
(1998) 10 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 25754 of 1998

Venugopala Reddy M.

APPELLANT

Vs

Hindustan Aeronautics Ltd. and Another

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g)
Employees State Insurance Act, 1948 — Section 30, 40, 41

Citation : (1999) 3 LLJ 1206

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : B.S. Manjunath, for the Appellant; T.K. Subbanna, Hareesh Bhanday and Harikrishna Holla, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—In this writ petition, the petitioner is a contractor. He is seeking to quash Annexure-A dated July 17, 1998 by which the petitioner was called upon to furnish his own and E.S.I. and P.P. Code numbers to consider his request for issue of tender document. It is contended that inspite of 2nd respondent confirming that such separate code numbers are not required, the condition is imposed and the same is violative of Article 19(1)(g) of the Constitution of India. It is further contended that refusal to give tender forms for non-furnishing separate code numbers is violative of principles of natural justice as no opportunity was given to the petitioner. It is also contended that the imposition of the condition is contrary to Section 30 of the Employees Provident Fund Act.

2. Respondents 1 and 2 have filed their respective counters. The main stand taken by the first respondent is that it has been exempted from extending the statutory benefits to contract workers under Para 27-A of the Employees Provident Fund Scheme as per Annexure-R2 dated April 24, 1990.

3. In paragraph 4 of the counter filed on behalf of the 2nd respondent it is stated

that all these years the first respondent was deducting Provident Fund contributions in respect of contract employees and was remitting the same to the Fund. For the first time the first respondent has called upon the petitioner to obtain Separate Code Number, which is not permissible under the Act or the Scheme. The first respondent is estopped from directing the petitioner to obtain separate code number, especially when the first respondent itself was complying with the provisions of the Act in respect of employees engaged through contractors. The procedure to be followed in the matter is elaborately stated in paragraph 3 of the counter.

4. Various contentions have been advanced by the learned senior counsel appearing for the parties. Mr. T. R. Subbanna, learned senior counsel for the first respondent placed reliance on the following decisions:

- (1) State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others,
- (2) Radhakrishna Agarwal and Others Vs. State of Bihar and Others,
- (3) State of Orissa and another Vs. Radheyshyam Meher and others,

It is not necessary to advert to all those contentions and the decisions as the short point for consideration is, whether a contractor is required to have separate account of E.S.I. and P.P. under the Employees Provident Funds and Miscellaneous Act, 1952 (hereinafter referred to as "the Act") and the E.S.I. Act in respect of the labourers engaged by him for discharging the work of principal employer?

5. At the out-set it should be seen that there is no provision that a contractor must have separate account of E.S.I. and P.F. respect of the labourers engaged by him. Thus, there is no statutory obligation on the part of the contractor to compulsorily possess separate accounts under the relevant Acts and the Rules framed thereunder. Such being the position, a contractor cannot be insisted to possess separate accounts for the aforesaid two items for the purpose of obtaining a contract work from the principal employer. Hence, the condition imposed on the petitioner in Annexure-A to furnish his own E.S.I. and P.P. code numbers is bad and without the authority of law.

6. In the statement of objections filed on behalf of the 2nd respondent it is specifically stated in paragraph 3 as under :

"3. The contractor who is performing contract in a covered establishment is under obligation to submit a statement to the principal employer within seven days of the close of every month. A statement showing such recoveries of contributions in respect of contract employees shall be submitted to the principal employer. The principal employer is required to furnish the said details to this respondent under the provisions of the Scheme and the principal employer is required to remit dues to the fund. The said legal position is evident on reading Section 8-A read with paragraph 36-B of the Scheme. Therefore, it is a duty cast upon principal employer to ensure prompt compliance under the provisions of

Employees Provident Funds & Miscellaneous Provisions Act, 1952. On a reading of the entire Act and the Scheme, it is evident that there is no provision for grant of code numbers to contractors".

The above stand of the 2nd respondent has not been controverted by the first respondent in their counter. However, in paragraphs 3 and 4 of the counter the first respondent has furnished the reasons for incorporating the condition imposed on the petitioner as a policy decision. It is not necessary to refer to those reasons for the simple reasons extracted above from the statement of objections filed on behalf of the 2nd respondent. One should not lose sight of the fact that exemption sought by the first respondent is not granted so far.

7. Section 8-A(1) of the Act reacts as under :

"8-A. Recovery of Moneys by Employers and Contractors:--

(1) The amount of contribution (that is to say the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A reading of the above provision makes it clear that the contributions of employees employed by or through a contractor is required to be recovered by the employer from the contractor. The definition of "employee" u/s 2(f) of the act reads thus :

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person--

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) x x x

As per Clause (i), "employee" includes any person employed by or through a contractor. In view of this definition, the Regional Provident Fund Commissioner of Karnataka has rightly observed in Annexure-R-2 dated April 24, 1990 this aspect that the law as it stands at present does not make any distinction between the employees employed directly by the employer or through the contractors and it is the principal employer responsible for implementation of the provisions of the Act and the Schemes. In the absence of any specific provision in the Act that the contractor has to obtain separate numbers in respect of the employees engaged by him to discharge the work of principal employer and in view of the specific duty case upon the employer to file returns and to deduct the

contributions of the employees from the employer, the condition imposed on the petitioner in the impugned communication at Annexure-A to furnish his own E.S.I. and P.P. Code numbers is unwarranted and such a condition is without the authority of law.

8. Even the Employees State Insurance Corporation Act also do not prescribe that a contractor has to possess his own account in respect of the employees engaged by him for the work of the principal employer. On the other hand, Section 40 of the ESI Act prescribes that the principal employer shall pay the contributions in the first instance and thereafter, u/s 41 of the said Act he shall recover the same from the immediate employer. Under this Act also, Section 44 casts a duty on the employers to furnish returns and maintain registers in certain cases. In Section 2(9) of this Act, the definition of "employee" is, any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer. Therefore, the principal employer has to discharge the duty prescribed under Sections 40 and 41 of the Act and he cannot compel a contractor to have his own account in respect of the employees engaged by him to discharge the work of principal employer. Such a duty or obligation is not cast upon a contractor under the ESI Act also. Consequently, the condition imposed in Annexure-A on the petitioner to furnish his own separate account of E.S.I. cannot be sustained as the same is not prescribed under the Act.

9. What is not contemplated under the Act and the ESI Act cannot be imposed on a contractor. Therefore, it is not open for the first respondent to call upon the petitioner to furnish separate account numbers of his own under both the enactments. Since the principal employer has to discharge the duties and obligations cast upon them, they cannot insist for having separate accounts under these enactments in respect of the very same employees whose returns are to be filed and whose contributions are to be deducted and remitted to the respective funds under the enactments. The impugned condition is neither authorised nor permitted under these enactments. Therefore, imposition of such a condition upon a contractor is wholly unwarranted. It follows that the petitioner is entitled to the relief sought for in this writ petition.

10. In view of the foregoing reasons, I must hold that the decisions relied upon by the learned counsel for the first respondent have no application to the facts of this case.

11. Accordingly, this writ petition is allowed and the impugned communication at Annexure-A is quashed holding that the contractor is not required to have separate account numbers of E.S.I and P.P. in respect of the employees engaged by him for discharging the work of a principal employer.