

M/s. Panther Security Service Pvt. Ltd. Vs. The Employees' Provident Fund Organisation and Anr.

Civil Appeal Nos. 4434-4435 of 2010
2020-01-01 | NAVIN SINHA · SURYA KANT
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Full judgment text

M/s. Panther Security Service Pvt. Ltd. Vs. The Employees' Provident Fund Organisation and Anr.

[Civil Appeal Nos. 4434-4435 of 2010]

Navin Sinha, J.

1. The appellant is engaged in the business of providing private security guards to its clients on payment basis. The appellant is registered under the Private Security Agencies (Regulation) Act, 2005 (hereinafter referred to as "the Act of 2005"). The appellant is aggrieved by the order of the High Court, affirming the order dated 28.07.2008 of the Assistant Provident Fund Commissioner, Kanpur under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act") holding the appellant liable for compliance with the provisions of the EPF Act and to deposit statutory dues within 15 days. The dues of the appellant as quantified by order dated 15.04.2009 are Rs.42,01,941/, and statutory interest under Section 7Q at Rs.30,44,224/.

2. Shri S. Sunil, learned counsel for the appellant submitted that the appellant was not covered by G.S.R. No.805 dated 17.05.1971 issued under Section 1(3)(B) of the EPF Act, since it was not engaged in rendering any expert services. It merely facilitated in providing Chowkidars to its clients at the request of the latter. The appellant only levelled a service charge for facilitation. The salary was paid to the Chowkidars by the client who engaged their services. The appellant had only 5 persons on its rolls.

The EPF Act was therefore not applicable to it. Placing reliance on Section 2(e) (ii) and (f) of the EPF Act it was submitted that since the salary was paid by the client and who had the ultimate control over the security guards deployed with them, the appellant was not the employer of these security guards and neither were they employees of the appellant. Reliance was placed on *Krantikari Suraksha Rakshak Sanghatana vs. Bharat Sanchar Nigam Limited and others*, (2008) 10 SCC 166 and *Saraswath Films vs. Regional Director, Employees' State Insurance Corporation, Trichur*, (2010) 11 SCC 553.

3. Ms. Divya Roy, learned counsel for the respondents submitted that the appellant renders expert services by way of providing trained personnel as security guards. It is fully covered by the Notification dated 17.05.1971. Despite repeated notices the appellant never furnished its wage and salary registers. The balance sheets seized for the financial years 200304, 200405, 200506 and 200607, during raid, reveals a very large amount paid towards salaries and wages running into several lacs which cannot be the wage bill of five employees.

The letter dated 03.04.2001 written by the appellant to the New India Assurance Company Limited seeking Group Janta Personnel Accident Insurance Policy of one lac each was in respect of 79 security personnel. It was lastly submitted that the appellant did not approach the Tribunal under Section 7I of the EPF Act against the order passed under Section 7A, where all disputed facts could have been examined and instead filed a writ petition directly.

4. The writ petition and review application filed by the appellant were both dismissed.

5. We have considered the submissions on behalf of the parties and are of the opinion that the appeal lacks merit, for reasons to be enumerated hereinafter.

6. By G.S.R. No. 805 dated 17.05.1971 issued under Section 1(3)(b) of the EPF Act and published in the Gazette on 25.09.1971 the provisions of the EPF Act were made applicable to specified establishment and which reads as follows : "G.S.R. No. 805 : In exercise of the powers conferred by clause (b) of subsection (3) of Section 1 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the Central Government hereby specifies that with effect from the 31st May, 1971, the said Act shall apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or

departmental enquiries, special services in rectifying pilferage, thefts and payroll, irregularities to factories and establishments on certain terms and conditions as may be agreed upon between the establishment and the establishment rendering expert services and employing twenty or more persons."

7. The appellant was engaged in providing security services to its clients since the year 2001. A squad under the EPF Act visited the appellant's establishment on 29.12.2005 and seized certain records opining that the provisions of the EPF Act applied to the appellant. The Assistant Provident Fund Commissioner on 07.03.2006 on basis of the seized documents opined that the appellant had 79 employees as on 03.04.2001 allotting Code No. UP/39076, requiring the appellant to deposit the necessary contributions.

The appellant having objected to the same, proceedings were initiated under Section 7A of the EPF Act with due opportunity of defence to the appellant. The appellant failed to submit the attendance register, wage register etc. The Assistant Provident Fund Commissioner on basis of balance sheets seized during raid opined that the appellant had more than twenty employees on its rolls and stood covered by the term "expert services" such as providing of personnel under the Notification dated 17.05.1971. It also noticed that wages were not paid directly by the clients to the security guards deployed by the appellant but that the payments were made by the clients to the appellant, who in turn disbursed wages to the security guards.

The remedy of an appeal before the Tribunal under Section 7I was bypassed by the appellant instituting the writ petition directly. The High Court declined interference with the conclusion of expert services being rendered by the appellant. A review petition contending that the appellant stood duly registered under the Act of 2005 was also rejected.

8. The Act of 2005 defines a private security agency under Section 2(g) as an organization engaged in the business of providing security services including training to private security guards and providing such guards to any industrial or business undertakings or a company or any other person or property. A licence is mandatory under Section 4 and those security agencies existing since earlier were mandated to obtain such licence within one year of coming into force of the Act.

A complete procedure is provided with regard to making of an application for grant of a licence under Section 7, renewal under Section 8 of the Act. The eligibility for appointment as a security guard with such security agency is provided under Section 10 of the Act. Section 11 provides for the condition of the licence and the licence can be cancelled under Section 13. A private security agency under Section 15 is required to maintain a register inter alia with the names, addresses, photographs and salaries of the private security guards and supervisors under its control.

The Private Security Agencies Central Model Rules, 2006, framed under the Act of 2005, requires verification by the security agency before employing any person as a security guard or supervisor in the manner prescribed. Proper security training of the person employed is the responsibility of the security agency under Rule 5, and Rule 6 prescribes the standard of physical fitness for security guards.

Under Rule 14 the security agency is required to maintain a Register in Form VIII, Part I of which contains details of the management, Part II contains the name of guard, his parentage, address, photograph, badge no. and the salary with the date of commencement. Part III contains the name of the customer, address, the number of guards deployed, date of commencement of duty and date of discontinuance. Part IV contains the name of the security guard/supervisor, address of the place of duty, if accompanied by arms, date and time of commencement of duty and date and time of end of duty.

9. We have no doubt in our mind that the appellant is engaged in the specialised and expert services of providing trained and efficient security guards to its clients on payment basis. The contention that the appellant merely facilitated in providing Chowkidars cannot be countenanced. The provisions of the Act of 2005 make it manifest that the appellant is the employer of such security guards and who are its employees and are paid wages by the appellant.

Merely because the client pays money under a contract to the appellant and in turn the appellant pays the wages of such security guards from such contractual amount received by it, it does not make the client the employer of the security guard nor do the security guards constitute employees of the client. The appellant therefore is squarely covered by the Notification dated 17.05.1971.

10. The appellant never made available the statutory registers under the Act of 2005 to the authorities under the EPF Act. In fact, we have no hesitation in holding that it actually withheld relevant papers. This

coupled with the letter dated 03.04.2001 written by the appellant, the appellant's balance sheet seized for the financial years 200304, 200405, 200506 and 200607 showing payment of wages running into lacs, necessarily and only leads to the irresistible conclusion that the appellant has more than 20 employees on its rolls. The provisions of the Act therefore necessarily apply to it.

11. Krantikari Suraksha Rakshak Sanghatana (supra) has no relevance to the present controversy as it concerned to the provision of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The applicability of the EPF Act did not fall for consideration there. Saraswath Films (supra) was in the context of the Employees' State Insurance Act, 1948 interpreting the term "immediate employer", which again has no relevance to the present controversy.

12. That the provisions of the EPF Act are applicable to a private security agency engaged in the expert service of providing personnel to its client, if it meets the requirement of the EPF Act. The question is no more res integra evident from the discussions contained in Group 4 Securitas Guarding Ltd. vs. Employees Provident Fund Appellate Tribunal & Ors., 184 (2011) DLT 591, G4S Secure Solutions India Pvt. Ltd. vs. The Regional Provident Fund CommissionerI and Ors., ILR 2018 Karnataka 2527, Orissa State Beverages Corporation Limited vs. Regional Provident Fund Commissioner & Ors., 2016 LLR 413, Roma Henney Security Services Private Limited vs. Central Board of Trustees, EPF Organisation, 2012 SCC OnLine Del 3597, Sarvesh Security Services Private Limited vs. University of Delhi, 2017 SCC OnLine Del 12209.

13. The appeals are therefore dismissed and the interim order dated 12.05.2009 restraining coercive steps for enforcement of the demand notice dated 15.04.2009 is vacated.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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