

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

Reserved on :31.05.2023
Pronounced on:.16.06.2023

OWP No. 112/2015(O&M)

M/s Delton Infra Pvt. Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Ved Bhushan Gupta, Advocate

Vs

State of J&K and another

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy.AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The petitioner-company claims to have obtained the registration under Central Employees Provident Fund Act and Miscellaneous Provisions Act 1952 and further claims to have been regularly depositing the Employee Provident Fund (EPF) in the State Bank of India, Employees Provident Fund Organization Delhi North in respect of all its 107 employees including 54 working in the erstwhile State of Jammu and Kashmir in connection with maintenance and operation of Vodafone sites. It is submitted by the petitioner that respondent No. 2 relying upon some inspection conducted by the Provident Fund Inspector in the office of the petitioner-company at 597-A, Gandhi Nagar, Jammu, vide its communication dated 06.11.2013 called upon the petitioner-company to implement the Provident Fund Scheme by deducting Provident Fund contributions from its employees @12 % of the total salary and deposit the same into account of the respondent No. 1 along with its matching share

and administrative charges @ 5%, on the ground that the unit/establishment was covered under the provisions of Jammu and Kashmir EPF Act, 1961.

2. The petitioner-company further claims to have replied the said communication through its counsel, whereby the respondent No. 2 was intimated that the petitioner-company or its unit operating in Jammu is not liable to make any contribution on account of EPF as the petitioner-company was already registered with the EPF Organization, New Delhi and all the employees including 54 working in Jammu were covered by the EPF scheme prepared under the Central Act.
3. The case projected by the petitioner in the present petition is that respondent No. 2 without holding any further enquiry into the matter and affording any opportunity of being heard to the petitioner, on its own, worked out the arrears payable by the petitioner on account of EPF contribution, administrative charges and damages etc. and served the petitioner-company with the notice dated 17.01.2015 for payment of Rs. 16,17,565/- and a similar communication dated 17.01.2015 was also issued to M/s Vodafone Essar Space Tel Ltd. Jammu. The petitioner has impugned both the communications each dated 17.01.2015 addressed to the petitioner-company and to the Principal Employer of the petitioner i.e. M/s Vodafone Essar Space Tel Ltd. Jammu, on the following grounds:
 - (1) that the petitioner-company is already registered with EPF Organization, New Delhi under the provisions of the Central Act i.e. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 and as such, the petitioner-company cannot be forced to comply with the provisions

of the J&K Employees Provident Funds (And Miscellaneous Provisions) Act, 1961.

(2) that the Jammu and Kashmir Employees Provident Funds (and Miscellaneous Provident) Act, 1961 applies only to such establishments which fall within the definition of a factory or industry specified in Schedule-1 and in which 10 or more persons are employed at any time and also to such other establishment or business which the Government may by notification in the Government gazette declare to be an establishment for the purpose of this Act. The services being provided by the petitioner do not fall within the purview of J&K EPF and MP Act, 1961.

(3) that the communications impugned have been issued in utter violation of principle of natural justice because as per the mandate of Section 8-A of the Act, 1961, the amount due from any employer can be determined only after conducting an enquiry into the matter and while conducting the enquiry, employer must be afforded reasonable opportunity for representing his case.

4. Reply stands filed by the respondents, wherein it is stated that the petitioner has itself admitted about the engagement of 54 employees in the erstwhile State of Jammu and Kashmir and the petitioner has implemented the J&K Employees Provident Funds (and Miscellaneous Provisions) Act, 1961 with effect from 08/2014 in respect of 10 employees only. It is also stated that the then Provident Fund Inspector vide his inspection conducted on 25.10.2013 has pointed out 89 employees engaged with the petitioner from the date of set up as 03 years back. The relevant record was demanded by then Inspector which was not provided to him on spot by the officials of the petitioner-

company. It is further stated that the notice for implementation was issued on 06.11.2013 but no response was received from the petitioner. Thereafter, a recovery notice dated 17.01.2015 was issued amounting to Rs. 16,17,565/- for the period 11/2013 to 12/2014 but the petitioner did not respond and the principal employer of the petitioner-company was directed vide communication dated 17.01.2015 to withhold the payment of the petitioner-company till it obtained clearance certificate from the office of respondents. It is further averred that the petitioner instead of producing the relevant record in the office of the respondents for ascertaining the factual position, approached the Court and obtained an interim order.

5. Mr. Ved Bhushan Gupta, learned counsel for the petitioner vehemently argued that the petitioner cannot be forced to pay the amount for the employees working for the petitioner in respect of whom the petitioner-company has already been depositing the contribution in the account of its 107 employee including 54 working in the erstwhile State of Jammu and Kashmir. He further argued that without conducting any enquiry, the impugned communications have been issued.
6. On the contrary, Mr. Dewakar Sharma, learned Dy.AG vehemently argued that the petitioner-company did not respond to the notice served upon it by the respondents and never produced any record before the respondents and facing with such situation, the respondents were left with no other option but to issue the communications impugned.
7. Heard and perused the record.
8. The first contention raised by the petitioner is that once the petitioner is making contribution under the Central Act in respect of all of its employees

including those working in the erstwhile State of Jammu and Kashmir, the issuance of communications impugned amount to doubling the liability. A perusal of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act) reveals that at the relevant point of time, the same was applicable to whole of India except the erstwhile State of Jammu and Kashmir, whereas the Jammu and Kashmir Employees Provident Funds (and Miscellaneous Provisions) Act, 1961 was applicable in the erstwhile State of Jammu and Kashmir. The purpose of both the Acts is to provide for the institution of Provident Funds for employees in the factories and other establishments. Only the area of the operation of these Acts is different. There is a substance in the contention raised by the petitioner that once the petitioner is making contribution under the Central Act, then the petitioner-company cannot be compelled to contribute for same employee under the State Act of 1961. This Court is of the considered view that once the employer is contributing EPF for a particular employee under either of the Acts, then the employer cannot be compelled to make contribution under the other Act, as the employer would then make contribution twice for the same employee.

9. The second contention raised by the petitioner is that the services rendered by the petitioner-company do not fall within the purview of the State Act. This contention becomes irrelevant in view of the fact that the petitioner-company has already registered itself under the State Act as admitted by the petitioner itself in paragraph 4 of the petition.
10. The third contention raised by the petitioner is that without holding proper enquiry, the communications impugned have been issued by the respondents. A perusal of the record reveals that notice dated 06.11.2013 was issued and

admittedly received by the petitioner-company, whereby the petitioner was directed to implement the Provident Fund scheme by deducting the Provident Fund contributions from its employees. The petitioner responded to this communication and specifically stated that at the relevant point of time, the petitioner was having 107 employees including 54 employees working in the erstwhile State of Jammu and Kashmir and further, the petitioner had been depositing the Provident Fund with the State Bank of India, Employees Provident Fund Organization Delhi in the combined challan in respect of all its 107 employees. The details of 54 employees working with the petitioner-company at the time of erstwhile State of Jammu and Kashmir were also submitted along with reply dated 10.12.2013. The respondents have not denied the averments made in paragraph 4 of the petition wherein a specific stand was taken by the petitioner-company that the reply was submitted to the respondents. It would be appropriate to take note of section 8-A (1) of the Jammu and Kashmir Employees Provident Funds (and Miscellaneous Provisions) Act, 1961:

“8-A. Determination of moneys due from employers (1) Any officer authorized by the Government in this behalf may, by order, determine the amount due from any employer under any provision of this Act or the Scheme and for this purpose may conduct such inquiry as he may deem necessary.”

11. A perusal of Section 8-A (1) reveals that the officer duly authorized by the Government can determine the amount due from an employer and for that purpose, may conduct an enquiry. In the present case, no such enquiry was conducted by the respondents as by virtue of notice dated 06.11.2013, the petitioner was directed to implement the Provident Fund Scheme by deducting the Provident Fund contributions from its employees and thereafter, even after

the receipt of the reply from the petitioner-company along with relevant documents, no such enquiry was conducted by the respondents and straightway communications impugned were issued. The petitioner-company is right in submitting before this Court, that the petitioner has been condemned unheard.

12. In view of all what has been said and discussed above, this Court deems it proper to quash both the impugned communications dated 17.01.2015 and are hereby quashed. The respondents shall pass fresh order after taking note of the contributions made by the petitioner under the Central Act. The respondents shall take note of the documents placed on record along with the writ petition by the petitioner-company and in case, the respondents require any additional information, the petitioner shall provide the same to the respondents. It is made clear that the petitioner cannot be compelled to make contribution under both the Acts for the same employee.

13. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
16.06.2023
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No