

02 06.9.2022
Sc Ct. no.22

WPA 24257 OF 2012

M/S. Muramen Travels

Vs.

Regional Provident Fund Commissioner,
West Bengal & Ors.

Mr. Anant Kumar Shaw
Mr. Ravi Kumar Dubey.

Ms. Aparna Banerjee

Mr. Mainak Ganguly

.... For the Petitioner

.... For the Respondent
Nos. 1 & 2.

.... For the Respondent
No.4

This writ petition assails an impugned order dated March 20, 2012 (for short 'the impugned order') passed by the third respondent under **Section 7A of the Employees Provident Funds and Misc. Provisions Act, 1952** (for short 'the said P. F. Act'), **Annexure-P11** to the writ petition.

The writ petitioner contended that while passing the said impugned order, the third respondent could not have clubbed the petitioner and the fourth respondent taking into and considering the same to be a single unit as a single establishment covered under the said P.F. Act.

Mr. Anant Kumar Shaw, learned counsel appearing for the petitioner submitted that, the petitioner and the fourth respondent are two separate, independent juristic entities. The first petitioner is a registered partnership

firm and the fourth respondent is also another registered partnership firm.

It is an admitted position that both the said two entities carried on business at and from the same premises situated at 61B, Park Street, Kolkata – 700 016. However, the office of the petitioner was situated on the ground floor of the premises whereas the office of the fourth respondent was situated on the first floor of the premises.

Mr. Shaw, learned counsel submitted that, previously several rounds of writ litigations had occurred at the instance of the petitioner and the fourth respondent when orders were passed from time to time by this Court. He drew attention of this Court to an **order dated October 19, 2001**, passed in the then writ petitions, **AST No. 1302 (W) of 2001** and **AST No. 1303 (W) of 2001** whereby and whereunder the petitioner, *inter alia*, was granted liberty to urge the point of applicability of the said P. F. Act on the petitioner in the **Section 7A** proceeding before the appropriate authority and petitioner was, *inter alia*, directed to deposit the demanded amount of the Provident Fund Authority in a fixed deposit in its own bank and to continue to deposit with the current dues payable by the petitioner to the Provident Fund Authority in accordance with law. The said order further directed that all such deposits and payments would be

without prejudice to the rights and contentions of the parties.

Mr. Shaw further submitted that, in terms of the said direction, the necessary fixed deposit had been created by the petitioner and the petitioner had been continuing to deposit the current amount with the Provident Fund Authority without prejudice to its rights and contentions.

Mr. Shaw also submitted that, the impugned order was passed on the basis of a report prepared and submitted by the relevant enforcement officers of the Provident Fund Authority. He drew attention of this Court to such report, **Annexure-P5** to the writ petition. Referring, *inter alia*, to clauses (6), (7) and (10) thereunder he submitted that, the **Permanent Account Numbers** of the two said entities namely, the petitioner and the fourth respondent, as mentioned therein, are different. The bank accounts are different. The common bridge between the two as stated in the said report was the common chartered accountant of the said two entities. He submitted that, the two entities having different **Permanent Account Numbers** under the provisions of the **Income-Tax Act, 1961** *ex facie* demonstrated that the entities are separate and independent to each other. Mr. Shaw submitted that the petitioner carried on business as a travel agent whereas the fourth respondent carried on business as a courier service provider. The

learned counsel then submitted that, on the basis of such finding of the report of the fact-finding-inquiry, the impugned order was passed whereby and whereunder both the petitioner and the fourth respondent were clubbed together and were assessed as a single establishment under the provisions of the said P. F. Act.

Mr. Shaw, learned counsel for the petitioner referred to the provisions laid down under **Section 2A of the P. F. Act** and submitted that, save and except this provision there was no other provision under the statute by which the clubbing of establishment could be construed. He submitted that, the very expression of language used under **Section 2A of the P. F. Act** showed that, an establishment would include all departments and branches. This clearly, according to Mr. Shaw, denoted that two separate and independent entities could not come within the scope and purview of clubbing in terms of **Section 2A of the P. F. Act**. Hence, the impugned order passed under **Section 7A of the P. F. Act** should be set aside and the writ petition should be allowed.

Ms. Aparna Banerjee, learned counsel appearing for the Provident Fund Authorities submitted that, this clubbing of the petitioner and the fourth respondent were done under **Section 2A of the P. F. Act** and was permitted in law. She referred to **Annexure-R1** to the affidavit-in-opposition filed by the Provident Fund Authority and submitted that, this **Coverage Letter**

clearly spelt of the said two entities to become a single entity and establishment within the meaning of the P. F. Act and were assessable accordingly under the provisions of the said P. F. Act. She submitted that, the two entities to be taken as clubbed together employed twenty-five (25) persons as on April, 1997 and the clubbed entity became an establishment within the meaning and scope of the said P. F. Act with effect from April 1, 1997 with a **single code number being WB/CA/34873**. She also submitted that necessary demand was also raised upon these two entities having been clubbed together.

Referring to the impugned order, the learned counsel appearing for the P. F. Authority submitted that, there was no error whatsoever in law in applying the provisions of **Section 2A of the P. F. Act** on the petitioner and the fourth respondent clubbing together and to treat them as a single establishment. She further submitted that, the impugned 7A order was passed on the basis of the said fact-finding-report being **Annexure-P5** to the writ petition. She submitted that at the time of hearing in the 7A proceeding, the petitioner failed to produce the necessary documents and records before the hearing authority. The fact-finding-inquiry also spelt out that there was a common partner between the two partnership entity and there might be common employees also. She further submitted that, there was financial dependence between the said two entities each other as

unsecured loans were provided and transacted by and between themselves. She further submitted that, both the entities carried out their respective business which were also inter-dependent and from the same premises.

Mr. Mainak Ganguly, learned counsel appearing for the fourth respondent adopted the submissions made by Mr. Shaw, learned counsel for the petitioner. He further raised an issue with regard to the applicability of the said P. F. Act on the fourth respondent. According to him, the P. F. Act was not applicable at the relevant time when the proceeding under **Section 7A** was taken into consideration.

After hearing the rival contentions of the parties and on perusal of records, it appears to this Court that, the impugned **7A order** was passed on the basis of the said fact-finding-report, **Annexure-P5** to the writ petition and the subsequent fact-finding-reports, though those are not on record before this court.

On a close scrutiny of the said fact-finding-report, **Annexure-P5** to the writ petition, which was the basis of the impugned order, it is evident that the petitioner and the fourth respondent had their independent and separate **Permanent Account Numbers** under the relevant provisions of the **Income-Tax Act, 1961**. Had it been a single unit and/or a single assessee in terms of the **Income-Tax Act, 1961**, the two independent **Permanent Account Numbers** could not have been

provided. Inasmuch as it is also clear from the record that the petitioner is an independent registered partnership firm and the fourth respondent is another independent registered partnership firm. Such fact makes it further evident that the petitioner and the fourth respondent are two separate and independent juristic entities.

Section 2A of the P. F. Act is quoted below :

“2A. Establishment to include all departments and branches

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as part of the same establishment.]”

On perusal of the provisions made under **Section 2A** of the P. F. Act, it is clear that an establishment is inclusive of its all departments and branches and an establishment cannot include another independent juristic entity for being clubbed together for the purpose of assessment under the P. F. Act as a single establishment. The provision provides that where an establishment consists of different departments or has branches, whether situate at the same place or in different places, all such departments and branches shall be treated as parts of the same establishment. In the facts of this case, the petitioner and the fourth respondent being two separate and independent juristic

entities, the said provision under **Section 2A of the P. F. Act** has no application.

On a close scrutiny of the impugned order, it appears to this Court that, the same had proceeded on the basis that both the said two entities carried on business under the same roof i.e., the same premises. Both the entities had financial and/or unsecured loan transactions between themselves. Both the said entities had a common partner and might be common employees. Such finding in the impugned order also emanated, *inter alia*, from the fact-finding-report being **Annexure -P5** to the writ petition. The third respondent while passing the impugned order did not consider that the two entities had their independent **Permanent Account Numbers** in terms of the **Income-Tax Act, 1961**. For the reason that both the entities had a common chartered accountant shall not necessarily mean that they are same and not separate. The two separate and independent juristic entities might work through a common chartered accountant, as a chartered accountant being a professional can work for his several clients.

In view of the foregoing discussions and reasons, this Court is of the considered opinion that the said **impugned order dated March 20, 2012, Annexure-P11** to the writ petition suffers from infirmities both in facts and law and shall not sustain. Accordingly, **the**

impugned order dated March 20, 2012, Annexure-P11 to the writ petition stands set aside and quashed.

However, it is made clear that, this Court has not gone into the question of applicability of the Provident Fund Act either on the petitioner or on the fourth respondent. This Court has also not gone into the merits of the claim raised by the Provident Fund department against the petitioner. Since Mr. Shaw, learned counsel appearing for the writ petitioner submitted that the petitioner is continuing and complying the direction made by this Court in the said order dated October 19, 2001 without prejudice to its rights and contentions, as directed therein, such compliance shall continue in terms of the said order dated October 19, 2001 without prejudice to its rights and contentions.

It is also made clear that this Court has also not gone into any issues raised by the respondent no.4.

In view of this order, the Provident Fund Authority is directed to take steps to segregate the said two entities, namely, the petitioner and the fourth respondent forthwith in their records in accordance with law within a period of eight weeks from the date of communication of this order and shall intimate the same to the petitioner and the fourth respondent within a further period of two weeks thereafter. The Provident Fund Authority thereafter will be free to proceed to take steps against the petitioner and the fourth respondent, if situation so

needs, but strictly in accordance with law. The deposit already made and the continuous current deposit is being made in terms of the order dated October 19, 2001, shall abide by the reasoned decision to be taken by the Provident Fund Authority after giving an opportunity of hearing to both the petitioner and the fourth respondent after segregation of the two entities as directed above, as expeditiously as possible but positively within a period of six weeks from the date of communication of the segregation of the two entities to the petitioner and the fourth respondent.

On the above terms the writ petition, **WPA 24257 of 2012** is disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)