

(1980) 01 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 3429 of 1979

Punjab Film and News
Corporation

APPELLANT

Vs

Regional Provident Fund
Commissioner and Others

RESPONDENT

Date of Decision: Jan. 1, 1980

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 19A, 7A, 8

Citation: (1981) 1 ILR (P&H) 347

Hon'ble Judges: Gokal Chand Mital, J; B.S. Dhillon, J

Bench: Division Bench

Advocate: K.L. Sachdeva, for the Appellant; C.D. Dewan and Ramesh Puri, for the Respondent

Judgement

Gokal Chand Mital, J.

The substantial question of law which has arisen in this set of three writ petitions C.P.W. No. 3429 of 1979 Punjab Film and News Corporation Ltd. v. The Regional Provident Fund Commissioner Punjab Haryana H.P. and Chandigarh. C.W.P. No. 933 of 1980 Charan Dass Sanjev Kumar v. The Government of India and Anr. and C.W.P. No. 966 of 1980 Sham Lal-Ram Lal v. Government of India and Anr.--is whether no recovery can be made from the employers u/s 7-A of the Employees Provident Fund Act, 1952 (hereinafter referred to as the Act) while an application filed u/s 19-A by the Employer is still pending with the Central Government and for the determination of this point the writ petitions were admitted to D.B.

2. For facility of reference, we are noticing the facts of C.W.P. No. 3429 of 1979 in our order as the question of law arises on similar facts in these three cases before us.

3. The staff of the Regional Provident Fund Commissioner, found that the Petitioner was covered by the provisions of the Act and it was asked to file an application on the prescribed form. According to the Petitioner, it was not covered by the Act, but the Regional Provident Fund Commissioner found that it was covered under the Act and ultimately passed an order u/s 7-A of the Act and found the amount recoverable from the employer and ordered that the amount be recovered as arrears of land revenue u/s 8 of the Act. After the aforesaid order was passed and recovery was sought to be made, the employer filed a representation u/s 19-A of the Act against the aforesaid order of the Regional Provident Fund Commissioner before the Central Government and challenged the levy of the amount as also the applicability of the Act and the scheme for various reasons detailed in the representation. Since, the recovery was sought to be made, the employer along with it also filed an application for staying the recovery proceedings in pursuance of the order of the Regional Provident Fund Commissioner. The Under-Secretary to the Government of India informed the employer that the stay cannot be granted as there is no provision in the Act giving power to the Central Government in that behalf. After the passing of the aforesaid order declining stay, the employer came to this Court by way of present writ petition as the recovery was sought to be made through the Assistant Collector, Chandigarh, for taking proceedings under the Punjab Land Revenue Act, 1887. Similar are the facts in the other two connected writ petitions.

4. The first and the foremost argument raised on behalf of the Petitioners is that the moment an employer files an application u/s 19-A of the Act, before the Central Government, there is automatic stay of recovery proceedings. In support of this argument, there is no statutory provision in favour of the Petitioners, but reliance is placed on Jay Bharat Woolen and Silk Mills Vs. Regional Provident Funds Commissioner and Others, T.R. Raghava Iyenger and Co. v. The Regional Provident Fund Commissioner. Madras AIR 1963 Mad 238 Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, Dhanalakshi Weaving Works and Ors. v. Regional Provident Fund Commissioner Trivandrum 1904 I L.L.J. 528 and Manjunatha Setty M.L. Vs. Regional Provident Fund Commissioner and Others.

5. After going through the aforesaid judgments, we find that the point which has been raised before us, has not been made out from any of the aforesaid decisions. In all the aforesaid decisions, the correctness of the order passed u/s 7-A was being examined and in one of the cases the correctness of the order passed u/s 19-A was under challenge. In both set of facts, wherever the High Court found, in exercise of its jurisdiction, under Article 226 of the Constitution, that some case u/s 19-A of the Act was made out and was pending consideration before the Central Government on the peculiar facts of that case, the recovery proceedings were stayed till the decision of the Central Government, but it was (nowhere laid down as an abstract proposition of law that merely by filing of an application u/s 19-A of the Act, the recovery proceedings automatically would stand stayed or would remain in abeyance. Therefore, none of the aforesaid decisions, support the Petitioners on the

point urged before us.

6. On the other hand, the learned Counsel appearing for the Regional Provident Fund Commissioner has invited our attention to a Bench decision of this Court in Waliati Ram-Jaishi Ram Partap Bazar Amritsar v. The Regional Provident Fund Commissioner Punjab Haryana Himachal Pradesh and Union Territory of Chandigarh and Anr. CW 2663 79 decided on 3rd August 1978, as also a Full Bench decision of the Gujarat High Court in Jintan Clinical Thermometer Co. (India) Pvt. Ltd., Surendranagar v. The Union of India and Anr. 1975 Lab I.C. 303 and a Bench decision of the Kerala High Court in Provident Fund Inspector v. Auto Transport Union (Private) Ltd. and Ors. 1964 I L.L.J. 562 for the proposition that there is no automatic stay merely by the filing of an application to the Central Government u/s 19-A of the Act.

7. After hearing the learned Counsel for the parties, we find that there is no merit in the aforesaid contention of the learned Counsel for the Petitioners, which is not made out either from the provisions of the Act or the well established principles of law or from any precedent. A reading of Section 19-A of the Act would show that representation can be made to the Central Government on certain matters and the decision of the Central Government shall be final. The jurisdiction of the Central Government u/s 19-A of the Act may be treated as a supervisory, revisional jurisdiction or a plenary power on the working of other authorities under the Act and the Central Government can pass such appropriate orders in respect of the matters arising under the Act or enumerated in the Section and that decision shall be final, but there is no provision in this Section or any other Section of the Act by which by merely filing of an application, the entire recovery proceedings or the provisions of the Act would remain stayed or would stand in abeyance automatically till the final decision of the Central Government. In all statutes, wherever there is a similar provision or provision of appeal or revision, the original order passed by the authority does not stand automatically stayed or remains in abeyance merely by the filing of an appeal or revision. In some statutes, there is a provision for filing of application for stay before the appellate or revisional authority and sometimes there is no provision. Wherever there is an express provision, the stay matter can be entertained subject to those provisions and wherever there is no provision for stay, we are of the opinion that the power to stay the operation of the impugned order would be inherent in the superior authority on the principles that if superior authority can set aside or modify the order of the subordinate authority, then why cannot it put that order in abeyance till the decision of the matter by the superior authority.

8. Therefore, in the absence of any provision that by filing of an appeal, revision or a petition like u/s 19-A the impugned order would remain stayed or would be kept in abeyance, the necessary result is that the order of the subordinate authority would hold the field and can be given effect to till its operation is stayed by the superior

authority. Since there is no provision in the entire Act for staying the operation of the order passed u/s 7-A of the Act during the pendency of the petition u/s 19-A of the Act, we are clearly of the opinion that the order passed u/s 7-A of the Act can be given effect to and there is no merit in the contention raised on behalf of the Petitioners.

9. For the aforesaid view of ours, we find support from Messrs. Waliati Ram-Jaishi Ram's case (*supra*), wherein two learned Judges of this Court held as follows:

The provisions u/s 19-A of the Act is in the nature of a final appeal against the decision of the Provident Fund Commissioner and that too in cases where a doubt arises in regard to the matters referred to therein. The general principle of law is that unless the higher adjudicating authority stays the operation of the order or judgment of the subordinate authority, the latter's order remains potent and effective in all respects and can always be given effect to. That being the position, the Provident Fund Commissioner is well within his right to take follow up action and give effect to his judgment or order by ordering the recovery of the amount till the Central Government makes an express order staying the operation of his order or staying the recovery of the amount.

10. A Full Bench of the Gujarat High Court in *Jintan Clinical Thermometer Co.*'s case (*supra*) held as follows:

The pendency of a dispute before the Central Government u/s 19-A is no bar to the applicability of the Act to the establishment to which the dispute relates.

11. A Division Bench of the Kerala High Court in *Provident Fund Inspector*'s case (*supra*) also held as follows:

Section 19-A of the Employees' Provident Funds Act, 1952, does empower the Central Government to remove difficulty arising in giving effect to the provisions of the Act. But there is no provision that in every case where a plea is raised that the Act is not applicable to a particular establishment or to a particular person, an application should be made u/s 19A and without that the criminal Court trying an offence punishable under the Act would have no jurisdiction to proceed with the case and come to its own conclusion.

The aforesaid decisions clearly show that there is no ipso facto stay of operation of the order passed u/s 7-A or the operation of the Act merely by filing an application u/s 19A of the Act before the superior authority. Accordingly, we decide the primary point raised before us against the Petitioners and hold that merely by filing an application u/s 19A, neither the order passed u/s 7-A of the Act nor the provisions of the Act are stayed or are to be put in abeyance.

12. The next question which arises for determination is whether the Central Government has the power of granting stay while the application u/s 19-A of the Act remains pending before it. It is not disputed before U9 by the learned Counsel for

the Regional Provident Fund Commissioner that the employer is also entitled to move a petition u/s 19A of the Act. In some decisions, which were brought to our notice it was held that employer cannot move an application u/s 19A, but the learned Counsel for the Regional Provident Fund Commissioner fairly concedes that he is of the opinion that Section 19A of the Act is widely worded and even the employer can resort to it and we think that the stand of the learned Counsel is fair, which is correct on the plain reading of the Section.

13. In the present cases before us, all the three writ Petitioners had filed applications for stay of the operation of the order passed u/s 7-A of the Act pending decision of the Central Government u/s 19A of the Act and on those applications the Central Government has given a decision that there is no power of stay with the Central Government as there is no such provision contained either in Section 19A of the Act or. in any other provision of the Act. We are of the opinion that every superior authority, which has power to annul or modify the order of the subordinate authority, has inherent power to put that order in abeyance till the final disposal of the matter by the superior authority. This inherent power is implicit in the superior authority either by virtue of appellate power or revisional power or a representation on the sole ground that if it can set aside or modify the order of the inferior authority, why cannot it put the order of the inferior authority in abeyance for the time being. Therefore, we hold that the Central Government was in error in rejecting the stay applications on the ground that there was no power of stay with it. Accordingly, we set aside the order of the Central Government Annexure P-12 in C.W.P. No. 3429 of 1979, Annexure P-3 in C.W.P. No. 933 of 1980 "and Annexure P-2 in C.W.P. No. 966 of 1980 and issue the direction that the Central Government should redecide the applications for stay filed by the Petitioners within a period of two months from today and the recovery proceedings will remain stayed till the decision of the said application by the Central Government.

14. With the aforesaid observations, Civil Writ Petitions Nos. 3429 of 1979, 933 and 966 of 1980 stand disposed of with no order as to costs.