

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19454 of 2006

ORDER:

The order dated 11.05.2005, passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in ATA No.484(1) of 2000 reversing the order passed by the Regional Provident Fund Commissioner, Viakhapatnam, dated 19.09.2000, is challenged before this court.

2. The facts, in brief, are that the petitioners, who are workers of the Anti Malaria Workers Welfare Association (for brevity, "Association"), have been engaged in various Anti-Malarial activities in relation to Visakhapanam Steel Plant, first respondent. Petitioner made an application before the Regional Provident Fund Commissioner, Employees Provident Fund, Visakhapatnam, second respondent, seeking to cover the members of the Association for the benefits of various schemes under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (for short, "the Act") as they were not being covered as employees of the first respondent Company. The second respondent after taking into consideration of the material placed before him came to the conclusion that though the members of the Association were being paid their wages through the District Malaria Officer, they were, *in fact*, indirectly in employment of the first respondent Company and thus the first respondent Company

is liable to cover the members of the Association under the Act and are required to make contributions to the Provident Fund Schemes. The order dated 19.09.2000 was challenged by the first respondent company before the Appellate Tribunal constituted under Section 7D of the Act. The Tribunal on consideration of the material placed before it and on analysis of the scheme under which the first respondent had contributed money towards Anti Malarial schemes found that the members of the petitioners were not employed by the first respondent company and the mere contributions which were made to the scheme that is being carried out by the District Malaria eradication, by itself does not create any employer-employee relationship between the members of the Association and the first respondent company and thus the order of the Regional Joint Commissioner is erroneous. Challenging the same, the present writ petition is filed.

3. Sri G.Ram Gopal, learned counsel for the petitioner, would submit that the persons engaged in the Anti Malarial activities are indirectly engaged by the first respondent company and the appellate authority erred in appreciating the true scope and intent of Sections 2(e), 2(f) and that of Section 3 of the Act. Learned counsel would also submit that the District Administration is required to submit various details with respect to the persons engaged in carrying out the anti malarial activities to the first respondent company and thus the first respondent company wields control over the persons engaged through the District Malaria Officer. Learned counsel would

further submit that the finding of the appellate authority that the persons engaged in the activities are not employed by the first respondent company is perverse and the said conclusion was arrived at merely on account of there being no obligation on the first respondent company to contribute to the Anti Malarial activity. Even there being no obligation, once as a matter of fact if the amounts are being contributed, the said factum of contribution would create the employer and employee relationship and thus the order of the appellate authority suffers from error apparent in appreciating the facts.

4. On the other hand, Sri K. Sarva Bhuma Rao, learned counsel appearing for the first respondent company, supporting the order of the appellate authority, would submit that in the absence of any legal obligation to undertake the Anti-Malarial activities, which in fact is the duty of the State, the respondent Company cannot be mulcated with the obligations of the Act by artificially creating an employee and employer relationship. Learned counsel would further submit that the interpretation sought to be placed by the petitioner is erroneous as the activity of the steel plant is not in relation to the anti malarial programme.

5. Having considered the respective submissions, at the outset, it may be born in mind that the petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari. The principles

governing issuance of Certiorari are well settled by a catena of Judgments of the Supreme Court. For invoking jurisdiction under Writ of Certiorari the order challenged must have been the one passed without jurisdiction, or a total lack of jurisdiction, or is in violation of the principles of natural justice, or the findings are perverse and no reasonable person would have arrived at the decision in such a manner.

6. The contention of the petitioners is based on the three provisions as fairly submitted by the learned counsel for the petitioner. To appreciate the contention of the petitioners the said provisions on which reliance is placed reads as follows:

2(e) 'employer' means-

- (i) In relation to an establishment which is a factory; the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as manager of the factory under Clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
- (ii) In relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

2 (f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person,—

- (i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

3. Power to apply Act to an establishment which has a common provident fund with another establishment.—Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees employed in that establishment and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

7. So far as Section (1) is concerned, it is a general provision which merely declares the applicability of the Act. Undoubtedly, the first respondent is a Factory in relation to the activity of manufacture of Steel, which is governed under the Act. The first respondent is not an establishment engaged in the activity in relation to Malaria Eradication Schemes. In that view of the matter, Section 3 has no application. So far as Sections 2(e) & 2(f) are concerned, they merely define 'employer' and 'employee' and nothing turns on the same as the applicability of the Act cannot be decided on the same.

8. In the case on hand, admittedly there is no direct employment of any of the members of the Association by the first respondent Society. It is the contention of the learned counsel for the petitioners that they are being employed indirectly. There is no material that in any manner the members of the Association were being employed by the first respondent company though it is admitted fact, to the extent, the money for Malaria Eradication scheme is being contributed by the first respondent Company. Merely because the first respondent company as

a measure of community welfare to the persons living in the plant area and to aid the State has agreed to fund the activities of the State, that by itself does not make all the persons who are engaged in various schemes of the State to be the employees of the first respondent company. If such logic is to be accepted, in one way or the other every individual citizen, organization, firm, who contribute to the State Exchequer, by way of fees, tax, etc., would become employees of every other individual, which would result in an absurd situation.

9. The emphasis placed on Section 2(f) also does not support the contention of the petitioners inasmuch as Sec.2(f) requires the persons employed either directly or indirectly should be in relation to and in connection with the work of the establishment (emphasis supplied). Apparently, in the case on hand, the work of the first respondent is the production of the steel and not eradication of Malaria. It also cannot be said that the State Government has been engaged as a Contractor by the first respondent company merely because certain amount is being contributed and there is no finding to that effect. As a matter of fact by letter dated 24.03.2001 of the first respondent it was made clear that 'fulfillment of all the liabilities to the workers of amount in respect of PF, and other statutory requirements, is State Government's responsibility.'

10. Under the CSR activities of the Companies Act various welfare measures are required to be taken up and are being taken up both private sector and public sector companies and as the funds are being

contributed for such purposes and merely because of that, If an employer- employee relationship is to be created, the same would result in utter chaos and would defeat the schemes for which the activities like CSR are being made mandatory and are being permitted.

11. Viewed from any angle, there being no material before this court which was justified issuance of a Writ of 'Certiorari', the writ petition lacks merits and is liable to be dismissed. However, the first respondent, in future on its own volition may contribute additional amounts to meet expenses on account of Provident Fund that may be payable to the persons engaged by their employer. Subject to the eligibility, necessary steps may be taken by the appropriate authority.

The Writ Petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

November 22, 2016

LMV