M/s Silicon Cortec Vs The Regional Provident Fund Commissioner

Court: BOMBAY HIGH COURT

Date of Decision: July 5, 2017

Acts Referred: Constitution of India, Article 227 - Power of superintendence over all courts by the High Court Employees Provident Funds and Miscellaneous Provisions Act, 1952, Section 7A<

Hon'ble Judges: C.V. Bhadang

Bench: SINGLE BENCH

Advocate: D. Pangam, Luis Fernandes, P.P. Singh, Manu Bharadwaj

Final Decision: Dismissed

Judgement

1. The challenge in this petition is to the order dated 03.10.2005 passed by the Assistant Provident Fund Commissioner, as also the subsequent

order dated 24.08.2011 passed by the Employees" Provident Fund Appellate Tribunal, thereby holding that the petitioner-Establishment is

covered by the provisions of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (Act, for short). Incidentally, the petitioner

is also challenging the consequential demand notices, by which a claim for the provident fund dues alongwith damages and interest has been made.

2. An inspection of the petitioner-Establishment was carried out and an Inquiry Report was drawn on 17.10.2001, which showed that the

petitioner has employed 17 employees in the month of December, 1999 in addition to 3 Security Guards, whose services were engaged through a

security agency, namely, the Cobra Security Services, Panaji, Goa. Thus, according to the Provident Fund Authorities, in the month of December,

1999, the petitioner-Establishment had employed 20 employees, attracting the coverage under the said Act.

3. It appears that an inquiry was accordingly held and the Assistant Provident Fund Commissioner passed the following order on 24th June,

2003:-

That the amount determined hereinabove of the EPF & MP Act, 1952, shall be paid by means of Demand Draft or Bankers Cheque

in favour of Regional Provident Fund Commissioner, Goa payable at Panjim, Goa within 7 days from the date of receipt of this order

and further compliance from 12/99 to 6/2000 along with submission of uptodate returns shall be intimated.

4. By a subsequent order dated 03.10.2005, the Assistant Provident Fund Commissioner determined the actual amount payable to be

Rs.59,085/-, which is for the period from December, 1999 to June, 2000.

5. The petitioner challenged the order dated 03.10.2005 after four years i.e. in the year 2009 before the Employees'' Provident Funds Appellate

Tribunal, New Delhi (Appellate Tribunal, for short). The Appellate Tribunal by an order dated 24.08.2011, has dismissed the appeal which brings

the petitioner to this Court.

6. I have heard Shri Pangam, the learned Counsel for the petitioner and Shri Singh, the learned Counsel for the respondent. With the assistance of

the learned Counsel for the parties, I have gone through the record and the impugned order passed.

7. The only contention raised on behalf of the petitioner is that the Security Guards, who were employed through an independent security agency,

could not have been counted for reckoning the statutory requirement, of engaging 20 employees for being covered under the said Act. Shri

Pangam has placed reliance on the decision of this Court in the case of Tata Engineering and Locomotive Vs. Union of India & Others, 1995 (3)

LLJ 603 BOM and the decision of the Delhi High Court passed in Writ Petition (C) No. 4408/2008 on 20.09.2011 in the case of Group 4

Securitas Guarding Ltd. Vs. Employees Provident Fund Appellate Tribunal and Others. It is submitted that the Cobra Security Agency was an

independent entity registered under the provisions of the Act and this is a case of the security agency providing Security Guards on principal to

principal basis and not as a contractor. It is therefore submitted that the Authorities were in error in reckoning the three employees, who were

engaged through the security agency, for finding that the Establishment is covered under the Act.

8. On the contrary, it is submitted by Shri Singh, the learned Counsel for the respondent that the initial order of the year 2003, by which the

petitioner-Establishment was held to be covered under the provisions of the Act from December, 1999 to June, 2000 has not been challenged. It

is submitted that the subsequent order dated 03.10.2005 only determines the amount, which order was challenged after a period of four years. It is

submitted that the Appellate Authority was thus justified in holding that the appeal under Section 7A of the Act was barred by limitation.

9. Insofar as merits are concerned, it is submitted by the learned Counsel for the respondent that the definition of an employee as contained in

Section 2(f) of the Act, is wide enough to cover employees, who are employed through a contractor, provided they are employed in or in

connection with the work of the Establishment. He submits that the subsequent contributions are being paid by the petitioner and the question is

only of the coverage for seven months period from December, 1999 to June, 2000. He submits that it has not been shown that the Cobra Security

Agency had provided the Security Guard on a principal to principal basis, which is the crucial factor to decide whether these employees can be

reckoned for coverage under the Act.

10. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. As

noticed earlier, the dispute in the present case, only pertains to the coverage for the period from December, 1999 to June, 2000. The Inquiry

Report dated 17.10.2001 shows that there were 17 persons employed with the petitioner-Establishment in the month of December, 1999 and it

was also found that in addition to these 17 employees, there were 3 more persons employed as Security Guards through Cobra Security Agency.

Thus, the question is whether these 3 employees, can be counted for the purposes of coverage under the Act.

11. Section 2(f) of the Act defines an employee, which means any person who is employed for wages, in any kind work, manual or otherwise, in

or in connection with the work of the Establishment and who gets his wages directly or indirectly from the employer and includes any person

employed by or through a contractor in or in connection with the work of the Establishment. It can thus clearly be seen that the definition of an

employee is wide enough to cover a person, who is employed in or in connection with the work of the Establishment even though employed

through a contractor.

Presently we are not concerned with a situation as contemplated under Section 2(f)(ii) of the Act.

12. At this stage, a brief reference to the decision of this Court in the case of Tata Engineering and Locomotive (TELCO) (supra) would be

necessary. TELCO is having a factory at Pune. They are in business of manufacture of commercial vehicles and engineering goods and it has a

work force of about 13,000 employees, who were covered under the provisions of the Act. The conservancy work in relation to its factory at

Pimpri was attended to by employees of the third respondent. The respondent no. 2, namely, the Authorities under the Act have been demanding

information from the petitioner in relation to the work force employed by respondent nos. 3. A perusal of the judgment would further show that the

respondent nos. 3 had clearly claimed that they are independent agency, registered under the provisions of the Act and that they were supplying

the work force to the petitioner on a principal to principal basis. This Court after holding that the respondent nos. 3 had supplied the work force to

the petitioner on principal to principal basis and not as a contractor, found that the petitioner was not liable to supply information or to pay the

provident fund contributions of the said employees.

13. The Delhi High Court in the case of Group 4 Securitas Guarding Ltd. (supra), after taking note of the decision in the case of Tata Engineering

and Locomotive (supra) on facts found that the petitioner M/s GSGL was an independent entity, registered under the provisions of the Act. The

Delhi High Court on facts found that it was a case where the Security Guards were provided on principal to principal basis and not through a

contractor.

14. Coming back to the present case, there is nothing on record to show that the Security Guards were provided by the Cobra Security Agency

on a principal to principal basis. It is also not established on record that the Cobra Security Agency was having an independent registration under

the said Act and was paying the provident fund contributions of the Security Guards, whose services were provided to the petitioner.

15. Apart from this, it is significant to note that the initial order holding the petitioner to be covered from December, 1999 to June, 2000 was

passed as far back as on 24th June, 2003, which order is not challenged till today. The subsequent order dated 03.10.2005 only determines the

amount payable on the basis of the order dated 24th June, 2003. This subsequent order was challenged after a period of four years. Thus, the

Appellate Tribunal was justified in holding that the appeal under Section 7A of the Act was barred by limitation. Even on merits, no case for

interference was made out before the Appellate Tribunal. I do not find that the impugned order suffers from any infirmity, so as to require

interference under Article 227 of the Constitution of India.

In the result, the petition is hereby dismissed with no order as to costs.