IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 33628 of 2014 (S)

PETITIONER(S):

GEORGE ISSAC,
MANAGING PARTNER, THE MALABAR COAST PRODUCTS,
PALATHINKAL HOUSE, PAKKIL P.O., NATTAKOM,
KOTTAYAM - 686 012.

BY ADV. SRI.GEORGE ISSAC (PARTY-IN-PERSON)

RESPONDENT(S):
----

1. **THE ASSISTANT REGIONAL PROVIDENT FUND COMMISSIONER,**
   S.R.O. KOTTAYAM, ADITYA SABARI TOWER,
   POST OFFICE ROAD, KOTTAYAM, KERALA-686 001.

2. **THE CENTRAL PROVIDENT FUND COMMISSIONER,**
   THE EMPLOYEES PROVIDENT FUND ORGANIZATION,
   341 BHAVISHYOG, NIDHI BHAVAN, 14 BHIKAJI CAMA ROAD,
   NEW DELHI-10066, MUMBAI-400 051.

3. **THE PRINCIPAL SECRETARY,**
   MINISTRY FOR LABOUR AND EMPLOYMENT,
   GOVERNMENT OF INDIA, SHRAM SAKTHI BHAVAN, RAFI MARG,
   NEW DELHI-110 001, NEW DELHI.

4. **THE SECRETARY,**
   THE MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES,
   GOVERNMENT OF INDIA, "A" WING, 7TH FLOOR,
   NIRMAN BHAVAN, NEW DELHI-110 108.

5. **THE SECRETARY,**
   THE MINISTRY OF SOCIAL JUSTICE, GOVERNMENT OF INDIA,
   "A" WING SASHTRI BHAVAN, DR.RAJENDRA PRASAD ROAD,
   NEW DELHI-110 001.

msv/

WP(C).No. 33628 of 2014 (S)
----

6. THE SECRETARY,
INDIAN NATIONAL TRADE UNION CONGRESS, SHRAMIK KENDRA,
4 BHAI VEERE SING MARG, NEW DELHI-110 001.

7. THE SECRETARY,
CENTRE FOR INDIAN TRADE UNIONS, B.T.RANADIVE BHAVAN,
13 A, ROUSE AVENUE, NEW DELHI-110 002.

R1 BY ADV. SRI.JOY THATTIL ITOOP, SC
R2-R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 33628 of 2014 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 : PROCEEDINGS DTD.27.8.2014 FROM THE ASST. PROVIDENT FUND COMMISSIONER REJECTING THE OBJECTIONS OF THIS PETITIONER - AND REITERATING THE DEMANDS FOR PENAL INTEREST AND DAMAGES.

EXT. P2 : DEMAND FOR DAMAGES AND PENAL INTEREST FROM THE PETITIONER RAISED BY THE 1ST RESPONDENT.

EXT. P3 : PETITION FILED BY THIS PETITIONER OBJECTING TO THE AFORESAID DEMANDS WITH ENGLISH TRANSLATION OF MANALAYAM PORTION.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * *
W.P.C.No.33628 of 2014

Dated this the 28th day of January 2015

<u>J U D G M E N T</u>

<u>Shaffique,J</u>

This writ petition is filed as a public interest litigation seeking the following reliefs:

> *(i) substituting the existing irrational distinction between (i) establishments employing more than 20 workers, and (ii) establishments employing less than 20 workers, with a rational distinction between (i)* ***labor intensive employers/establishments and (ii) capital intensive employers/establishments*** *- based on the r relation between the capital employed in an establishment and the number of workers it employs.*
>
> *(ii) exempting* ***labor intensive establishments employers*** *from the Act, in recognition of the service they do to the nation by creating employment and wealth and economizing the use of our scares capital resources.*

(iii) restricting the coverage of all labor laws, including the Act under which the EFPO functions, to ***capital intensive establishments (i.e. establishments which employ few workers in relation to the capital invested)*** *and employees in such establishments with a wage ceiling to exclude employees drawing wages in excess of - say Rs.20,000/- a month.*

iv) permitting workers in the labor intensive establishments, and workers who have no fixed employer, to join the EFPO, if they ***are prepared to pay a percentage of the wages they receive, as contributions, directly to the EFPO or through their trade unions, without insisting on a contribution from their employer****.*

v) providing incentives to trade unions to enroll workers in ***labor intensive establishments, and workers who have no fixed employment****, in the EFPO, to collect contributions from such workers, and remit such contributions into the EFPO and to maintain records of such remittances.*

vi) taking into account factors, beyond the control of the employer, which may have caused him to delay such remittances, before imposing penalties *for delays in remitting contributions to the EFPO with the prescribed time limit.”*

2. The petitioner has appeared in person and he does not narrate the reason as to why he has approached this Court in a public interest litigation matter exposing the cause of certain category of employees who are not getting the benefits of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'). Perusal of the facts of the case indicates that the petitioner was imposed with penal interest and damages amounting to Rs.65,735/- for the delay in making contribution during the period 20/11/2013 to 07/04/2014. He contends that the said action is arbitrary. Therefore, apparently, this is a case in which the petitioner being aggrieved with the imposition of penalty, wants to file a litigation against the Department projecting the cause of workers. For that reason itself, this writ petition is liable to be dismissed.

3. The cause projected is that the benefit of EPF Act has been restricted to workers in establishments employing more than 20 employees and limited to certain establishments alone. According to the petitioner, being a social welfare legislation, it has to be made applicable to all establishments irrespective of the number of persons employed.

4. EPF Act has been enacted taking into consideration the benefits that could be given to certain class of employees employed in notified establishments. Whether a particular class of establishment can be included or excluded is clearly a legislative function which cannot be considered by this Court in a Public Interest Litigation.

Section 1(3) and (4) of the Act reads as under:

"(3) Subject to the provisions contained in Section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or

more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.]

***Note**.—For list of non-factory establishments to which the Act has been extended under S. 1(3)(b) see the Appendix printed at the end of this Act after Sch. IV.*

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

5. The objects and reasons of the EPF Act was considered by the Constitution Bench in **Mohmedalli v.**

Union of India, (1963 Supp (1) SCR 993) and held as under:

> *"6. In our opinion, there is no substance in any one of these contentions. It cannot be asserted that the powers entrusted to the Central Government to bring within the purview of the Act such establishments or class of establishments as the Government may by notification in the Official Gazette specify is uncontrolled and uncanalised. The whole Act is directed to institute provident funds for the benefit of enployees in factories and other establishments, as the preamble indicates. The institution of provident fund for employees is too well-established to admit of any doubt about its utility as a measure of social justice. The underlying idea behind the provisions of the Act is to bring all kinds of employees within its fold as and when the Central Government might think fit, after reviewing the circumstances of each class of establishments. Schedule I to the Act contains a list of a large variety of industries engaged in the manufacture of diverse commodities, mentioned therein. To all establishments, which are factories engaged in the industries enumerated in Schedule I, the Act has been made applicable of its own force, subject to the provisions of Section 16, which has indicated the establishments to which the Act shall not*

apply. The Schedule is liable to be added to or modified so as to include other categories of industries not already included in Schedule I. So far as establishments which do not come within the description of factories engaged in industries, the Central Government has been vested with the power of specifying such establishments or class of establishments, as it might determine, to be brought within the purview of the Act. The Act has given sufficient indication of the policy underlying its provisions, namely, that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons. This Court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees. xxx"

6. The Supreme Court in **Maharashtra Co-operative Bank Ltd. v. Provident Fund Commissioner**

[(2009) 10 SCC 123], held that, analysis of the statutory provisions would show that it is to provide financial benefit to the workers who contribute to growth of industry and industrialisation of the country. Further, the legislature has made provision for framing various rules under the Act and establishment of funds, with a view to ensure that the employers rigidly comply with the mandate of the provisions enacted for the benefit of the workers. In so far as the purpose behind the legislation is very clear, that the benefit has to given to workers who contribute to the growth of the industry, the classification made is reasonable. That apart, Section 1(4) makes appropriate provisions to take care of a situation, when the employer and majority of employees decide to come under the scheme.

7. Hence it is purely within the realm of jurisdiction of the legislature to come up with a like policy and extend such benefits. It may not be proper for this Court to issue any directions in that regard calling upon the Government to

exercise a legislative function in the manner suggested by the petitioner.

In the result, there being no basis for the aforesaid writ petition, the same is dismissed.

(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

jsr