Tata Motors Limited Vs The Regional Provident Fund Commissioner

Writ Petition (Civil) Nos. 1643, 1967 and 2196 of 2014

Court: Jharkhand High Court

Date of Decision: Oct. 21, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 38, 43#Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 1(3), 7A, 7A(1)(b), 7A(2)#Industrial Disputes Act, 1947 â€" Section 10

Citation: (2015) 1 AJR 58 : (2015) 144 FLR 538 : (2015) 1 JLJR 703 : (2015) LLR 395

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: V.P. Singh, Shashi Anugrah Narayan, Sr. Advocates, Arun Kumar Singh, A.K. Das, Rashmi Kumari, R.K. Singh and P.A.S. Pati, Advocate for the Appellant; Banani Verma, Ashok Kr. Sinha, Arun Kumar Singh, A.K. Das, Advocates, Shashi Anugrah Narayan and V.P. Singh, Sr. Advocates, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.
Since a common issue is involved in all the writ petitions and orders dated 13.12.2013 and 12.03.2014 have been

impugned in all the writ petitions, with the agreement of the counsel appearing for the parties, all the writ petitions were heard together and by a

common order, all the writ petitions are disposed of. Since in all the writ petitions identical facts have been stated, for reference, the facts of W.P.

(C) No. 1643 of 2014 are discussed in detail in this order.

FACTS:

W.P. (C) No. 1643 of 2014

2. The petitioner-Company namely, M/s. Tata Motors Limited is registered as a Limited Company under the Companies Act and it manufactures

commercial vehicles at its Jamshedpur Works Division (Factories). The petitioner-Company started manufacturing chassis of motor vehicle since

1954 and with a view to avoid hardship and inconvenience to its dealers in collecting the chassis from its workshop at Jamshedpur, it introduced a

system of delivery of vehicles at different regional sales offices. For this purpose, the petitioner-Company engaged contractors for transportation of

chassis to different destinations and the choice of the transportation was left to the contractors to opt either the Railways or Roadways or by other

mode for transporting the vehicle to different destinations. The transporters, in turn, employed convoy drivers from a pool/list prepared and kept

by civil administration/the Deputy Commissioner, Jamshedpur. The contractors who worked for the petitioner-Company as well as for other

manufacturers have formed a Union called Telco Transport Companies Association (TTCA). The petitioner-Company has no role in selecting a

particular convoy driver for transporting the chassis to a particular destination. In the year, 1981 the Regional Provident Fund Commissioner issued

a notice to the petitioner-Company under Section 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 calling upon it

to make contributions under the Act in respect of convoy drivers. The said notice was challenged in C.W.J.C. No. 1571 of 1981 and the writ

petition was allowed and vide order dated 25.09.1987 the said notice was quashed. This Court held that there is no employer-employee

relationship between the TELCO and convoy drivers. The order dated 25.09.1987 was challenged in LPA No. 53 of 1988 which was allowed

and the matter was remanded to the Regional Provident Fund Commissioner vide order dated 23.01.1992. Finally, by order dated 23.06.1997,

the Regional Provident Fund Commissioner, Jamshedpur passed an order that TELCO now, M/s. Tata Motors Limited is liable to make

contribution under the Act, in respect of convoy drivers. The said order was challenged in C.W.J.C. No. 2356 of 1997 (R) and in the said

proceeding an order was passed permitting the Provident Fund Commissioner to pass a final order but he was restrained from executing the order

until further orders from the High Court. Thereafter, the respondent no. 1 passed order dated 24.06.1999 quantifying the amount to be contributed

by the petitioner-Company and the said order was also challenged by the petitioner by amending the writ petition being C.W.J.C. No. 2356 of

1997 (R). Another writ petition being C.W.J.C. No. 3275 of 1999 (R) was filed challenging final order dated 24.06.1999 and both the writ

petitions were heard together and disposed of by judgment and order dated 20.05.2004.

3. In the meantime, the Telco Convoy Drivers Mazdoor Sangh sought to raise an industrial dispute claiming benefit to the convoy drivers as the

employee of TELCO however, the appropriate Government, i.e., the erstwhile Government of Bihar refused to make a reference under Section 10

of the Industrial Disputes Act, 1947 and therefore, the Sangh moved a writ petition being C.W.J.C. No. 1852 of 1987 (R). The writ petition was

dismissed vide order dated 15.01.1988 and the matter went up to Supreme Court. The Hon''ble Supreme Court allowed the appeal by the Telco

Convoy Drivers Mazdoor Sangh and directed the State of Bihar to make a reference. Vide notification dated 27.05.1989 the Government of

Bihar made reference to the Industrial Tribunal, Ranchi which answered the reference by Award dated 31.07.1991 holding that there is no

employer-employee relationship between TELCO and convoy drivers. The said Award was challenged in C.W.J.C. No. 3392 of 1997 by the

Sangh which was dismissed and the Letters Patent Appeal being LPA No. 373 of 2001 challenging order passed in C.W.J.C. No. 3392 of 1997

was also dismissed vide order dated 06.07.2001. A Special Leave Petition being SLP(C) No. 19936 of 2001 filed by the Sangh was also

dismissed vide order dated 10.12.2001 and thus, the Award dated 31.07.1991 was affirmed by the Hon''ble Supreme Court.

4. After order dated 20.05.2004 was passed and the matter was remanded by this Court, the Regional Provident Fund Commissioner issued fresh

notices under Section 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 to M/s. TELCO Limited and M/s. TTCA

as well as Telco Convoy Drivers Mazdoor Sangh. Again, several writ petitions being W.P. (L) No. 2618 of 2006, W.P. (L) No. 2773 of 2006,

W.P. (L) No. 3484 of 2006 and W.P. (L) No. 3560 of 2006 were filed challenging orders passed by the respondent no. 1. All the writ petitions

were heard together and disposed of vide order dated 15.09.2011, permitting cross-examination of the witnesses whose cross-examination had

been closed by the order impugned therein. The Regional Provident Fund Commissioner was directed to complete the evidence within two weeks

or within a reasonable period. A direction to conclude the entire proceedings by or before 31.01.2012 was also passed by the Division Bench of

this Court. In the present proceeding, the petitioner filed applications dated 25.02.2014 and 12.03.2014 for deciding the applicability of the

provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 however, vide order dated 12.03.2014, the said

applications were rejected and officers of the petitioner-Company were directed to remain present before the respondent no. 1. Aggrieved, the

present writ petition has been filed by M/s. Tata Motors Limited.

5. The petitioner has also filed Interlocutory Application being I.A. No. 2214 of 2014 for challenging orders dated 13.12.2013, 21.01.2014,

25.02.2014, 25.03.2014 and 11.04.2014.

6. A counter-affidavit on behalf of the Regional Provident Fund Commissioner has been filed taking exception to M/s. TTCA and 10 Transport

Contractors independently and separately challenging orders passed by respondent no. 1. It is stated that the M/s. TTCA and the 10 Transport

Contractors are colluding with each other and also with M/s. Tata Motors Ltd. The examination of the witnesses was concluded on 03.09.2013

and the matter was fixed for examination of record by all the parties when in view of the indexed documents, the respondent no. 1 felt it necessary

that some more documents are still required to be filed by M/s. Tata Motors Limited and M/s. TTCA and therefore, order dated 13.12.2013 was

passed. The writ petitioners have been trying to delay the matter and by filing frivolous petitions, the writ petitioners are avoiding the final decision

in the proceeding before the Regional Provident Fund Commissioner, Jamshedpur.

7. In its reply to I.A. No. 2214 of 2014, the Regional Provident Fund Commissioner has taken a stand that the documents such as the expenditure

of details made to the transport contractors which would be reflected in the balance-sheet of M/s. Tata Motors Limited are necessary. Similarly,

Ticket Number and other relevant documents for proper identification of the convoy drivers and for deciding the issue of employer-employee

relationship, are also necessary.

8. A counter-affidavit on behalf of respondent no. 2-TTCA has also been filed stating that the stand taken by M/s. TTCA in the writ petition being

W.P. (C) No. 1967 of 2014 which has been filed challenging orders dated 13.12.2013 and 12.03.2014, should be taken as the stand of M/s.

TTCA in the present writ petition.

9. The petitioner has filed rejoinder affidavit to the counter-affidavit filed on behalf of the respondent no. 1 denying the statements made in the

counter-affidavit.

W.P. (C) No. 1967 of 2014

10. M/s. Telco Transport Companies Association (TTCA) is an association of independent contractors which is registered under the Indian Trade

Union Act having its registered office at Delhi and its local office at Jamshedpur. The local office of M/s. TTCA is registered under Bihar Shops

and Establishment Act, 1953. It is urged that the petitioner-M/s. TTCA is aggrieved by order dated 12.03.2014 because in response to order

dated 13.12.2013, an application dated 06.02.2014 was filed by M/s. TTCA stating that there is no Ticket Number of any convoy driver and they

are private freelance drivers however, the application dated 06.02.2014 has not been considered by the Regional Provident Fund Commissioner

and vide order dated 12.03.2014, M/s. TTCA has again been directed to produce the records as directed vide order dated 13.12.2013.

W.P. (C) No. 2196 of 2014

11. This writ petition has been filed by the Transport Companies and in this writ petition also, orders dated 13.12.2013 and 12.03.2014 have

been challenged, with a further prayer to direct the respondent no. 2- Regional Provident Fund Commissioner to first decide the issue of employer-

employee relationship, in terms of directions passed by this Court. The writ petitioner is also aggrieved by the direction of the Regional Provident

Fund Commissioner for producing the records.

SUBMISSIONS:

12. Mr. V.P. Singh, the learned Senior Counsel appearing for M/s. Tata Motors Limited has submitted that the application dated 25.02.2014 and

12.03.2014 challenging the jurisdiction of the Regional Provident Fund Commissioner to proceed in the matter has been dismissed vide order

dated 12.03.2014 with a cryptic order and therefore, on that ground alone the impugned order dated 12.03.2014 is liable to be quashed. Raising

serious objections to the various orders passed by the respondent no. 1 whereby the petitioner-M/s. Tata Motors Limited was directed to

produce balance-sheet and the officers were directed to remain present, the learned Senior Counsel has submitted that in view of orders passed by

this Court in earlier proceedings, the Regional Provident Fund Commissioner is required to first decide the question of ""employer-employee

relationship"" and for that purpose the documents directed to be produced by the petitioner is not required. In the written notes filed on behalf of the

petitioner-M/s. Tata Motors Limited, the petitioner has made the following submissions:

1. The respondent no. 1 before proceeding to calculate/quantify the amount under Section 7A(1)(b) of the Act is required in law first to decide the

jurisdictional facts noted in the order dated 25.03.2014.

2. The direction of this Hon''ble Court was to the respondent no. 1 to consider the evidence produced by parties before him and not to compel

anybody for production of any document before him for roving and fishing enquiry.

3. The respondent no. 1 be directed to act fairly and not in partition manner.

13. Mr. Shashi Anugrah Narayan, the learned Senior Counsel appearing for the respondent no. 2- TTCA which has also filed a separate writ

petition being W.P. (C) No. 1967 of 2014 submitted that vide order dated 23.01.1992 in LPA No. 53 of 1988 (R), a Division Bench of this

Court observed that, ""on the basis of evidence, oral or documentary, the Regional Provident Fund Commissioner shall record a finding whether the

convoy drivers are employees of the Company within the meaning of the P.F. Act or whether they are not employees of the Company but of Telco

Transport Contractors Association or they are employees of neither"", however, without deciding the said issue, the respondent no. 1-Regional

Provident Fund Commissioner has embarked upon a roving enquiry which is not permissible in law. It is submitted that an application dated

06.02.2014 was filed on behalf of the M/s. TTCA in which it has been categorically stated that there is no Ticket Number of any convoy driver

who are private freelance drivers and the convoy drivers have their own licence numbers. A list of convoy drivers is prepared by the Deputy

Commissioner and the M/s. TTCA does not engage any driver nonetheless, without considering the same, vide order dated 12.03.2014, the

respondent no. 2 dismissed the application of M/s. TTCA without assigning any reason and directed the Managing Director of the M/s. TTCA to

remain physically present during the proceeding before him.

14. Mrs. Banani Verma, the learned counsel appearing for the respondent no. 1 has submitted that though this Court remanded the matter for a

fresh consideration and vide order dated 15.09.2011 directed the respondent no. 1 to conclude the evidence within two weeks, due to delaying

tactics of M/s. Tata Motors, M/s. TTCA and the Contractors, the respondent no. 1 has not been able to decide the preliminary issue of

employer-employee relationship"". Supporting the impugned orders passed by respondent no. 1, the learned counsel has submitted that the

documents called for by the Regional Provident Fund Commissioner are necessary for arriving at a just conclusion and if a particular document is

not in possession of a party to the proceeding, its affidavit would be taken into consideration by the respondent no. 1. It is submitted that the plea

of jurisdiction raised by the petitioner-M/s. Tata Motors Limited in its application dated 12.03.2014 is barred by constructive res-judicata. Only

with a view to delay the proceeding before the respondent no. 1, application dated 12.03.2014 was filed. The proceeding was initiated by the

Regional Provident Fund Commissioner, Jamshedpur way back in the year, 1981 and the matter came up before this Hon''ble Court on several

occasions however, plea of jurisdiction was never raised by the petitioner-M/s. Tata Motors Limited and when the matter is almost ripe for final

hearing, awaiting filing of documents by the parties, M/s. Tata Motors Limited filed a frivolous application dated 12.03.2014 which has rightly been

dismissed by the respondent no. 1.

DISCUSSIONS:

15. Mr. V.P. Singh, the learned Senior Counsel appearing for M/s. Tata Motors Limited has contended that in view of Section 1(3) of the

Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 the Regional Provident Fund Commissioner is first required to decide

whether the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to M/s. Tata Motors Limited or not and only

when it is found that the provisions of the Act is applicable to the petitioner, the Regional Provident Fund Commissioner would have jurisdiction to

proceed in the matter. Per contra, Mr. Shashi Anugrah Narayan, the learned Senior Counsel appearing for the respondent no. 2 has submitted that

in view of provisions under Section 7A of the Act, such dispute can be decided by the Regional Provident Fund Commissioner in the proceeding

of Section 7A and in fact, in the present case, no such dispute has arisen. The learned counsel for the respondent no. 1 has submitted that such a

plea is barred by constructive res-judicata.

16. This case has a chequered history. Way back in the year, 1981 the Regional Provident Fund Commissioner, Jamshedpur issued notice to M/s.

Telco Limited and thereafter, several round of battle has been fought between the parties. It has not been brought on record by M/s. Tata Motors

Limited in the present proceeding that it raised the plea, as raised in application dated 12.03.2014, at any stage in the earlier proceedings. The

learned counsel for the respondent no. 1 has rightly taken the plea of constructive res-judicata. Though order dated 12.03.2014 does not record

reason for rejecting application dated 12.03.2014 by the petitioner-M/s. Tata Motors Limited, I am of the opinion that, no interference is required

by this Court with the said order. It is well settled that the Courts would not interfere with orders if such interference would perpetuate the illegality.

In the present case, the plea taken by the petitioner-M/s. Tata Motors Limited is not only barred by constructive res-judicata, any interference with

impugned order dated 12.03.2014 would be in breach of orders passed by this Court in earlier proceedings. This Court has specifically directed

the Regional Provident Fund Commissioner to decide first, the question of ""employer-employee relationship"" and therefore, the petitioner-M/s.

Tata Motors Limited cannot be permitted to raise an issue which was not raised by it at any stage.

17. A plea of jurisdiction should be taken at the first instance. In Harshad Chiman Lal Modi Vs. DLF Universal and Another, , the Hon''ble

Supreme Court has held that in so far as, ""territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the

earliest possible opportunity. If such objection is not taken at the earliest it cannot be allowed to be taken at a subsequent stage"". Though, it is true

that objection to the jurisdiction of the Court as to subject-matter can be raised at any stage, as noticed above, though the matter came up before

this Court on several occasions however, M/s. Tata Motors Limited never raised any objection as to the applicability of the Employees'' Provident

Funds and Miscellaneous Provisions Act, 1952 to it. In view of orders passed by this Court in earlier proceedings, such an objection must be

deemed to have been waived by M/s. Tata Motors Limited. Moreover, it is not in dispute that the respondent no. 1-the Regional Provident Fund

Commissioner has jurisdiction to deal with the subject-matter in the case.

18. In so far as challenge to orders dated 21.01.2014, 25.02.2014 and 25.03.2014 are concerned, I find no merit in the challenge made by the

petitioner-M/s. Tata Motors Limited. On 21.01.2014 when the matter was listed before the Regional Provident Fund Commissioner, it was

noticed that neither M/s. Tata Motors Limited nor M/s. TTCA has filed or supplied informations as required by order dated 13.12.2013 and

therefore, they were directed to comply with the order failing which their officers were directed to appear in person and explain the situation. On

25.02.2014, the parties were again directed to comply with orders dated 13.12.2013 and 21.01.2014 and the matter was adjourned for

11.03.2014. On 25.03.2014, the officers of M/s. Tata Motors Limited and M/s. TTCA appeared and explained their position and the same were

taken on record and the matter was adjourned for 11.04.2014. I do not find any reason to interfere with orders dated 21.01.2014, 25.02.2014

and 25.03.2014. In so far as, order dated 13.12.2013 is concerned, M/s. Tata Motors Limited and M/s. TTCA both have raised similar

contentions as in the main writ petition and therefore, challenge to orders dated 13.12.2013 and 12.03.2014 has to be considered together. In so

far as, the submission of the learned Senior Counsel for M/s. Tata Motors Limited that the Regional Provident Fund Commissioner, Jamshedpur

has time and again unnecessarily directed the officers of M/s. Tata Motors Limited to appear before him is concerned, I find that on 25.03.2014,

officer of M/s. Tata Motors Limited and M/s. TTCA both appeared and explained their position and that has been taken on record. Since the

parties were neither producing records nor furnishing necessary informations, their officers were directed to explain their position and therefore, I

do not find any irregularity or illegality in orders dated 21.01.2014, 25.02.2014 and 25.03.2014.

19. Vide order dated 13.12.2013, M/s. Tata Motors Limited was directed to produce balance-sheet together with related expenditure details

pertaining to payments made to M/s. TTCA and Transport Contractors from 2006-07. M/s. TTCA was also directed to provide the following

details,

(i) Ticket Number/Identification Number of drivers

(ii) Date and period of the engagement of the drivers, and

(iii) Rate of payment/actual payment to the drivers from April, 2006

20. Section 7A(2) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the officer conducting the enquiry

under sub-section (1) shall have the following powers as are vested in a Court under the Code of Civil Procedure, 1908;

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

21. In Food Corporation of India Vs. Provident Fund Commissioner and Others, , the Hon''ble Supreme Court has held that the Regional

Provident Fund Commissioner while conducting an enquiry under Section 7A has the same power as are vested in Court under the Code of Civil

Procedure for trying a suit. The Hon''ble Supreme Court has held that the Commissioner should exercise all his powers to collect all evidence and

collate all material before coming to a proper conclusion. The Hon''ble Supreme Court has observed as under,

7. ""The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory

authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

22. It has been held by the Hon''ble Supreme Court that the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 is a social

welfare legislation intended to protect the interest of the weaker sections of the society and therefore, it is imperative for the Courts to give a

purposive interpretation to the provisions contained therein keeping in view the Directive Principles of State Policy embodied under Article 38 and

43 of the Constitution.

23. Since the Regional Provident Fund Commissioner is required to adjudicate first, whether there is ""employer-employee relationship"" between

the convoy drivers and other parties, the documents directed to be produced including the balance-sheet of M/s. Tata Motors Limited and the

informations required to be furnished by M/s. TTCA appear to be necessary for examining whether payments were made directly to the convoy

drivers or through some agency and whether the payments made relate to or are in connection with the work of the establishment either directly or

indirectly and for ascertaining how and when the payments were made and therefore, I find no illegality in orders dated 13.12.2013 and

12.03.2014 directing M/s. Tata Motors Limited and M/s. TTCA to furnish details of expenditure. In order dated 12.03.2014, the Regional

Provident Fund Commissioner has observed that if M/s. Tata Motors Limited and M/s. TTCA fail to produce records, secondary evidence

produced by the parties may be considered. I do not find any infirmity in the observation made by the Regional Provident Fund Commissioner in

order dated 12.03.2014. If M/s. Tata Motors Limited and M/s. TTCA do not produce record, the law provides that the parties may lead

secondary evidence and an adverse inference can also be drawn against the party which has failed to produce the record as directed by the Court.

M/s. TTCA has taken a stand that it never engaged the convoy drivers and Ticket Number or Identification Number, if any, was never issued by

M/s. TTCA to the convoy drivers. I find that M/s. TTCA has already filed an affidavit and its officer also appeared on 25.03.2014 before the

Regional Provident Fund Commissioner and its stand has been taken on record. Now, it is for the Regional Provident Fund Commissioner to

decide the relevancy of the materials produced by the parties and the genuineness of the stand taken by the parties. Before the matter is

adjudicated and a final decision is taken whether there is any ""employer-employee relationship"" between the convoy drivers and other parties, it

would be in the realm of conjectures only to speculate the nature of order passed by the Regional Provident Fund Commissioner. I find that the

apprehensions raised by M/s. Tata Motors Limited and M/s. TTCA are unfounded. In Nagendra Nath Bora and Another Vs. The Commissioner

of Hills Division and Appeals, Assam and Others, , it has been held that, ""it is not every error either of law or fact which can be corrected by a

superior Court. Mere formal or technical error even though of law, would not be sufficient to attract the extraordinary jurisdiction of High Court of

Certiorari"". In view of repeated orders passed by this Court, the Regional Provident Fund Commissioner is under a duty to decide the issue

expeditiously. In the first round of the present proceeding, i.e., in LPA No. 53 of 1988 (R), a Division Bench of this Court vide order dated

23.01.1992 directed the Regional Provident Fund Commissioner to dispose of the matter within four months. Vide orders passed in C.W.J.C.

No. 2356 of 1997 (R) and C.W.J.C. No. 3275 of 1999 (R), a Division of this Court again directed the Regional Provident Fund Commissioner to

render a fresh decision expeditiously. And, vide order dated 15.09.2011, a Division Bench of this Court again directed the Regional Provident

Fund Commissioner to conclude the proceeding by 31.01.2012.

24. In view of the aforesaid discussion, all the writ petitions are dismissed however, in view of the orders passed by this Court in earlier

proceedings, I hereby direct the Regional Provident Fund Commissioner to decide the issue of ""employer-employee relationship"" first, and to

conclude the proceeding expeditiously. Mr. V.P. Singh and Mr. Shashi Anugrah Narayan, the learned Senior counsel for M/s. Tata Motors

Limited and M/s. TTCA respectively have assured the Court that their clients would co-operate with the Regional Provident Fund Commissioner

for expeditious disposal of the matter. It would be open to the parties to produce documents and furnish informations as directed by the Regional

Provident Fund Commissioner and if a party does not furnish the document or provide information, the Regional Provident Fund Commissioner is

directed to proceed in the matter, in accordance with law.

25. I.A. No. 5130 of 2014 for clarification of order dated 28.04.2014 stands dismissed. In view of the nature of dispute raised by the petitioners,

I.A. No. 5249 of 2014 is not required to be allowed and the Sangh is not required to be added as a party at present. In view of the discussion and

order passed in the writ petition, I.A. No. 2214 of 2014 in W.P. (C) No. 1643 of 2014 is also dismissed.