

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment reserved on: 12.01.2023**

% **Judgment delivered on: 03.03.2023**

+ **LPA 420/2022 & C.M. Nos. 30843-30845/2022 & 1382/2023**

PARTHA SARATHI SAHA ..... Appellant

Through: Mr. Abheek Saha, Mr. Siddharth  
Mohan & Ms. Aditi Mohan,  
Advocates.

versus

ASSISTANT PROVIDENT FUND  
COMMISSIONER ..... Respondent

Through: Mr. Satpal Singh, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**J U D G M E N T**

**SATISH CHANDRA SHARMA, C.J.**

1. The Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (Hereinafter referred as "the EPF Act" or "the Act") provides for the institution of certain funds to be maintained through contributions by employers employing equal to or more than 20 persons in their establishments. The competent authority under the EPF Act declared the appellant's establishment to be an employer under the Act and held it to be governed by the provisions of the Act. Whether the appellant is governed

by the provisions of the EPF Act, and thus liable to meet certain obligations meant for employers under the Act, is the sole question that falls for our consideration.

2. On 01.10.2012, the appellant received a communication whereby his establishment Shri Krishna Automobiles was brought under the purview of the EPF Act. Aggrieved thereby, the appellant preferred a review petition dated 06.11.2012 before the Assistant Provident Fund Commissioner (Hereinafter referred as “APFC”), Agartala, which came to be dismissed. Thereafter, on 27.02.2013, the appellant filed an application under Section-7A of the Act before APFC, Agartala for determining whether his establishment was covered by the Act or not. The Commissioner conducted a quasi-judicial enquiry in this regard. Upon culmination thereof, an order was passed by the Commissioner declaring the establishment to be covered by the Act. During the course of this proceeding, the appellant submitted that the establishment was employing 17 employees and 3 security personnel who were only employed for a temporary period and on need basis. It was further submitted that the three security personnel were engaged through a contractor namely New Brave Security Pvt. Ltd. on outsourcing basis and thus, they cannot be regarded as the employees of his establishment. The appellant was given opportunity to produce the relevant records to show the employees engaged by the establishment. The appellant, before the Commissioner, also took the stand that the wages of the said security personnel were not being paid from the accounts of the establishment and thus, they cannot be regarded as the employees of the establishment. However, the Enforcement Officer furnished the profit and

loss account of the establishment along with the balance sheet for the concerned period of time, which revealed that the wages of the security personnel were paid from the account of the establishment. On this basis, the application under Section-7A came to be decided against the appellant vide order dated 01.07.2013 passed by the APFC, Agartala.

3. The aforesaid order came to be challenged before the Employees Provident Fund Appellate Tribunal (Hereinafter referred as “the Tribunal”) which upheld the order passed by the Commissioner and noted that the appellant employed 20 persons, including the three security personnel. Challenging the Tribunal’s order, the appellant has approached this Court by way of a writ petition. Ld. Single Judge traversed through the history of this case at length and found the impugned orders to be on the right side of the law. Ld. Single Judge noted that the appellant’s own documents reflected that the three security personnel were being paid from the account of establishment and thus, they were employed with the establishment. The Court further noted that the Tribunal correctly relied upon the definition of “employee” within the meaning of the Act as it included both direct as well as indirect employees hired through a contractor. The operative part of the impugned order reads thus:

*“29. On a consideration of the averments made in the petition, the response of the respondent, written submissions made on behalf of either side and oral submission addressed on behalf of either side by their learned counsel, it is apparent that the impugned order dated 09.05.2017 of the learned Employee Provident Fund Appellate Tribunal, New Delhi i.e. EPFAT in ATA No.480(2)/2013 is based on the proceedings before the APFC, Agartala, Tripura as observed vide order dated 01.07.2013 of the Assistant Provident Fund Commissioner,*

*SRO, Agartala which in turn is based on the inquiry conducted under Section 7A of the 'Act'. The proceedings before the Enforcement Officer as reflected in the order dated 01.07.2013 of the learned Assistant Provident Fund Commissioner categorically indicate that the Enforcement Officer had deposed that in terms of Section 2(f) of the Act 'employee' includes both direct employees of the establishment as well as indirect employees employed through a contractor in or in connection with the workmen of establishment and it was apparent that the security personnel had been engaged from M/s New Brave Security Private Service and were employed in or in connection with the work of M/s Shri Krishna Automobiles and that during the hearings on 12.04.2013, 22.04.2013, 30.04.2013, letter dated 17.04.2012 issued to the Enforcement Officer and prayer dated 27.02.2013 submitted before the Assistant Provident Fund Commissioner, the proprietor and the learned Advocates of M/s Shri Krishna Automobiles had contended that the security personnel in the instant case are outsourced from Brave Security Private Service and New Brave Security Private Service and salaries were not paid to them from the business of Shri Krishna Automobiles but by the outsourced agency and that Shri. S.R. De, Enforcement Officer in his deposition on 22.04.2013 had stated that the security personnel were being paid by the establishment as per the balance sheet of the establishment and that in contradiction to the submissions made by the establishment's representatives, an amount of Rs.64,640/- and Rs.97,239/- had been paid against security service from the profit & loss accounts as per the balance sheet ending March 2010-2011 respectively and that with the date of hearing being 30.04.2013, the petitioner had strangely submitted that on 29.04.2013, the bills pertaining to New Brave Security Private Service had been lost making it obvious that the details of the payment made to the security personnel were thus available."*

*(emphasis supplied)*

4. Taking exception to the order passed by the Ld. Single Judge, the appellant contends that the security personnel were employed by the appellant through an independent contractor i.e. M/s New Brave Security Private Service. It is further contended that the security personnel were, in fact, the employees of the contractor and their EPF contribution was also made by the contractor, their actual employer. It is urged that the appellant never paid their salaries to them directly and the payments on account of their salaries were made to the contractor and not to the security personnel.

5. The appeal is contested by the respondent on the principal ground that the governing law provides for a clear definition of an “employee” and includes both direct and indirect employees. It is further contended that the balance sheet and profit and loss account of the relevant period indicates that the salaries of the security personnel were indeed being disbursed by the appellant and there is no infirmity in the impugned order.

6. We have heard the parties at length and have perused the record in detail.

7. The appellant in this case appears to be fighting against an unambiguous piece of legislation. Section-2 of the Act incorporates the definition clause and clause (f) defines an “employee” as:

*“(f) “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—*

*(i) employed by or through a contractor in or in connection with the work of the establishment;.....”*

8. The key ingredients for holding any person as an employee in an establishment are –

- a. The person must be employed for wages;
- b. The person must be employed in connection with the work of an establishment;
- c. The person must be getting his wages from the employer, directly or indirectly;
- d. Even if the employment is through a contractor, the person would continue to be an employee if such employment is in connection with the work of the establishment.

9. The Act also defines the term “employer” as a person who has the ultimate control over the affairs of the establishment. In this case, the appellant admittedly had the ultimate control over the establishment in question and thus, it is not a subject matter of contest in this case. Thus, the case spins on the definition of the term employee. In this case, the three security personnel were working and drawing wages from the establishment. Despite averments that the security personnel were not paid by the establishment, no material was brought on record at any stage of this litigation to substantiate this averment. On the contrary, the record brought by the Enforcement Officer, including the balance sheet and profit/loss account of the relevant period, nullifies the stand taken by the appellant. Thus, the personnel were working at the establishment and were being paid wages from the accounts of the establishment. Mere fact that they were employed through a contractor would not disturb the employee-employer

relationship and this possibility had been foreseen by the legislature. The submission advanced by the appellant that the security personnel were also deployed at the private residence of the appellant, would not advance his case any further. We say so because wages were paid from the accounts of the establishment and not personally by the appellant. It follows as a natural corollary that the personnel were employed by the establishment. The burden to rebut this position fell upon the appellant and he failed to discharge the same, despite given multiple opportunities to do so.

10. Pertinently, the widely worded definition of “employee” in the Act is a conscious legislative measure to confront a situation like the one that arises before us. The EPF Act is a welfare legislation having its roots in the constitutional idea of social justice and seeks to benefit the unempowered class of employees in the industry. The definition is carefully crafted to protect the employees from those employers who camouflage their relationship with the employees in order to avoid regulatory expenses. It is for this reason that even indirect employment is covered within the definition of “employee”, subject to the fulfilment of other conditions already stated above. To permit an employer to camouflage its relationship with the employee by contending that the employees were engaged indirectly through a contractor, as urged in this case, would be an assault on the fairly unambiguous legislative intent behind the provision.

11. Before parting, we may note that in the course of this hearing, the appellant had also moved an application for bringing certain additional documents on record indicating that the appellant has already shut operations. Without expressing any view on the factual merits of the

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application, we proceed to decide the issue at hand for the sake of legal certainty of rights and liabilities *inter-se* parties. No separate opinion is required to be expressed on the merits of the application.

12. In view of the aforesaid discussion, we find no infirmity in the impugned order and uphold the same. Interim applications, if any, also stand disposed of.

13. No costs.

**(SATISH CHANDRA SHARMA)**  
**CHIEF JUSTICE**

**(SUBRAMONIUM PRASAD)**  
**JUDGE**

**MARCH 03, 2023**

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