



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 14.02.2025

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.10559 of 2012

The Management of
Hotel Pratap Plaza,
Rep. By its Managing Partner Mr.M.K.Prasad
No.96-C, Kodambakkam High Road,
Chennai-34.

... Petitioner

Vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
(Ministry of Labour & Employment Government of India)
Scope Minar, Core II, 4th Floor,
Laxmi Nagar, District Centre,
Laxmi Nagar, New Delhi-110 092.

2. The Regional Provident Fund Commissioner,
No.20, Royapettash High Road,
Royapettah, Chennai-600 014.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the entire records of the first respondent in ATA.No.94(13) 2002 and quash its order dated 13.02.2012 confirming the order of the second respondent dated 6/8-05-1996 in proceedings No.D6/TN/MS/35712/Enf/Regl/96.



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For Petitioner : Mr.Aadarsh Levin
M/s.T.S.Gopalan & Co.
For Respondents : Mr.T.R.Sundaram R2
R1 – Court

ORDER

The Writ petition has been filed seeking to quash the order passed by the first respondent in ATA.No.94(13) 2002 and quash its order dated 13.02.2012 confirming the order of the second respondent dated 6/8-05-1996 in proceedings No.D6/TN/MS/35712/Enf/Regl/96.

2. It is the case of the petitioner that initially one M/s.Rao & Company was registered as a partnership firm in the year 1970 with one Rao and Subbu Rao, Rajalakshmi and Lakshmikanthamma as its partners. In the year 1983, the said firm was wound up. The petitioner Hotel was opened in the year 1993 and 31 persons were employed. The petitioner was allotted code No.PN/MS/35712 and it was called up to remit the PF. Contribution and the petitioner was directed to pay arrears of contribution for the period from 01.05.1993 to 31.05.1995. An enquiry under Section 7A of EPF act was held in this regard. The petitioner made a representation to the second respondent for assessing the liability of the petitioner for PF dues from 1970 onwards.



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The second respondent, vide order dated 06.05.1996 rejected the petitioner's request and directed the petitioner to implement the provisions of the EPF Act. Against the said order, the petitioner preferred appeal before the first respondent. The first respondent, vide order dated 13.04.2012, has dismissed the appeal filed by the petitioner herein. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that admittedly , the petitioner has established the hotel industry at No.96-C, Kodambakkam, Chennai and commenced the business activities from the year 1993 as per Section 16(1)(d) of the EPF Act. The observation of the first respondent that the petitioner would not be entitled for infancy protection while starting a new business as to the defeat the very purpose of providing infancy protection shows that it was oblivious to ingredient of Section 16 of the EPF Act. Pursuant to the impugned order of the first respondent, the second respondent would like to claim arrears of contribution from 01.05.1993 to 31.06.1995 along with interest and damages. However, the issue was not properly adjudicated either by the second respondent nor by the first



respondent. Both the respondents were mechanically passed an order contrary to Section 16(i)(d) of the Act. Accordingly, the learned counsel prays to allow this petition.

4. The respondent filed a counter and the relevant paragraphs are extracted hereunder:

"9. It is respectfully submitted that the petitioner himself has admitted that the Hotel M/s. Pratap Plaza has been started by M/s. M.P.Rao & Company. It is also evident from the Deed of Partnership dated 23.02.1970 that the nature of business shall be among other business, "any other business that may be mutually agreed to between the Partners from time to time". Since then, there is a continuation in Partnership except for some change in Partners. It is therefore, evident and also it has also been admitted by the petitioner that M/s. Hotel Pratap Plaza has been started by Partnership firm M/s. M.P. Rao & Company. This issue was adequately dealt by the Hon'ble Tribunal and in its impugned order dated 13.02.2012, it has been observed that ***"The appellant firm continued in business operation till the date of passing of the impugned order though it is having different activities at different intervals, It has also started new business activities but all these activities***



remain the activities of the appellant without discontinuation of its business activities and also all these activities were in consonance with the provisions of terms and conditions of the executed deed of partnership. So, there was no occasion that a new firm was created or established and the said new firm has started the new business of its own. Therefore, the appellant may not be entitled for to avail the protection of infancy period."

5. Heard the learned counsel for the petitioner and the respondent and perused the materials available on records.

6. The second initiated section 7(a) proceedings as against the petitioner establishment on the ground that the petitioner is a continuous establishment from 1970 and it was managed by one M.P.Rao and others. This Court perused the partnership deed entered between the partners of the petitioner in the year 1970 and 1987, which shows that that the Rao company was doing film production,, distribution execution, finance, generator equipments and agency business which was mutually accepted by its partners. However, the hotel business was not mentioned in the said



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partnership deed. Admittedly, the petitioner firm has been established in the year 1993 and it was covered EPF from 01.05.1993 to 31.05.1995. It is equally undisputed fact that the petitioner establishment was paying the contribution from 01.07.1997. However, the petitioner is entitled to cover infancy protection from the period from 01.05.1993 to 31.05.1995. Under this circumstances, the respondents 1 & 2 have mechanically passed an order as against the petitioner, which is not sustainable and the same is liable to be quashed.

7. Accordingly, the impugned order passed by the first respondent is quashed and the writ petition is allowed. No costs.

14.02.2025

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To

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