

(2001) 10 CAL CK 0028

Calcutta High Court

Case No: F.M.A. No. 875 of 1992

Jasoda Glass and Silicate and
Others

APPELLANT

Vs

Regional Provident Fund
Commissioner and Others

RESPONDENT

Date of Decision: Oct. 10, 2001

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14, 7A

Citation: (2002) 3 LLJ 1047

Hon'ble Judges: Altamas Kabir, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Sukumar Bhattacharjee and A.J. Sengupta, for the Appellant; Jayanta Kumar Biswas and Anil Gupta, for the Respondent

Judgement

Altamas Kabir, J.

This appeal is directed against the summary rejection of the writ petition filed by the appellants, inter alia praying for quashing of the various complaint cases set out in prayer (a) thereto and pending before the learned Chief Judicial Magistrate, Barasat.

2. On behalf of the appellants it was urged by Sri Sukumar Bhattacharjee that all the complaints filed on behalf of the Regional Provident Fund Commissioner, West Bengal, were incompetent as the same was based on adjudications said to have been made u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, but in respect whereof no notice had been served on the appellants, It was urged that since the Section 7A proceedings had been conducted behind the back of the writ petitioners, the same stood vitiated and all proceedings taken on the basis of such unlawful adjudication also stood vitiated and were liable to be quashed.

3. In this connection, reference was made to a Single Bench decision of the Madras High Court in [Ramanujam Press Vs. The Regional Provident Fund Commissioner, Madras](#), wherein the orders passed consequent to the adjudication u/s 7A of the aforesaid Act were quashed as the employer was not given an opportunity to represent his case in the Section 7A proceedings.

4. Sri Bhattacharjee then referred to the decision of the Hon"ble Supreme Court in [Union of India and Others Vs. Dinanath Shantaram Karekar and Others](#), wherein relation to service of a charge-sheet the Hon"ble Supreme Court held that since the delinquent had to submit his reply, actual service was essential and had to be proved.

5. Sri Bhattacharjee submitted that in the absence of proof of actual service the theory of communication could not be invoked.

6. It was also submitted that sanction for prosecution had not been obtained from the Regional Provident Fund Commissioner, West Bengal, the Andaman and Nicobar Islands, and the complaints filed by the Provident Fund Inspector were, therefore, without authority, and the cognizance taken thereupon was bad in law and was liable to be quashed.

7. Sri Bhattacharjee urged that pursuant to the various orders passed from time to time in the appeal, all the dues alleged to have been outstanding, had been fully paid by the appellants and in view of the decisions of the Hon"ble Supreme Court and this Court in that regard, the criminal complaint cases were liable to be quashed.

8. Sri Bhattacharjee also referred to the decision of the Hon"ble Supreme Court in [Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others](#), wherein having regard to the liquidation of the outstanding provident fund dues, the Hon"ble Supreme Court directed that the prosecutions for default in payment of such dues be quashed subject to the condition that the sum directed to be deposited be paid to the Regional Provident Fund Commissioner who would be entitled to appropriate the same.

9. In this connection reference was also made to a Bench decision of this Court in the case of Regional Provident Fund Commissioner, West Bengal v. Raj Kumar Nemani and Ors. reported in 1995 (1) L.L.N. 945, wherein relying on the decision of the Hon"ble Supreme Court in [Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others](#), it was held that since the entire arrears of provident fund had been deposited prior to the lodging of the criminal complaint, the prosecution could not be proceeded with.

10. Sri Bhattacharjee next referred to a single Bench decision of this Court rendered by one of us (ALTAMAS KABIR, J.) in Kanoria Jute Industries, Ltd. and Anr. v. Regional I Provident Fund Commissioner, West Bengal and Ors., reported in 1994 (1) C.LJ.

442, wherein in the facts and circumstances of the case instalment was granted to the Company to clear the arrear dues and the authorities were restrained from taking coercive measures.

11. Sri Bhattacharjee submitted that following the decisions of the Hon"ble Supreme Court and this Court, the criminal prosecutions commenced against the appellants were liable to be quashed since the entire arrear provident fund dues had been liquidated by the appellants.

12. Sri Bhattacharjee submitted that the appellants could have moved this Court in its revisional jurisdiction but as observed by the Hon"ble Supreme Court in [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), . The jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution inspite of an alternative remedy available to the petitioner, is not affected "particularly in a case where the concerned authority had acted without jurisdiction.

13. Appearing for the respondents, Sri Jayanta Kumar Biswas, learned senior advocate, submitted that the appeal was misconceived and the learned single Judge had not committed any error in summarily dismissing the writ petition. It was submitted by Sri Biswas that it was immaterial whether the appellants had deposited the arrear dues having regard to the provisions of Section 14 of the 1952 Act and since the offence for the periods in question had already been committed and the learned Magistrate had taken cognizance on the basis of materials disclosed in the several complaints, the payments subsequently made could only be a mitigating factor on the quantum of punishment to be awarded.

14. Sri Biswas submitted that in the case of Provident Fund Inspector, Faridabad (supra), it was specifically indicated that the same was not to be treated as a precedent and the said decision could not, therefore, be relied upon by the appellants in support of this case.

15. As far as the Bench decision of this Court in Raj Kumar Nemani case (supra), and the single Bench decision in Kanoria Jute Industries Ltd. (supra), were concerned, Sri Biswas urged that the same had been rendered in the special facts of those cases and the same could have no application to this case where such special facts were absent.

16. As to the decision in the Adoni Cotton Mills Ltd. case (supra), Sri Biswas urged that in the said case no criminal prosecution had been started and what was quashed were the notices issued to the appellant to show cause as to why the company should not be prosecuted under Sections 14 and 14A of the Act and Section 15 of the Additional Emoluments (Compulsory Deposit) Act, 1974, read with Sections 406 and 409 of the Indian Penal Code. Moreover, in the said case the period of default was only 4 months which seemed to have weighed with the Court in quashing the impugned notices.

17. Sri Biswas submitted that the defaults in this case were committed over several months and the fact situation was, therefore, quite different from the facts in the Adoni Cotton Mills Ltd. case (supra).
18. It was pointed out that the appellants had been duly notified of the Section 7A proceedings and prosecution had been duly sanctioned by the Regional Provident Fund Commissioner, West Bengal, after the failure of the appellants to comply with the demand notices duly served on them pursuant to the adjudication u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
19. Sri Biswas submitted that the same question had been considered by a Division Bench of this Court in an unreported judgment in the case of Heavy Mechanical Lifting Enterprise v. Union of India and Ors. ; in an appeal from Matter No. 97 of 1993. Sri Biswas submitted that the decision of the Hon'ble Supreme Court in the case of Provident Fund Inspector, Faridabad (supra) relied upon by Sri Bhattacharjee in this case, was also considered by the Division Bench in the said appeal and it was ultimately held that u/s 14(1A) of the 1952 Act any person who commits a default in complying with the provisions of Section 6 or Clause (a) of Sub-section (3) of Section 17 or Para. 38 of the scheme is liable to be punished. It was also held that when default had been committed in respect of the deposits required to be made u/s 6, the offence stands committed, and any subsequent deposit could not cause a waiver of the prosecution but could only be a consideration for imposing minimum sentence in accordance with law.
20. Sri Biswas lastly urged that, in any event, writ remedy was not the proper remedy available to the appellants and the appellants should have moved a revisional application u/s 482 of the Code of Criminal Procedure for quashing the criminal complaints since cognizance had already been taken by the learned Chief Judicial Magistrate, Barasat, on the basis thereof.
21. Sri Biswas submitted that this was not a case of the learned Magistrate not having jurisdiction to take cognizance on the complaints filed so as to bring it within the ambit of the Whirlpool Corporation case (supra), relied upon by Sri Bhattacharjee.
22. Sri Biswas submitted that this was not a case which called for interference either with the orders passed in the Section 7A proceedings or the complaints filed on the basis thereof.
23. We have carefully considered the submissions made on behalf of the respective parties and have also noted the fact that pursuant to the orders of the Court in this appeal the outstanding dues have been deposited by the appellants. However, the fact still remains that as soon as default was committed, it constituted an offence punishable u/s 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, with imprisonment and fine also.

24. Notwithstanding the above position, the Hon"ble Supreme Court in the Adoni Cotton Mills Ltd. case (supra) quashed the proceedings for prosecution initiated on the notices to show cause as to why prosecution for default should not be taken under Sections 14 and 14A of the 1952 Act since the amount in default had been partly deposited and partly secured.

25. In the case before us, the appellants have also deposited all the dues which were allegedly outstanding on the strength of orders passed from time to time.

26. In view of the aforesaid decision of the Hon"ble Supreme Court, we dispose of the appeal with leave to the appellants to file separate affidavits before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas, in respect of each separate complaint giving details of the payments of the amounts in default in each such complaint, and if the learned Magistrate is satisfied that such payments have been duly made, he shall take steps to drop the proceedings in respect of which such payments have been made.

27. There will be no order as to costs.

28. If an urgent xerox certified copy of this order is applied for, the same is to be supplied expeditiously, subject to compliance with all the required formalities.

A.K. Basu, J.

29. I agree. Direction given.