



KERALA HIGH COURT
Hon'ble Mr. S. Manu, J.
W.P. (C) No. 29145/2014, Dt/- 5-6-2025

Employees Provident Fund Organisation
v.
M/s. Treads Direct Limited and Anr.

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7A – EPF Authority initiated enquiry under section 7A, assessed the EPF dues in respect of employees engaged through contractors – Establishment challenged order of the EPF Authority in appeal which was allowed by setting aside order of the EPF Authority – EPF Authority has challenged order of the Tribunal in writ petition – Held, amount assessed is in relation to employees of contractors cover under the Act but it was responsibility of the principal employer to get the EPF contributions remitted – Despite requests made by the establishment to implead the contractors as parties to the 7A enquiry, the EPF Authority did not do so causing a serious prejudice to the establishment – Contention of the EPF Authority is that Tribunal in such circumstances ought to have remitted the matter to EPF Authority for fresh enquiry under section 7A of the Act – Writ petition is allowed by remanding the matter back to the EPF Authority for conducting a fresh enquiry under section 7A after issuing fresh to establishment as well as contractors if such a request is made, by the establishment and hear them in the enquiry and a fresh decision under section 7A of the Act be taken. Paras 4 and 6

For Petitioner: Mr. Thomas Mathew Nellimoottil, SC, P.F.

For Respondent(s): None.

IMPORTANT POINTS

- Enquiry conducted by EPF Authority under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, without impleading concerned contractors is not sustainable.
- When the principal employer has requested the EPF Authority to implead the contractors as parties to the 7A enquiry, the EPF Authority ought to have issued summons/notices to the concerned contractors.
- The proper course on the part of the CGIT, when the EPFO did not summon the contractors during enquiry under section 7A, would be to remand the matter instead of setting aside the entire order.

JUDGEMENT

S. Manu, J.–1. Employees Provident Fund Organisation has filed this Writ Petition aggrieved by Ext. P1 order in ATA 938(7)/2012 of the Employees Provident Fund Appellate Tribunal, New Delhi, dated 19-03-2014.

2. The appeal was filed by the 1st respondent aggrieved by order dated 10-08-2012 passed by the Assistant Provident Fund Commissioner, Calicut under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. The Assistant Provident Fund Commissioner issued notice to the 1st respondent and enquiry was conducted. The 1st respondent attended the enquiry and contended that the employees were actually engaged by their contractor which was a covered establishment and it was their liability to pay provident fund dues. Evidence was produced regarding payment of regular dues by the contractor for the period 03/2011 to 03/2012. Dues in respect of 18 other non-enrolled employees were not paid, according to the Enforcement Officer. The Enforcement Officer also had reported that there was dues on escaped wages (conveyance allowance and special allowance) in respect of contract employees under M/s. Shrinivas Engineering Company for the period of 01/2012 to 03/2012 and the same was also liable to be remitted. The Assistant Provident Fund Commissioner concluded that as the principal employer, it was for the 1st respondent to remit the contributions. Finally it was concluded that amounts are due from the 1st respondent in respect of 18 non-enrolled employees and also dues with respect to conveyance allowance and special allowance with respect to contract employees.

4. In the appeal, it was contended that though a request was made by the 1st respondent to implead the contractors as parties to the 7A enquiry, the Assistant Provident Fund Commissioner did not permit the same. According to the 1st respondent, that caused a serious prejudice to the 1st respondent. The learned Tribunal concluded that there was serious omission on the part of the Assistant Provident Fund Commissioner in refusing to issue notice to the contractors to make them also parties to the enquiry under section 7A of the Act.

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The learned Tribunal observed that the responsibility of a principal employer would arise only in case the immediate employer, the contractor, failed to remit the PF dues. Therefore, the Tribunal allowed the appeal by setting aside the order passed by the Assistant Provident Fund Commissioner under section 7A of the Act.

5. Though notice was served on the 1st respondent, there is no appearance for the 1st respondent. I heard the learned Standing Counsel for the Employees Provident Fund organization.

6. The main contention raised by the learned Standing Counsel is that the order passed by the Appellate Tribunal has caused serious prejudice to the EPFO as far as the prayer for setting aside the order passed under section 7A was allowed. He submitted that proper course ought to have been adopted by the Appellate Tribunal was to remit the matter to the Assistant Provident Fund Commissioner for a fresh enquiry under section 7A of the Act. I find considerable force in the said contention. If the matter was remitted for fresh consideration, the 1st respondent could have got an opportunity of raising all available contentions and the contractors also could have been summoned and made parties to the enquiry so that a proper and effective enquiry could have been ensured. I therefore modify Ext. P1 order as follows:

The Assistant Provident Fund Commissioner, Calicut shall conduct a fresh enquiry under section 7A after issuing fresh notice to the 1st respondent. It will be open to the 1st respondent to seek to issue notice to the contractors and if such a request is made, the Assistant Provident Fund Commissioner shall issue notice to the contractors also and hear them in the enquiry. After hearing all parties concerned, a fresh decision under section 7A shall be taken by the Assistant Provident Fund Commissioner.

Ref: LLR

If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333