BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.1268 and 1269 of 2013
and
M.P.(MD).Nos.1, 1 and 2 of 2013

W.P.(MD).No.1268 of 2013

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Bhavishyanidi Bhavan,
NGO 'B' Colony,
Tirunelveli – 627 007. ... Petitioner

Vs.

1.The Employees' Provident Funds
Appellate Tribunal,
New Delhi.

2.Jeyaram Roadways,
No.106/7, Trivandrum Road,
Palayamkottai – 627 002,
Represented by its Proprietor,
Shri.N.Ramkumar ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the first respondent dated 25.04.2012 in ATA No.761 (13) 2003 and quash the same.

W.P.(MD).No.1269 of 2013

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Bhavishyanidi Bhavan,
NGO 'B' Colony,
Tirunelveli – 627 007. ... Petitioner

Vs.

1.The Employees' Provident Funds
Appellate Tribunal,
New Delhi.

2.Jeyaram Roadways,
No.106/7, Trivandrum Road,
Palayamkottai – 627 002,
Represented by its Proprietor,
Smt.R.Suyambukani ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the first respondent dated 25.04.2012 in ATA No.762 (13) 2003 and quash the same.

(In Both Writ Petitions)

For Petitioners : Mr.K.Murali Sankar

For R-1 : Tribunal

For R-2 : M/s.H.Lakshmi Shankar

COMMON ORDER

The prayer in the Writ Petitions is to quash the orders dated 25.04.2012 passed in ATA No.761 (13) 2003 and ATA No.762 (13) 2003.

2. The brief facts as stated in the affidavit are that the establishment namely M/s.Jeyaram Transport was owned by one Shri Jebakani and the same was covered under the Employees Provident Funds and Miscellaneous Provisions Act 1952 with effect from 01.11.1979 and the code number for the establishment is TN/10854. The establishment had complied with the provisions of the Act in respect of 8 employees employed by them in two buses till 31.05.2000. On 06.06.2000, the said two buses of the establishment, one with Register No.TCT 4794 was transferred in the name of Sri.N.Ramkumar (Jayaram Travels) and another one with the Register No.TNI 4794 in the name of Smt.Suyambukani, wife of N.Ramkumar (Jayaram Roadways), who are the second respondents in both the present Writ Petitions. The contention of the petitioner organization is that even though the ownership and permit of the two buses were transferred in favour of N.Ramkumar and Suyambukani, the buses were plying in the same route and the establishment functioning in the same

premises. Based on this, the petitioner has come to the conclusion that there is no change in the management and nature of business. The office premises for both the units namely M/s.Jayaram Travels and M/s.Jayaram Roadways are one and the same. The said two offices were looked after by one Manoharan which was evident from the acknowledgement of notice issued in the name of both the units. The Transport establishment is covered under the EPF Act. However, the second respondent failed to implement the provisions of the Act with effect from 6/2000. So, an inquiry was initiated under Section 7A of the Act in order to decide the issue whether the Act is applicable to the said two units. After giving sufficient opportunity, the inquiry was concluded and an order was passed on 28.02.2001 holding that the establishments functioning in the same premises, having the same management and functional integrity constitute one entity and a continuation of the establishment is covered under the Act. The further contention of the petitioner is that the establishment had not produced any records in respect of the employees engaged by them and the respondents state that no records were maintained by them. Aggrieved over the said order, the Appeals in ATA No.761 (13) 2003 and ATA No.762 (13) 2003 filed by the establishments namely M/s.Jayaram Travels and M/s.Jayaram Roadways respectively. Since the appeals were dismissed for non prosecution, thereafter along with the condone delay, the establishments had filed Restoration Petition. However, the condone delay application was dismissed on 31.03.2010 which was challenged in W.P.Nos.12733 and 12734 of 2010 and this Court vide order dated 07.09.2011 directed to restore the Appeal and pass orders within a period of three months. The proceedings under Section 7A was challenged in W.P.No. 1235 of 2010 and this Court disposed of the case with a direction that the interim order passed by this Court staying the recovery proceedings, shall continue till the disposal of the applications for stay before the Appellate Tribunal. Thereafter the Tribunal after hearing finally, a common order was passed vide order dated 25.04.2012 whereby the Tribunal has allowed the appeals. Aggrieved over the same, the present Writ Petitions are filed.

3. The further contention of the petitioner organization is that the said Mr. Ramkumar is the proprietor of Jayaram Travels whereas his wife Suyambukani is the proprietor of Jayaram Roadways. The operation of the two buses in two different names is only to avoid the liabilities under various Act. Since the buses were plying in the same route, and the buses were operating in the same addresses, the change of ownership alone has taken place and all other aspects were similar before and after purchases of buses. Therefore, the

petitioner's organization had come to the conclusion that in order to escape from the liabilities of the Act, the two buses owned by one Jebakani, owner of M/s.Jayaram Transport has transferred the buses to Ramkumar and his wife Suyambukani and they are shown as two establishments and the same is not permissible. The second respondent had not produced the attendance register, wages register in respect of the employees engaged by them to prove that the employees of the previous employer were not engaged by them. The further contention of the petitioner organization is that the Tribunal has come to the wrong conclusion that M/s.Jayaram Transport sold its business by selling two buses and the buyers of those buses are not plying these buses jointly, that the business of M/s.Jayaram Transport ceases to exist. The first respondent fails to see that the purchasers are husband and wife and they are plying the buses in the same route and the official address are same and the accounts are maintained by one person. The petitioner also relies on Full Bench order passed by the Hon'ble High Court of Kerala in the case of Zainulabdeen Vs Regional PF Commissioner (1974 KLT 708 (FB)), wherein, it has been held that in case where there was disruption of an establishment covered by the Act on account of real and bonafide partition and if the separated establishments employ less than twenty persons, the Act does not apply. But here there is no bonafide partition, no disruption of the establishment, it is only a change in Management. Hence, the petitioner contended that the order of the Tribunal is on a erroneous evidence.

4. The second respondent filed a counter stating that the previously establishment namely M/s.Jayaram Transport was run by one Jebakani and the same was covered under the Employees Provident Fund and Miscellaneous Provisional Act, 1952 with effect from 01.11.1979. Originally, the said Jebakani owned around 7 buses with various stage carriage permits and employed approximately 30 persons and was in the business of running buses from 1970 onwards. After nearly two decades, due to financial crisis the said establishment had liquidated the business by selling the buses one by one along with the carriage permits to various persons and ultimately settled their workmen and closed his business in the year 2000. Many employees working under Jeyaram Transport had their claim settled from petitioner's organization, in the year 2000. Thus, the original establishment M/s.Jeyaram Transport was wound up. On 06.06.2000, the second respondent namely Ramkumar had purchased a bus bearing Registration No.TCT 4794 from the said Jebakani. Around the same time, the wife of Ram Kumar namely, Suyambukani also purchased another bus

bearing Registration No.TNI 4794 with stage carriage permit and transfers were affected in the Registration Certificate in their respective names. Thereafter, the said Ramkumar and Suyambukani running the buses under their separate proprietorship in the name and style of Jayaram Roadways and Jayaram Travels respectively. Except the fact that the second respondent has purchased one bus from the Jayaram Transport owner Jebakani, there is no other connection between them. The second respondents in both the Writ Petitions are not continuing the business of Jayaram Transport with all its rights and liability. The Jayaram Transport business was would up and closed after sale of all buses and thus it got disrupted. The contention of the second respondent is that as far as his knowledge, most of the employees of Jayaram Transport are settled their account with the Employees Provident Fund Organization in the year 2000 after it was closed. One Aruldoss and another L.Subbiah closed their accounts EPFO and the copies of those proceedings issued by the petitioner's organization are produced before this Court. However, these facts are not disclosed by the petitioner's organization in the Writ Petition or before the Appellate Tribunal. The second respondent further contended that after purchasing the bus, the second respondent had invested fresh capital and employed a new persons and thus running the business. In the same manner, the Suyambukani also running the bus which was purchased from the erstwhile owner. The Assistant Commissioner of EPF while passing the original order dated 14.03.2001, did not arrive at any conclusion, based on materials that the business of Jebakani in the name of Jayaram Transport has been purchased in its entirety by the second respondent in both the writ petitions and they are continue to run it and because of that it is only a continuing establishment so as to attract the provisions of the Act. On the other hand, the Assistant Commissioner arrived at very strange conclusion that since the second respondents are running the buses and the business in the same premises, it can be considered to be one unit with functional integrity and in view of that the enactment applies. This reasoning is absolutely erroneous and unsustainable. The petitioner's organization has not considered the real issue whether the erstwhile owner Jayaram Transport business and the second respondent business are effectively one establishment and it is a continuing one, subjected to the very same rights and liabilities of the erstwhile Jayaram Transport establishment. The issue was not whether the second respondent and his wife are functioning as one unit and the conclusion does not automatically lead to a conclusion that the second respondent business is the continuation of Jayaram Transport. Moreover the total number of employees in the second respondents business put together does not exceed 20 persons at any point of time to attract the provisions of EPT Act, the business of the second respondents is also the new establishment put together does not exceed 20 persons and it is only 8 or less than 8 at time and they are mostly casual employees. Hence, the order passed by the Assistant Commissioner that the second respondents are liable to pay contribution to the petitioner's organization as it was paid by erstwhile establishment of Jayaram Transports, is without basis and on erroneous conclusion. The Appellate Tribunal has correctly appreciated the legal principles. The respondent has not established how they had come to the conclusion that the erstwhile establishment of Jebakani is being continued. The place of business of Jayaram Transport and the second respondents are different and the same was not considered by the writ petitioner. The second respondents written explanations and the documents produced to this effect were not considered by the writ petitioner. Hence, the second respondent prayed to dismiss the Writ Petitions.

5. Heard Mr.K.Murali Sankar, the learned counsel for the petitioner and Mr.H.Lakshmi Shankar learned counsel for the second respondents in both the writ petitions and perused the records.

6. The contention of the petitioner's organization is that the second respondent in both the Writ Petitions are husband and wife and they have purchased the buses from the erstwhile owner namely Jebakani who was running the transport in the name of Jayaram Transport. The petitioner's organization has come to the conclusion that erstwhile transport is being continued as it is and it is only a change of Management and the reason stated is that since the second respondents are running in the same premises and both husband and wife are running the Jayaram Transport. The said facts are denied by the second respondents. The second respondent submitted that the "**Jayaram Transport"** was running in the address J.J. Buildings 1-B, S.N. High Road, Tirunelveli - 6. The present "**Jayaram Roadways and Jayaram Travels"** are being running in the premises of No.106/7, Trivandrum Road, Palayamkottai. Since Jayaram Roadways and Jayaram Travels are running in the same premises, the petitioner's organization has come to the conclusion that the erstwhile owner **Jayaram Transport** was also running in the same premises. As stated supra the addresses are different and the petitioner's organization has come to the erroneous conclusion. Therefore this Court is of the considered opinion that the first issue raised by the petitioner's organization is incorrect.

7. The second reason for coming to such conclusion is that the second respondent in both the Writ Petitions are being a husband and wife are running the same business, but has established as if it is two different entities. Even though it is shown as two different entities, they are functioning in the same premises and the notice issued by the petitioner's organization was received by one Manoharan and the said Manoharan is the employee for both the units. Therefore, the petitioner's organization has come to the conclusion that in order to avoid the provisions of the statutory Acts, the second respondent has established two units, since they are husband and wife, it has to be considered as single unit. This plea cannot be accepted, there is no prohibition that husband and wife should not run business separately. Moreover in all statutory Acts, especially Taxation Acts, there is a concept called "tax planning" and "tax evasion". The tax planning is permissible but tax evasion is punishable Act. In the present case, the husband and wife has established two separate units, which can at the most can be stated as planning and it is not evasion. The husband and wife have independent rights to establish business in their own name and run the business. If the premises or the office establishment is shared by the husband and wife, that cannot be a conclusive proof that they are

running a single unit. As rightly pointed out by the respondent even though it is considered as single unit, the total number of employees in both the units has not exceeded 8 persons. The contention of the second respondent is that two drivers and two conductors are plying each bus. Therefore, this Court is of the considered opinion that the petitioner's organization has passed an order on an erroneous understanding of facts and the order is liable to be set aside.

8. The Tribunal has correctly come to the conclusion that there is a disruption in the establishment and the subsequent separated establishment has employed only less number of persons. The relevant portion is extracted hereunder:

> *6. Heard the Advocates for the parties. The only issue for consideration in the present matter is whether after the transfer of M/s.Jayaram Transport the present appellant is liable for the PF dues or not. In this regard, the law is no longer res-Integra. In the case of Zainulabdeen Vs Regional PF Commissioner (1974 KLT 708 {F,B}), the Full Bench of Hon'ble Court of Kerala held that, "in a case where there was disruption of an establishment covered by the Act on account of real and bonafide partition and if the separate establishments employ less than twenty persons, the Act does not apply". In the instant matter, M/s.Jayaram Transports sold its business, e.g.two buses it owned and the buyers of those buses are not plying these buses jointly, there the business of M/s.Jayaram Transports ceased to exist. The buyers of business of M/s.Jayaram Transports, the appellants owes no liability to pay the Provident Fund*

dues. In view of the above, the impugned order is quashed. The present appeal is allowed".

In such circumstances, subsequent establishment will not attract the provisions of the Act. The Tribunal has relied on the Full Bench of the Kerala High Court judgments and has come to the conclusion that the buyers of the business of M/s.Jayaram Transport owes no liability to pay the provident fund dues and this Court is of the considered opinion that the Tribunal has come to the correct conclusion that subsequent establishment where there are less number of persons than the erstwhile establishment, then the Act is not applicable.

9. The learned counsel for the second respondent further submitted that the erstwhile establishment had nearly 30 persons working in the establishment and has also produced Form-12 and more than 22 employees are paid EPF in the year 1998-1999 itself. The second respondent had produced the evidence of two employees namely Aruldoss and L.Subbaiah, where EPF contribution is paid in the year 1998. All these documents are available with the petitioner's organization. Therefore, the petitioner's organization without verifying its own records is seeking records from the second respondent, which is totally in non-

application of mind. The contention of the petitioner's organization is that it has to ascertain whether the left out employees (six more persons) are employed with the second respondent ought to be ascertained. But the petitioner's organization has issued notice to ascertain such fact to the erstwhile owner Mr.Jebakani several times and the erstwhile owner has never appeared before the petitioner's organization. This cannot be a reason to disbelief the case of the second respondent and this will not give power to the petitioner to keep on questioning the subsequent purchaser. The records further shows that the erstwhile establishment has paid the EPF to the 22 persons and subsequently has paid to two more persons. Even if it is taken for argument sake, the remaining six persons are employed in the subsequent establishment, it is below six in numbers. Therefore, this Court is of the considered opinion that from any angle the provisions are not applicable to the subsequent establishment and the petitioner's organization contention is not legally sustainable.

10. Hence the Writ Petitions are dismissed confirming the order of the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

12.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

The Employees' Provident Funds
Appellate Tribunal,
New Delhi.

S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.1268 and 1269 of 2013

12.09.2022