

PRINCIPAL EMPLOYER NOT LIABLE FOR PF DUES OF CONTRACTOR

On allotment of independent code number (after complying with the prescribed conditions) and submitting the list of 20 or more employees, a contractor acquires the status of 'establishment' (may it be a Company, firm, society or sole proprietorship) and becomes responsible for deposit of Employees PF contributions. Besides that administrative charges are paid to the EPFO by such establishment. The establishment of contractor maintains records of the employees, submits nomination forms, returns and complies with other formalities like maintenance of inspection book, etc. etc. it is intriguing as to why a principal employer should be held liable for the default in payment of contributions or delaying the same by the establishment of the contractor.

The EPFO was conceptualized to take care of the employees but not to let loose the reign of 'Inspector Raj' on the employers. It is a sad commentary on the EPFO's functioning that instead of simplifying the provisions of the EPF & MP Act and its Schemes for the benefits of the employees and employers, it has often created the labyrinthine of the byzantine complexity. A perception is gaining ground across the country particularly among the employers that the EPFO believes in circular made laws. This is really a travesty of justice and the administrative dispensation. Although circulars, which are against the grains of the statutory provisions or judicial pronouncements, have no sanctity, yet they certainly have the potentiality to cause damage to peace and tranquility of the employers. Holding principal employers liable for the dues of the contractors having independent code numbers is not only fallacious but the deliberate mischief of the EPFO.

With the globalization of the economy engaging of contract workers has not only become a necessity but almost inevitable. High level and aggressive competition among multinationals and national organisations have necessitated reorientation of business and industry. In the present circumstances, production is not only to be enhanced but has to be cost-effective and, therefore, outsourcing of certain services has become a necessity.

So far as the implications under the EPF&MP Act are concerned, it has gone a sea change over the last, more than a decade. Till 22nd March, 2001 the contractors were not allotted independent code numbers under EPF Act and, as such, their workers were covered on the code number of the principal employers. The Scheme of EPF Act provides that a code number is to be allotted to an establishment only then it will be entitled to deduct and deposit the contributions of the employees and the employer. While allotting code number, every establishment including a contractor has to comply with following requirements:-

1. Application Proforma for Coverage duly complete. (on Company letter head)
2. Copy of Memorandum / Partnership Deed etc., whatever applicable.
3. List of present Employees with salary break-up details and dates of appointment and parentage etc.
4. Chart showing number of employees, month wise from the date of start of business.
5. Chart showing number of employees, month wise, engaged through contractor(s)
6. Date of commencement of business.
7. Copy of first invoice, if any.
8. List of Directors / Partners, i.e., Names, parentage, addresses, etc.
9. Proof of residences of Directors.
10. Identification document of Directors.
11. Particulars of the Bank Account of the Company
12. One blank cancelled cheque leaf.
13. Pan number of the Company.

14. Pan numbers of Directors/Partners/Proprietor
15. Proof of ownership / tenancy, etc. of the premises.
16. Board Resolution / Authority.
17. Copy of Aadhar card (though not required immediately, but start obtaining from employees)

When a contractor has got an independent code number, his or her liabilities get increased vis-à-vis the employees. On allotment of code number, the PF Authorities recognize the contractor as 'establishment' since it has complied with all the prescribed conditions. A principal employer cannot be held responsible for the omissions and commissions of the contractor's employees. The Scheme of the Contract Labour (Regulation & Abolition) Act stipulates that the principal employer will not be supervising the workers of the contractor otherwise the contract labour system will be rendered as sham, ruse and camouflage as held in *Steel Authority of India Ltd. vs National Union Water Front Workers*, 2001 LLR 961 (SC).

In *Pardeep Kumar vs. Presiding Officer and another*, 2015 LLR 726, the Punjab and Haryana High Court has held that employer-employee relationship, in respect of principal employer, would not exist if the contractor, engaged in supply of man-power, is having a valid licence under the Contract Labour (Regulation and Abolition) Act, 1970, records of payment of wages and attendance show payments made by the contractor, EPF Employee Code number allotted to the workman is through the firm of the Contractor.

Despite allotment of code number under the EPF Act, some of the contractors default in depositing the contributions of their workers or delay in timely depositing the same. As and when such contractors default, the PF Authorities hold the principal employer liable for the dues. A question arises as to whether the principal employer can be held liable to pay PF dues payable by the contractor. When asked about the justification of such demand, the Authorities under the EPF Act refer to paragraph 30(3) of Employees' PF Scheme, 1952 providing that "it shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of the employer directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges". It is pertinent to state here that paragraph 30 of the Scheme could be relevant only till 22nd March, 2001 when the contractors were not allotted code numbers under the EPF Act. However, for the applicability of EPF Act, a contractor is treated as an establishment when code number is allotted after satisfying about completion of all the formalities. As an independent establishment, it is responsible for payment of EPF contributions and other dues payable under EPF Act, the principal employer cannot be asked by the PF Authorities in case a contractor holding independent code number defaults the PF dues. It is pertinent to state here, that the contractor in the capacity of an employer of its 'establishment' pays 0.85% towards administrative charges in addition to its matching contribution which is termed as 'employers share' of EPF contributions.

The EPF Act and the Scheme stipulates that as and when there have been defaults of payment of contributions by establishment, the PF Authority has to initiate proceedings under Section 7A of the EPF Act only then the liability for payment can be fastened upon the employer.

In a landmark judgment *Food Corporation of India vs. The PF Commissioner and ors.*, 1990 LLR 64 the Supreme Court has observed that “it is indeed a large amount for the determination of which the Commissioner has only depended upon the lists furnished by the workers Union. It is no doubt true that the employer and contractors are both liable to maintain registers in respect of the workers employed. But the Corporation seems to have some problems in collating the lists of all workers engaged in depots scattered at different places. It has requested the Commissioner to summon the contractors to produce the respective lists of workers engaged by them. The Commissioner did not summon the Contractors or the lists maintained by them. He has stated that the Corporation has failed to produce the evidence. While allowing the appeal that the powers of the Civil Court under Section 7A of the Act to be the determining authority under EPF Act was given by law. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. Despite above, the PF Authorities keep on fastening the liability for the default of the contractors upon the principal employer.

In *Group 4 Securitas Guarding Ltd. & Another vs. EPF Appellate Tribunal & Ors.*, 2012 LLR 22 the Delhi High Court has held that where the contractor, being employer providing services of man-power, is having control over the personnel being supplied by him to the establishments by way of issuance of appointment letters, making payment of wages and other allowances, taking disciplinary actions, effecting their placement, transfer and termination of services, the relationship between such a contractor and the establishment where the man-power is supplied by him would be of ‘principal to principal’ and not that of employer-contractor.

In the *Madurai District Central Co-operative Bank Ltd. rep. by its Special Officer vs. EPFO*, 2012 LLR 702, the Madras High Court has held that when a separate code number was allotted, the employees of the contractor, by no stretch of imagination can be treated to be employees of the principal employer. After hearing the arguments on behalf of the parties (EPFO as respondent), the Court held as under:

“With respect to the contractors, who are registered with the PF Department, having independent code number, they are to be treated as ‘independent employer’. The petitioner, therefore, cannot be treated to be ‘principal employer’ for the purposes of those contractors”.

In *Brakes India Ltd. (Brakes Division), Sholinghur-631 102, rep. by its Vice-President (Pers. & HRD) vs. EPFO, Vellore rep. by its RPFC*, 2015 LLR 635, the Madras High Court buttressed the same point in holding that the Employees’ PF Authority is not entitled to recover either PF contribution or damages from the principal employer in respect of employees engaged through contractors, registered with the PF Department, having independent code number.

The Hon’ble Court concluded:

“In the case on hand, the Contractor was allotted with EPF allotment number vide No.TN/VLR/38789/SDC.2013 in the year 2003 itself. As per the ratio laid down in the judgment of this Court, the Contractor viz., Mr. A. Govindaraj should be treated as an independent employer.”

While the circulars are meant to bring about clarity and to remove the mist but the EPFO that has been issuing circulars on the drop of the hat to create more confusions among the employers and employees. It may not be out of place to mention here that only a few years back a circular dated 30.11.2011 issued by the EPFO had created so much hullabaloo that the then Minister had to come out to clarify the confusion. Earlier also, a circular No. Coord/4(6)2003/clarification/Vol.II/7394, dated 23.05.2011 kept in abeyance.

With a corpus of Rs.2,55,645.43 crores over 795827 establishments as covered with membership of over 117813454 (prior to enhancement of wage ceiling increase from Rs.6500 to Rs.15,000 w.e.f. 1.9.2014), if the EPFO does not paint the right picture before them, then there is bound to be the cloud of confusion. It is also very intriguing as to why the EPFO does not issue the circular when a judgment of High Courts or the Supreme Court is pronounced settling certain laws. Since there are not one but three judgments of the High Court's now clarifying that no responsibility for PF dues can be fastened on the principal employer for the defaulting contractor, the appropriate instructions based on the ratio of the judgments as referred above would reduce the litigation as the dockets of the courts are already choking with surfeit of cases. It is, therefore, regrettable indeed that the EPFO is evolving its own methodology, which is anathema to simplification of rules.

Thus, it becomes obvious that either the EPFO is still frozen in time warp and does not want to keep pace with the time or it has completely lost its understanding of maintaining the conducive and harmonious ambience for the welfare of employees and peace of the employers. Be that as it may, the government and the industry both will have to make concerted efforts to stop the Organisation usually going berserk. The reasons are not far to seek for such aberrations in the EPFO.

Strange are the ways of the EPFO. It shows swiftness in issuing those circulars, which have possibility to be misinterpreted but it becomes slack and lethargic in conveying those decisions, which are succinct and contain no ambiguity. It will, thus, be seen that as and when there is a favourable judgment for the EPFO, the circular or clarification is issued without any loss of time but if the position is otherwise, no such clarifications are circulated. This mindset of the Organisation need not only to be deprecated but also to be cured and rectified. The Organisation needs to be reoriented, overhauled. There should not be any hesitation in its surgical operation even if some heads roll in the process.
