

(2014) 02 KAR CK 0396
In the Karnataka High Court
Case No : W.P. No. 48255/2013 (L-PF)

Wipro Enterprises Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Apprentices Act, 1961 — Section 18, 37

Constitution of India, 1950 — Article 14

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(f), 7A

Citation : (2014) 3 AKR 618 : (2014) 142 FLR 760 : (2014) LLR 850

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.C. Prabhakar, Advocate for Bhooalam Law Associates, Advocate for the Appellant; Venkataraman, Sr. Advocate for Harikrishna S. Holla, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner, an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for short "Act" and the Schemes framed thereunder, aggrieved by the summons dated 1.7.2013 Annexure-E issued by the respondent and the initiation of proceedings, in exercise of jurisdiction u/s 7A of the said Act has presented this petition. Memorandum of writ petition discloses that petitioner, an establishment in the State of Karnataka has a unit at Mysore engaged in manufacture of tight luminaries engaging 160 employees in various categories, assigned with provident fund code No. KN/Mysore/10165, under which contributions both of the employer and employees are remitted under monthly returns, in the custody of the respondent- Regional Provident Fund Commissioner from the year 1999 onwards.

2. The Apprentices Act, 1961 promulgated by the Central Government with the object of regulating and imparting training of apprentices in vocational,

educational through work experience, petitioner has made adequate facilities to enable apprentices to learn practical aspects of the subject through field study so as to supplement institutional learning. Petitioner asserts that under such scheme "on the job training" is extended to apprentices to secure adequate competence and skill required for various occupations leading to securing suitable employment or self-employment in organized industries. The Director-General of Employment and Training, Ministry of Labour and Enforcement, Govt. of India, in exercise of power conferred under sub-section (1) of section 37 of the Apprentices Act, 1961 and rules framed therein issued a notification dated 7.11.2007 designating 27 trades under "Centre of Excellence" (COE), Trade group for implementation of the scheme wherein the duration of training is two years out of which classroom training in Industrial Training institute (ITI) is one year six months and as in-plant trainee in industry for six months. Govt. of Karnataka too framed guidelines dated 9.3.2010 for In-plant trainees whereunder none of the Labour statutes are applicable to such trainees, under specialized module, clarifying that during the tenure of training, the In-plant trainees are not required to be covered under any labour enactments, it is further asserted that u/s 18 of Apprentices Act, 1961 every trainee undergoing traineeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour are inapplicable. According to the petitioner, the Govt. of Karnataka obtained approval from the competent authorities to sponsor trainees to undergo In-plant 5 training for a period of six months under the Scheme, "COE", supra, in the petitioner's industry and accorded approval to sponsor trainees to undergo implant training for a short period of two months based upon the request from colleges. It is in this backdrop that ITI, Malavalli and Mandya sponsored the In-plant trainees to the petitioner's factory vide letter dated 3.4.2013 enclosing copies of letters of Govt. of Karnataka. It is contended that though there is no statutory obligation on the part of the petitioner's establishment to pay stipend for In-plant training for six months, nevertheless, being a highly professional organization and most of the trainees are from rural background with limited financial resources, the management took a decision to pay stipend during the period of training purely on humanitarian grounds and paid at the rate of Rs. 4,871 per month, per trainee, between April 2013 and October 2013, to 73 trainees. The list of trainees sponsored through several Industrial Training Institutes for the period from 2011 to October 2013 are at Annexure-D series. Therefore, it is the contention of the petitioner that In-plant trainees were not employed as workers in the petitioner-factory and that stipend paid on humanitarian consideration cannot constitute wage falling within the definition of the said term under the Act or Scheme.

3. It is the allegation of the petitioner that the respondent-authority without application of mind, without securing necessary reports and in the absence of relevant material constituting substantial legal evidence, prima facie, over In-plant trainees being engaged as workmen in the petitioner-factory, issued

summons Annexure-E for the petitioner to appear before him on 27.3.2013 and give evidence and produce all relevant records as indicated in the summons, on the premise, that the respondent has information and has reason to believe that there has been a failure to remit the provident fund dues in respect of In-plant trainees working in the establishment, as also, "allied dues" on other allowances in respect of employees covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Scheme framed therein during the period March 2001 to 2013 and failure to attend the inquiry, will be held in the matter under the provisions of the Act.

4. Petition is opposed by filing statement of objections of the respondent inter alia contending that the petition is liable to be dismissed for suppression of material facts; that the petition is premature, while admitting that inspection of the establishment by Enforcement Officer was last conducted on 14.2.2013 whence he noticed non-remittance of provident fund dues on allowances to its "regular employees" and that the petitioner had "not enrolled certain categories of employees" whom petitioner had classified as In-plant trainees. According to the respondent In-plant trainees were engaged by the petitioner apart from regular trainees and failed to comply with the Act and Scheme from 1999 onwards. It is the allegation of the respondent that due to the defaults committed by the petitioner-establishment in the matter of non enrolment of employees there is evasion of payment of provident fund which can be found out only through regular inspection of the establishment. According to the respondent, the last regular inspection by the Enforcement Officer after 2001 was on 14.2.2013 whence defaults were noticed. It is the further allegation of the respondent that the Enforcement Officer made a demand for verification of the documents during inspection, which was refused. Respondent contends that if the petitioner were to place before the Authority, relevant documents and facts, then the respondent-Authority can decide whether the In-plant trainees engaged by the petitioner have to be excluded from the Act or not and since the enquiry is at a preliminary stage and the petitioner has refused to produce necessary documents, the petition is not maintainable and is premature. It is further asserted that the summons issued to the petitioner is based on two issues, firstly over the determination of provident fund dues on allowances paid to regular employees from March 2001 to 2013 and secondly over determination of In-plant trainees engaged by the petitioner who fall within the definition of the term "employee" under the Act.

5. The contention of the petitioner that there is limitation of five years for the initiation of 7-A proceedings is denied. It is made clear that the respondent has initiated the enquiry in exercise of power under paragraph 26-B of the Employees' Provident Fund and Miscellaneous Provisions Scheme, 1952. The respondent, it is said in the proceeding held on 18.10.2013 found an invalid explanation by the petitioner and having observed the delay of 3 to 4 months in the submission of documents imposed a penalty of Rs. 5,000. It is lastly stated that the answer to the question as to whether In-plant trainees engaged by the

petitioner are employees or not, is yet to be decided in the 7-A proceedings, wherein the Enforcement Officer represents the department. While responding to paragraph 24 of the memorandum of writ petition, the respondent states that the proceedings under 7-A is instituted on the basis of the Enforcement Officer's report only and the petitioner failed to give valid justification to the show cause notice. As regards the averments in paragraph 25 of the writ petition, the respondent states that two show cause notices were issued to the petitioner calling for explanation on both issues, noticed supra. It is stated that the petitioner is guilty of highhandedness and a fine of Rs. 5,000 was imposed in exercise of quasi judicial authority due to non-cooperative attitude of the petitioner.

6. Heard the learned counsel for the parties, perused the pleadings and examined the summons dated 1.7.2013 Annexure-E issued by the respondent-Regional Provident Fund Commissioner.

7. If regard is had to the statement of objections admitting that the basis for the show cause notice is the report submitted by the Enforcement Officer, then it is not known as to why that relevant material was suppressed in the notice Annexure-E since there is no mention of the report of the Enforcement Officer in the said notice except to state that the Regional Provident Fund Commissioner has "information". The issue of the summons Annexure-E without disclosing all relevant information essential for a proper and complete adjudication by the quasi judicial Authority tantamounts to violation of principles of natural justice. The respondent-authority cannot be heard to say that the petitioner had full knowledge of the allegations it has to meet since the foundation for the summons being the Enforcement Officer's report was admittedly not made available to the petitioner. On that score- alone the summons Annexure-E deserves to be quashed.

8. Learned counsel for the respondent submits that enclosed to the memo filed today are copies of the report of the Enforcement Officer, the basis for the summons Annexure-E, a copy of which is made available to the learned counsel for the petitioner. The mere furnishing of a copy of the Enforcement Officer's report in the Court today by the learned counsel for the respondent acknowledged by the learned counsel for the petitioner is not compliance with principles of natural justice. Affected must be appraised is the constitutional creed flowing from out of postulates of Article 14 of the Constitution which includes making available all relevant information to the affected party so as to enable it to counter the allegations made, effectively and for a complete adjudication of the dispute between the parties. The summons when not enclosed with the copy of the report, it is needless to state suffers from denial of justice.

9. It is unnecessary for this court at this stage to go into the question of delay in the initiation of the proceeding u/s 7A of the Act by exercising power under paragraph 26-B of the Scheme or whether In-plaint trainees are, in fact,

employees falling within the definition of the term u/s 2(f) of the Act or over alleged "Allied dues" on other allowances in respect of employees covered under the Act, in respect of which contribution was not paid for the period from March 2001 to 2013, since all these questions are based upon facts requiring a trial.

10. In the matter of procedure to be followed by the Commissioner in a section 7A proceedings, it is useful to extract the observations of the Apex Court in Food Corporation of India Vs. Provident Fund Commissioner and Others, , which reads thus: "The Commissioner, while conducting an inquiry u/s 7A has the same powers as are vested in a court under the CPC for trying a suit. The power given u/s 7A to the Commissioner is to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. Though the employer and the contractors are both liable to maintain registers in respect of the workers employed but the question is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

In the factual matrix, what is apparent and palpable is that the respondent having failed to supply a copy of the Enforcement Officer's report to the petitioner and not made reference of the report in the summons Annexure-E, the initiating of proceeding in exercise of quasi judicial authority over alleged failure of the petitioner to comply with the provisions of the Act and the scheme, in the matter of remittance of contribution, must necessarily fail. There is force in the submission of the learned counsel for the petitioner that the initiation of the proceedings at the very threshold being based upon suppression of material facts has resulted in denial of justice. It is elsewhere said that any person indulging in misadventure of *suggestio falsi* or *suppresso veri* would have to suffer the consequences. In the light of what is noticed *supra*, respondent having indulged in *suppresso veri* must suffer the consequence of quashing the proceeding initiated and the issue of the summons Annexure-E. In the result, this petition is allowed. The proceeding initiated by the respondent u/s 7A of the Act read with paragraph 26-B of the Scheme followed by the issue of summons dated 1.7.2013 Annexure-E are quashed, reserving liberty to the respondent to initiate proceedings in accordance with law and in the light of the observations made *supra*, if so available in law, and conduct the proceedings in compliance with the observations of the Apex Court in Food Corporation of India's case (*supra* 1) after extending reasonable opportunity of hearing to the petitioner including the tendering of the Enforcement Officer for cross-examination on the report submitted by him and such other witnesses as may be examined by the respondent.