

(2013) 10 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No"s. 51436-51437 of 2012 (L-PF)

Sri Vijayakrishna K.T. and Another

APPELLANT

Vs

The Assistant Provident Fund Commissioner and Recovery
Officer

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 2 AKR 438 : (2014) 140 FLR 673 : (2014) ILR (Kar) 717 :
(2014) 1 KCCR 926 : (2013) LLR 1258

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K. Kasturi, for Mr. H. Mujtaba, for the Appellant; S.N. Venkataram,
Advocate for Mr. Harikrishna S. Holla, for the Respondent

Judgement

Ram Mohan Reddy, J

1. There is considerable force in the submission of Sri. K. Kasturi, learned Sr. Counsel for the petitioners, that the notices of demand to defaulters Annex. A & B, issued by the Assistant Provident Fund Commissioner and Recovery Officer under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, for short the "Act", is contrary to the provisions of the said Act, hence illegal. M/s. Inter-Active Infonet Ltd., a company incorporated under the Companies Act, 1956, having its registered office in the State of Karnataka, consisted of 4 directors of which, one Sadashiva Rao was the Chairman while petitioners along with another Rajaram Khandige were directors. The said company, an establishment, when covered under the provisions of the Act, submitted form No. 5A under paragraph 36A of the Employees' Provident Fund Scheme, 1952, for short the "Scheme", furnishing against Column No. 8, the names and addresses of the directors as well as against Column No. 11, the names and addresses of the persons incharge of and responsible for the conduct of the business of the establishment as K. Rajaram Khandige and another T. Bhaskar.

2. It appears that due to default in the remittance of contributions led to orders

for recovery of damages and contribution. The failure on the part of the company to make payment as demanded, led to notices of demands - Annex. A & B.

3. A bare perusal of the definition of the term "employer u/s 2(e)(ii) of the Act discloses that in relation to an establishment, the "employer" means, person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

4. Paragraph 36-A of the Scheme requires every employer in relation to an establishment to which the Act applies to furnish to the Regional Commissioner in Form No. 5-A, particulars of owners, occupiers, directors, partners, manager or any other person or persons who have the ultimate control over the affairs of such factory or establishment and also send intimation of any change in such particulars, within 15 days of such change, to the Regional Commissioner by registered post and in such other manner as may be specified by the Regional Commissioner.

5. Form 5A with the nomenclature "Return of Ownership to be sent to the Regional Commissioner" having several columns, nevertheless Column No. 8 provides for particulars of owners. Column No. 11 provides for persons who are incharge of and responsible for the conduct of the business of the establishment.

6. From a reading of the aforesaid statutory provisions and the particulars sought in Form No. 5-A, what emanates is that, in order to hold the persons responsible for compliance with the provisions of the Act and the Scheme, an employer is required to mention the names of the persons who are incharge of and responsible for the conduct of the business of the establishment. In the instant case, Form No. 5A, Annex. F, while disclosing the names of the owners, including that of the petitioners in Column No. 8, did also disclose against Column No. 11, the names of K, Rajaram Khandige and another T. Bhaskar as the persons incharge of and responsible for the conduct of the business of the establishment in the name and style of "Inter-Active Infonet (P) Ltd.", the establishment.

7. Therefore the directors namely the petitioners when not shown to be persons in-charge of and responsible for the conduct of the business of the establishment in question, did not fall within the definition of "employer" nor persons liable to answer the non-compliance of the provisions of the Act and the Scheme. The notices of demand - Annex. A & B issued to the petitioners who were only directors and not persons responsible for the affairs of the establishment in question, for the purpose of the Act and the Scheme, cannot but be said to be illegal and without authority of law.

8. In almost identical circumstances, the Apex Court in Srikanta Datta Narasimharaja Wodiyar Vs. Enforcement Officer, Mysore, while examining the definition of the term "occupier" u/s 2(k), the term "employer" u/s 2(e), paragraph 36A of the Scheme, form No. 5-A furnished thereunder and section 14-

A, held that a director of a private company who is neither an occupier nor a manager can be prosecuted u/s 14-A of the Act for violation of the Scheme unless in Form No. 5-A against Column Nos. 8 and 11, the director has declared himself as one of the person incharge of and responsible for the conduct of the business of the establishment or factory. In other words, unless the name of the director is found against both Column Nos. 8 and 11 in form No. 5-A, such director of a private company cannot be prosecuted u/s 14-A of the Act.

9. Regard being had to the aforesaid observation, it is needless to state that petitioners whose names are not found against Column No. 11 in form No. 5A, Annex. F, cannot be prosecuted u/s 14A, hence no liability could have been clamped on them in respect of non-compliance of the Act and Scheme. Hence the notices of demand as defaulters, impugned in this petition, deserve to be quashed. Petitions are allowed. The notices - Annex. A & B are quashed and all proceedings from the inception of issue of notices - Annex. A & B are dropped.