(1984) 02 MP CK 0002

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 218 of 1982

Bhaiya Industries, Indore and another		APPELLANT
	Vs	
Rashmikant R. Shah and another		RESPONDENT

Date of Decision: Feb. 9, 1984

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A
- Penal Code, 1860 (IPC) - Section 193, 196, 228

Citation: (1984) JLJ 436 : (1984) MPLJ 185

Hon'ble Judges: G.L. Oza, Acting C.J.; P.D. Mulye, J

Bench: Division Bench

Advocate: S.C. Bagdia, for the Appellant; V.S. Kokje for Respondent No. 1 and A.H. Khan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, Actg. C.J.

This is a petition filed by the petitioner against an order passed by the Regional Provident Fund Commissioner, on 30th January 1982, holding that respondent No. 1 was an employee and, therefore, directing payment of provident fund contribution against the petitioner.

According to the petitioner, when the claim was made before the Regional Provident Fund Commissioner, the petitioner challenged the claim made by respondent No. 1 on the ground that he was not a regular employee but was only a commission agent. The Regional Provident Fund Commissioner instituted an enquiry and it was alleged that during that enquiry a certificate signed by one Mr. Gangwani who was a partner of the petitioner firm at one time, was produced showing that the petitioner was appointed on a monthly salary. This certificate was challenged by the petitioner and various questions were raised doubting the genuineness of the said certificate. It was alleged that the certificate was prepared and issued not on the date written on it but subsequently after Mr. Gangwani ceased to be a partner. Under these circumstances, both the parties wanted that this person should be examined and for that purpose a date was fixed on 3rd November 1981. The grievance made by the petitioner in this petition is that before the date which was fixed on 24th October 1981 it appears that Mr. Gangwani appeared before the Regional Provident Fund Commissioner and the Commissioner in the absence of the petitioner without intimating him that he is examining Mr. Gangwani put certain question to Mr. Gangwani and made a note of it which appears in the order-sheet dated 24th October 1981 (Annexure R-1) and it is contended that such an enquiry made by the Regional Provident Fund Commissioner at the back of the petitioner is illegal and against the principles of natural justice. It was held in that enquiry that the respondent No. 1 was a regular employee of the petitioner and, therefore, the petitioner was liable to make payment of provident fund contribution.

Learned Counsel appearing for the Regional Provident Fund Commissioner contended that although it is not disputed that the date fixed was 3rd November 1981 but on 24th October 1981 Mr. Gangwani appeared before the Regional Provident Fund Commissioner and submitted that he was going out and it will not be possible to come on 3rd November 1981. Under these circumstances the Regional Provident Fund Commissioner made the enquiry and made a note of it in the order-sheet dated 24th October 1981. It is not disputed that none of the parties were present on 24th October 1981 when Mr. Gangwani was examined. It was contended by Learned Counsel for the Regional Provident Fund Commissioner that it was not the only material on the basis of which the order was passed by the Regional Provident Fund Commissioner which was challenged in this petition. Learned Counsel for respondent No. 1 contended that although the enquiry was made from Mr. Gangwani on 24th October 1981 when he also was absent but he contended that the enquiry was made, it appears, by the Regional Provident Fund Commissioner for his satisfaction only but the matter has been disposed of on affidavits and documentary evidence produced by the parties.

It is apparent that u/s 7A of the Employees'' Provident Funds Act, 1952, the Commissioner while enquiring into the matter is expected to follow the procedure laid down in sub-section (2) of section 7A. Sub section (2) of section 7A reads :

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely :

(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; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228; and for the purpose of section 196 of the Indian Penal Code.

Sub-section (3) of section 7A specifically provides that no order, determining the amount due from any employer shall be made under sub-section (1) of section 7A, unless the employer is given a reasonable opportunity of representing his case. The scheme of sub-sections (2) and (3) of section 7A, therefore, clearly provides that the officer conducting an enquiry u/s 7A is expected to proceed in a judicial manner and enquire into the matter after affording a reasonable opportunity to the employer to represent his case. It, therefore, could not be contemplated that an officer enquiring into the liability under sub-section (2) of section 7A could interrogate material witnesses without affording any opportunity to the parties for put ting question in the nature of cross-examination. It is not disputed that Mr. Gangwani was a very material witness and it was because of this that both the parties wanted him to be examined but still it appears that the Regional Provident Fund Commissioner chose to interrogate him in the absence of parties and also even did not record his statement but only made a note of it. This procedure could not be justified when the officer conducting an enquiry u/s 7A is expected to follow the procedure prescribed under sub-sections (2) and (3) of this section. Under these circumstances, the order passed by the Regional Provident Fund Commissioner could not be said to have been passed after affording reasonable opportunity to the petitioner employer.

The petition is allowed. The order passed by the Regional Provident Fund Commissioner, dated 30th January 1982 is hereby quashed and it is directed that the Regional Provident Fund Commissioner shall now proceed to fix a date and examine Mr. Gangwani who was a material witness in the presence of both the parties and shall afford opportunity to both the parties to cross examine the witness, if necessary, and after recording evidence shall proceed to dispose of the question of fixing liability on the petitioner in accordance with law. In the circumstances of the case, parties are directed to bear their own costs. Security amount, if deposited, be refunded to the petitioner.