

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 13742 of 2011 (P)

PETITIONER(S):

BIJU T.M.
M/S. T.R.PETROLEUM, T.C.ROAD, KUTHUPARAMBA
KANNUR

BY ADVS.SRI.M.RAMESH CHANDER
SMT.K.A.SANJEETHA

RESPONDENT(S):

1. ASST. PROVIDENT FUND COMMISSIONER ,
EMPLOYEES' PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFFICE, FORT BUILDING, V.K.COMPLEX
FORT ROAD, KANNUR - 670 001.
2. INDIAN OIL CORPORATION LIMITED,
KOZHIKODE DIVISIONAL OFFICE, IIND FLOOR, P.M.K.TOWERS
CIVIL STATION POST, WAYANAD ROAD
KOZHIKODE - 673 020 - REPRESENTED BY SALES MANAGER

BY DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.
BY SRI.E.K.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

EXHIBITS

- P1- TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY R2 TO THE PETITIONER DATED 16.3.09
- P2- TRUE COPY OF THE NOTICE ISSUED BY R1 DATED 23.6.2010
- P3- TRUE COPY OF THE COMMUNICATION ISSUED BY R2 TO R1 DATED 16.8.10
- P4- PHOTOSTAT COPY OF THE COMMUNICATION ISSUED BY PETITIONER TO R1 DATED 23.7.10
- P5- PHOTOSTAT COPY OF THE ORDER ISSUED BY R1 DATED 8.12.10
- P6- PHOTOSTAT COPY OF THE COMMUNICATION ISSUED BY R2 TO R1 DATED 24.1.11
- P7- PHOTOSTAT COPY OF THE ORDER ISSUED BY R1 DATED 18.2.11
- P8- PHOTOSTAT COPY OF THE ORDER ISSUED BY R1 DATED 16.3.11

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P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 13742 of 2011

Dated 17th March, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P5, an order passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) for the period 9/2009 to 10/2010. The petitioner is the licensee of a retail petrol bunk which licence has been granted by the 2nd respondent and the liability now imposed under Section 7A is with respect to the employees of the said petrol bunk. Admittedly, there are six employees in the said Organization and the minimum required for coverage under the EPF & MP Act, is 20.

2. The petitioner is a licensee of the 1st respondent from 16.3.2009 the appointment of which is evidenced by Ext.P1. The Petrol bunk was earlier under the IBP Company Ltd., another

petroleum Company which has been amalgamated with the Indian Oil Corporation (IOC) w.e.f. 02.05.2007. The petrol bunk when it was under the IBP Company Ltd., was run on a 'Company Owned Company Operated' basis. In such circumstances, the person who was appointed for carrying on the operations voluntarily sought coverage under the EPF & MP Act as per Ext.R1(a) and the same was granted and was continued.

3. Subsequently, IBP itself is said to have discontinued the operations of the Bunk from 01.02.2007. It was thereafter, that the IBP Company Ltd., was amalgamated with the IOC. The IBP Auto services which was a contractor under the IBP continued remittance upto 30.07.2009. Despite the payment, it is the specific contention of the petitioner that, the retail bunk was never operated beyond 01.02.2007. The contractor is said to have paid the

contributions since there were disputes pending between the said contractor and the IBP Company Ltd., and he was merely attempting to create evidence that the retail bunk was continued even after discontinuance.

4. In any event, the dealership of the petitioner came into effect from 11.03.2009 as is evidenced by Ext.P1. The petitioner is not employing the very same employees of the earlier contractor. Hence, the said establishment is one which was commenced on the dealership being granted and there could be no continuance of the earlier coverage under the EPF & MP Act.

5. The learned Standing Counsel submits that the petitioner had an appellate remedy and even the review filed under Section 7B was delayed. It is also contended that the very same business was carried on.

6. It is to be noticed that, the establishment itself being one of a dealership as distinguished from a 'Company Owned Company Operated' establishment, would not be covered under the EPF & MP Act. The mere fact that the same business was continued by a different person would not also enable coverage under the EPF & MP Act since there is no specific provision to that count. It is also not the earlier employer who registered under the EPF & MP Act who transferred the establishment to the petitioner herein.

7. The learned Standing Counsel would contend that even as per the letter of IOC, Ext.P3, on amalgamation, all continuing liabilities are taken over. However, IBP did not seek coverage of the six employees. Even going by the evidence produced by the

respondent/Organization, it was the contractor who sought coverage. The contractor has admittedly, closed down the establishment. One another person has obtained dealership from the IOC under a licence and is carrying on an establishment where there are less than six employees. It cannot be said that the principle of an establishment once covered not being taken out of coverage by reason of reduction of employees or otherwise, cannot be imported to the facts of the case. Obviously, earlier IBP had been carrying on the same under a contractor as a 'Company Owned Company Operated' retail bunk; while now, the IOC has given the said retail operations on licence to the petitioner herein.

8. True, the petitioner had an Appellate remedy and also did not avail of the review remedy within the time stipulated. However, the

contention raised herein is with respect to the lack of jurisdiction of the respondent/Organization to proceed with under the Act. The same having been found to be sustainable, this Court would invoke its jurisdiction under Article 226 of the Constitution of India, as has been stated in State of H.P v. Gujarat Ambuja Cement Ltd. [STC (2005) 142, Pg.1]. Hence, Ext.P5 stands set aside.

The writ petition is allowed. Parties are left to suffer their respective costs.

SD/-

K.VINOD CHANDRAN
Judge

Mrcs

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