[¶1] India: Supreme Court revisits the scope and ambit of the definition of employee under the EPF Act, 01 August 2019

INTRODUCTION

The scope and ambit of the definition of an employee under the *Employees Provident Funds and Miscellaneous Provisions Act 1952* (EPF Act) has come up time and again before the Courts in India. This issue often arises in situations wherein workers engaged by an establishment are working from home or are being paid on a piece rate basis.

The Courts have developed certain criteria to examine the nature and scope of work being carried out and the relationship that is developed by such engagement. The control and supervision principle, ultimate authority principle, and integration principle are common tests that are applied by the Courts while examining such fact situations.

Recently, the Supreme Court of India (Supreme Court) in Officer in Charge, Sub Regional Provident Fund Office and Another v M/s Godavari Garments Limited dealt with a similar situation and was asked to decide whether the women workers engaged by M/s Godavari Garments Limited (Godavari Garments), who used their own sewing machines and worked from home to prepare garments, would qualify as employees under the EPF Act.

BACKGROUND

The Officer in Charge, Sub Regional Provident Fund Office (PF Authority) through an order had held that women workers engaged for stitching garments were covered by the definition of "employee" under s 2 (f) of the EPF Act.

On appeal to the Bombay High Court, the Aurangabad bench of the Bombay High Court held that Godavari Garments had no direct or indirect control over the women workers. It observed that, "*The conversion of cloth into garment could be done by any person on behalf of the women workers. Hence, the Respondent Company did not exercise any supervisory control over the women workers*."

This was appealed to the Supreme Court by the PF Authority.

ARGUMENTS ADVANCED BY GODAVARI GARMENTS

It was contended that there was no employer–employee relationship between Godavari Garments and the women workers as Godavari Garments did not exercise any supervisory control over them. In arriving at this finding, reliance was placed on the below factual points:

- sewing machines used by the women workers were not provided by Godavari Garments but were rather owned by the women workers themselves
- the women workers worked from their homes and not at the production centres of Godavari Garments
- work to be performed by them could be done by their relatives, or any other person on their behalf; and
- the women workers were not bound to report to the production centres regularly, nor were they required to work at the production centres.

DECISION OF THE SUPREME COURT AND JUDICIAL REASONING

A division bench of the Supreme Court speaking through Justice Indu Malhotra observed that the definition of an employee under the EPF Act was wide enough to include any person engaged, either directly or indirectly, in connection with the work of the establishment.

The Supreme Court further relied upon its decision in *Silver Jubilee Tailoring House and Others* v *Chief Inspector of Shops and Establishments* (1974) 3 SCC 498, where it had held that where the employer had the right to reject the end product if it did not conform to the instruction of the employer and direct the worker to rework it, the element of control and supervision could be said to be present.

In this scenario, Godavari Garments had the absolute right to reject the garments, in case of any defects and thus, it was held that the control and supervision test was met. Accordingly, the women workers were construed to be employees of Godavari Garments. The fact that the women workers stitched garments at

home or were paid wages by Godavari Garments on a per piece basis was held to not result in any difference to the arrangement.

KEY TAKEAWAYS

Given that the EPF Act is a social welfare legislation, we see that the Supreme Court has given a beneficial interpretation in favour of the women workers.

This is likely to be the judicial trend and thus, employers need to be careful when they engage independent workmen for getting work done. This becomes important from the perspective of employers as they invariably engage independent workmen and/or contract labour for carrying out part of their business activities or for incidental activities, like house-keeping, security, pantry, etc.

The documentation that the employers enter while engaging independent workmen and/or contract labour needs to be well drafted. It should provide that the engagement is on a principal-to-principal and non-exclusive basis.

It must also be specified that the arrangement does not create a relationship of employment between the parties and that the workman understands that he shall not be an employee of the employer. It must also state that the workman has agreed to voluntarily render services as an independent workman in lieu of the consideration that is agreed for in the contract. In case of contract labour, the employees of the contractors should be directly covered under the provident fund code of the contractor so as to ensure that the primary liability for such employees is not fastened upon the employer as the principal employer in terms of the EPF Act.

Most importantly, employers must be careful that the arrangement does not result in the employer controlling the manner in which independent workers carry out their work and should specify the work that is expected to be undertaken and that the ultimate authority over the independent worker in the performance of his work does not specifically lie with the employer.

The outlined practices, if properly followed, will help an employer defend its position properly in the event a s 7A proceeding is initiated against the employer under the EPF Act.

Needless to mention that there is no straitjacket formula to this and each situation has to be assessed in view of the facts and circumstances surrounding it. Employers are therefore advised to consult a lawyer while finalising such an arrangement.

Authors: *Jeevan Ballav Panda (Partner) and Satish Padhi (Senior Associate) (Khaitan & Co)*