

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

W.P.(C).No.1079 of 2015 (H)

PETITIONER(S):-

M/S.FORT HERITAGE (P) LTD,
NAPIER STREET, FORT KOCHI-682002,
REP.BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.JIMMY GEORGE
SRI.M.JOSE ANTONY
SRI.SURESH MADASSERY.

RESPONDENT(S):-

1. ASSISTANT P.F.COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB-REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,
KOCHI-682017.
 2. RECOVERY OFFICER & ASSISTANT P.F.COMMISSIONER,
OFFICE OF THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB-REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,
KOCHI-682017.
 3. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
MINISTRY OF LABOUR AND EMPLOYMENT,
GOVERNMENT OF INDIA, 4TH FLOOR, SCOPE MINAR,
CORE II, LAXMI NAGAR, NEW DELHI-110092.
- * ADDL.R4. THE ASSISTANT P.F.COMMISSIONER (COMPLIANCE),
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB-REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,
KOCHI - 682 017.
- * ADDITIONAL 4TH RESPONDENT IS IMPEADED AS PER ORDER ON
I.A.NO.2064 OF 2015 DATED 11.02.2015.
- R1 TO R4 BY ADV. DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE) &
STANDING COUNSEL SRI.A.RAJASIMHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.1079 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT-P1: COPY OF APPEAL DATED 25.11.2014 FILED BEFORE THE
3RD RESPONDENT APPELLATE TRIBUNAL, DELHI.

EXHIBIT-P2: COPY OF THE ORDER U/S 8F OF EPF & MP ACT DATED 6.1.15
ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P3: COPY OF SHOW CAUSE NOTICE OF PROSECUTION
DATED 13.11.2014.

EXHIBITP4: COPY OF THE REPLY DATED 7.2.2015.

RESPONDENT(S)' EXHIBITS

NIL.

VKU/-

(true copy)

K. Vinod Chandran, J.

W.P.(C) No.1079 of 2015-H

Dated this the 11th day of February, 2015

JUDGMENT

The petitioner is aggrieved with an order passed under Section 7-A of the Employees Provident fund and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"]. Admittedly there is an appeal provided under the Act and the petitioner has availed of the same as per Exhibit P1 and also filed an application for waiver of pre-deposit under Section 7-O of the EPF Act. The petitioner has approached this Court, since recovery proceedings have been initiated on the basis of the Section 7-A assessment, pending the appeal filed before the Appellate Authority as A.T.A.1307(7)/2014. The petitioner is aggrieved insofar as there is no incumbent in the office of the Tribunal and recovery would be proceeded during the pendency of the appeal.

2. It is trite that this Court would not look into the facts of the case; and since there was an appeal pending before the Tribunal, this Court is of the opinion that a conditional order could be passed. The petitioner insisted that there would be no coverage of the petitioner's establishment, since there are only four employees

as per the muster roll maintained in the petitioner's establishment and attested by the officer of the Corporation. The petitioner would invite this Court to go into the merits of the matter.

3. This Court has looked into the contentions raised by the petitioner. The petitioner, in fact, relies on Exhibit P1 to contend that Enforcement Officer has not recommended coverage as he could not find 20 employees on the record. No such inference, out of context, can be made from Exhibit P1. Obviously a complaint, dated 29.03.2012, was raised by one of the employees that the employees under the establishment were not given the protection of the EPF Act. An Enforcement Officer was deputed and he was directed to inspect the establishment and report on the facts. The Enforcement Officer obtained copy of certain documents duly attested by the Managing Director of the establishment, which is indicated as item Nos.1 to 7 in Exhibit P1. It was on verification of such documents issued by the establishment itself that the Enforcement Officer refused to recommend coverage.

4. However, later, another complaint was received by the Organisation, dated 02.09.2012, wherein certain documents, viz., address and photos of the employees, copy of salary vouchers,

salary statement and copy of attendance; were produced, showing that the employees in the establishment is far above 20. Hence, a squad of Enforcement Officers were sent for inspection. Exhibit P1 indicates that the Enforcement Squad had collected Attendance Register (original one book) for the months of 10/2010 to 10/2011 and another muster roll (original book) for the months of 02/2010 and 11/2011 to 03/2012. All these indicated that the petitioner had, on almost all the aforesaid months, employed more than 20 employees. An establishment at any point of time crossing 20 or more employees would not be absolved from the coverage on subsequent reduction of the employees.

5. In the above circumstances, looking at Exhibit P1 order, this Court *prima facie* is not convinced that the petitioner has a case for unconditional stay of the demand. In any event, an appeal has been filed and the same has to be considered, in which the contentions of the petitioner would have to be looked at, on the factual aspects also. The petitioner in the present case is aggrieved with Exhibit P2 issued for attachment of the amounts in the account maintained by the petitioner in the Bank of Baroda.

6. In the circumstances of the case as stated above, this Court is not convinced that there can be a stay of the order of assessment passed under Section 7A. Only since the appeal is pending, it is directed that Exhibits P2 and P3 would be kept in abeyance for a period of one month, within which time the petitioner shall remit 60% of the demand made as per Exhibit P1. Any further demand shall be kept in abeyance till the appeal is considered on merits, by the Tribunal. It is made clear that the observations made hereinabove are only in the nature of *prima facie* consideration and the Tribunal shall consider the appeal on its merits *de hors* such observations made herein.

The writ petition is disposed of as above.

Sd/-
K. Vinod Chandran,
Judge

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(true copy)