to 4/2011.

4. Aggrieved by Exts.P4 and P5, the petitioner filed Ext.P6 appeal ATA No.1326(7)/2015 and Ext.P7 Appeal ATA No.1329(7)/2015. The appeals were transferred to the Central Government Industrial Tribunal and were renumbered as Appeal Nos.391/2019 and 338/2019 respectively. Ext.P6 appeal was dismissed by order dated Ext.P11. The petitioner was not served with any order in Ext.P7 appeal. However, the petitioner was served with Ext.P12 demand.

5. On receipt of Ext.P12, the petitioner sought a copy of the order in Appeal No.338/2019. The petitioner was provided with Ext.P14 order in Appeal No.338/2019 by Ext.P13 letter dated 26.12.2022. The petitioner came to know that Ext.P14 order was passed on 12.11.2021 after about three months of hearing. The petitioner was not notified of the posting of the said case on the said date.

6. The petitioner states that Exts.P5 and P14 are illegal. Section 7C of the Act empowers the officer to redetermine the amount due from an employer within a period of five years from the date of communication of the order passed under Section 7A or Section 7B. The petitioner was issued an order under Section 7A bringing the establishment under coverage with effect from 01.08.2005, nearly a decade prior to the issuance of Ext.P1 order. Ext.P5 order under Section 7C passed on 28.05.2015 is beyond the five year period.

7. The 1st respondent relies on a report of the Enforcement Officer to determine the dues. The report is dated 28.05.2015. Ext.P5 has been issued on the same date. A copy of the said report was not made available to the petitioner. The 1st respondent proceeded as if the petitioner had admitted the dues. The petitioner had only admitted the genuineness of the documents produced by the petitioner. Exts.P5 and P14 are therefore liable to be set aside, contended the petitioner.

8. In W.P.(C) No.21338/2023, the petitioner challenges Exts.P4 and P14. Ext.P4 is the proceedings of the Assistant Provident Fund Commissioner under Section 7C. By Ext.P4, the respondents have determined ₹ 19,89,672/- as amount due from the petitioner for the period 8/2005 to 5/2006, 6/2007 to 7/2007, 12/2007 to 3/2008, 9/2009 to 12/2009, 5/2010 to 11/2010 and 5/2011 to 12/2011. The petitioner preferred appeal against Ext.P4. The appeal was rejected as per Ext.P14 order of the Central Government Industrial Tribunal-cum-Labour Court holding that though appellant has disputes regarding impugned orders, the management has decided to remit the contributions as per the impugned orders.

The petitioner states that Ext.P14 order was not pronounced in open court. It was not communicated to the petitioner.

9. The respondents in their counter affidavit stated that the squad of Enforcement Officers visited the establishment of the petitioner. Section 7A inquiry was initiated. ₹ 26,59,540/- was assessed as the dues payable by the petitioner for the period from 8/2005 to 12/2011. In ATA No.732(7)/2012, the Employees Provident Fund Appellate Tribunal set aside the impugned order and directed the respondent to redetermine the dues.

10. Thereupon, a fresh enquiry was initiated under Section 7A. Section 7C proceedings were also initiated thereafter. The petitioner did not produce any records during the enquiry. Dues were computed on the basis of the available materials in the enquiry. There is no procedural lapse in issuing Section 7A order. The inspection report revealed that out of 340 eligible employees, only 27 were seen enrolled in the PF. The records produced by the Enforcement Officer corroborated the findings on non-enrollment. The petitioner agreed with the findings of the Enforcement Officer during the enquiry. The writ petition is therefore without any merit and it is liable to be dismissed, urged the respondents.

11. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

12. Sections 7A and 7C proceedings were initiated against the petitioner on the basis of the visit of the Enforcement Officer and his report. Though the 1st respondent allowed participation of five employees of the establishment in the proceedings, it is clear from the records that relevant books, materials and information were not available before the Assessing Authority.

13. Ext.P8 is a list of employees. The list of employees included 60 names of excluded employees, nine duplication, five covered persons and 35 who were not identifiable, contends the petitioner. According to the petitioner, the persons named in Ext.P8 are persons unknown to the petitioner. However, these names find a place in Ext.P1 order passed under Section 7A as well as Ext.P5 issued under Section 7C.

14. The petitioner has produced list of names doubled in Section 7A order as well as Section 7C order. Ext.P8 would indicate that at least the names of nine employees find place more than once. Ext.P8 list also contains list of six employees whose names are to be excluded in Sections 7A and 7C orders.

15. The petitioner has produced list of employees to be excluded from Section 7C order for the period from 8/2005 to 12/2011. The names of these employees are to be excluded as they were drawing more than monthly salary of ₹ 6,500/- during the period in question. These persons were taken into account while passing Section 7C order also.

16. Page No.72 of the writ petition (Ext.P8) indicates names of five employees

who are enrolled in the Provident Fund and whose subscriptions were paid. The said five employees also were taken into account when Ext.P5 order under Section 7C was passed. Similarly, during 8/2005 – 12/2011, the petitioner had made remittances to the tune of ₹ 3,43,692/- on various dates as indicated in Ext.P10. These remittances were also not considered while passing Section 7C order.

17. Ext.R1(c) order sheet contains certain insertions. The inserted line is "ER has no objection about the so he has not produced the records". The insertion visibly seems to be subsequently added. In the circumstances, I find that the contention of the petitioner that they have not conceded anything before the respondent is probable. The afore mistakes have vitiated Exts.P4 and P14 orders in W.P.(C) No.21338/2023 also.

18. Taking into consideration the factual mistakes that have crept in the orders in these writ petitions, I am of the firm view that the matter has to be looked into by the respondents afresh, after giving opportunity of hearing to the petitioner.

19. Exts.P5 and P14 orders in W.P.(C) No.21299/2023 and Exts.P4 and P14 orders in W.P.(C) No.21338/2023 are therefore set aside. The 1st respondent is directed to reconsider the matter and pass orders afresh, after giving opportunity of hearing to the petitioner. Orders afresh shall be passed within a period of four months.

The writ petitions are disposed of as above.