Prakash Kothari Vs Regional P.F. Commissioner, Maharashtra and Goa

Writ Petition No. 2372 of 1987

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 28, 1988

Acts Referred:
Constitution of India, 1950 â€" Article 14#Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 7

Citation: (1988) 4 BomCR 585 : (1990) 60 FLR 315 : (1990) 2 LLJ 217 : (1989) MhLj 825

Hon'ble Judges: V.A. Mohta, J; M.S. Ratnaparkhi, J

Bench: Division Bench

Judgement

V.A. Mohta, J.
Regional Provident Fund Commissioner, Maharashtra and Goa passed order dated March 3, 1987 u/s 7-A of the

Employees" Provident Funds and Miscellaneous Provision Act. 1952 (the Act) determining Rs. 24,282.90 as the amount from M/s. Jaswala Tiles

and Pipes Works. Chandrapur (the employer) for the period January 1983 to September, 1986 and issued a demand notice dated April 20, 1987

on that basis. Aggrieved thereby the present petition has been filed.

2. Undisputed position seems to be that the employer was given Code No. MH/22116 under the Act. A summons to appear at Bombay on

October 7, 1986 was issued for the purposes of determining the amount due under the Act. Repeated applications for adjournments were made

from time to time by the employer. Enquiry was last fixed on March 3, 1987. None appeared even on that date. Evidence of Smt. N. P. Satghar.

Provident Fund Inspector, was recorded. On the basis of her evidence, the returns submitted by the employer, and on verification of records, the

impugned order was passed.

3. Three contentions are raised before us. The first is that the order is passed without hearing and, therefore, is vitiated for non-compliance of

principles of natural justice. We do not see any substance in this point. Copies of only two applications one dated October 1, 1986 and the other

dated November 3, 1986 are annexed to the petition. The other applications including the first and the last one are not placed on record. By these

two applications for adjournment the employer had requested the Commissioner to reconsider the direction of bringing the record to Bombay on

the ground that it would cause great hardship and inconvenience. It is also stated therein that as not more than 15 to 16 labourers were employed,

the Act did not apply. Now, the office of the Commissioner is at Bombay and the request of the employer for not calling the record at Bombay

was not reasonable. Hence no illegality was committed in not granting the said request. In the petition it is stated that the petitioner was not keeping

good health and had telegraphically informed the authority of his inability to take part in the proceedings and that even a medical certificate was

submitted. The copy of the said telegram or the medical certificate is not even produced before us. Under all these circumstances it cannot be said

that the order is passed without giving sufficient opportunity to the employer.

4. It is next contended that the order is ""non-speaking"" as it does not specifically refer to the contention about the number of employees and

consequent non-applicability of the Act. This contention is also not correct. The order refers to the evidence of the Inspector and the report

prepared on verification of records of the employer. No doubt, there is no specific reference to the contention of the employer about the number of

employees being only 15 to 16. But that by itself does not make the order ""non-speaking"". The adjournment application do not even disclose as to

since when the number of employees came to 15 to 16. The employer was given code number under the Act which implies that at one stage the

employer did attract the provisions of the Act. The Act does not cease to apply even if the number of employees subsequently drops down below

the requisite number. Applicability of the Act thus does not depend upon the continued employment of the requisite number of employees. There is

not even a whisper in the application about the point of time since when the number of employees was 15 to 16 as alleged. In the whole

background it was the employer''s duty to satisfy the Commissioner about non-applicability of the Act, which he failed to do. Moreover the point

was casually raised in the application for adjournment. Our attention was invited by the learned counsel for the petitioner to the case of Delhi Iron

and Steel Stockists Assn. Vs. Regional P.F. Commissioner, . That was a case where a lumpsum was determined without disclosing the basis. Such

an order was quashed on the ground that it was a "non-speaking" order. The ratio of that judgment clearly does not apply to the present case.

5. All that survives for consideration is the last point about Section 7-A of the Act being procedurally unreasonable in view of the finality attached

to the order under sub-section (4). There is a long line of decisions rendered by the Supreme Court on the question, taking a view that mere

absence of a provision for appeal or revision does not render the provision unreasonable. Several factors such as general scheme of the Act, the

purposes intended to be achieved, rank of the authority whose decision is made final, the type of the enquiry, the parties likely to be involved and

host of several such aspects become relevant. The Act in question is a social legislation. Section 7-A is attracted only when the employer fails in his

legal obligation to make contribution. Interest of poor employees is involved and the realisation of the amount has, therefore, to be quick. Person of

the high rank of a Commissioner or such other officer authorised by the Central Government u/s 14-B is alone vested with the adjudicative

powers. The Act only provides for an opportunity of being heard but in certain matters the officer is vested with the powers vested in a Court

under the Code of Civil Procedure. No such complicated question of fact are generally involved. The enquiry is deemed to be judicial enquiry

within the meaning of Section 193 and 228 and for the purpose of Section 196, Indian Penal Code. If under these circumstances the Legislature in

its wisdom thought that the order should be made final and should not be subjected to either appeal or revision, there is nothing arbitrary or

unreasonable in the said legislative policy. In the case of Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, , an

unsuccessful challenge on the similar ground was made to Section 14-B of the Act. Therein it is observed (p. 420) :

Nor is the plea of absence of guidelines or appellate review sound enough to subvert the validity of Section 14-B. It is attractive to hear the

argument that an order passed by an authority, which becomes infallibly final in the absence of an appeal or revision, is apt to be arbitrary and bad.

An appeal is a desirable corrective but not an indispensable imperative and while its presence is an extra cheek on wayward orders, its absence is

not a sure index of arbitrary potential. It depends on the nature of the subject matter, other available correctives, possible harm flowing from wrong

orders and a wealth of other factors.

6. What applies to Section 14-B also applies to Section 7-B.

7. While testing the validity of the Maharashtra Debt Relief Act, on the ground of procedural unfairness in the absence of the appellate provision, in

the case of the Fatehchand Himmatlal and Others Vs. State of Maharashtra, ., it is observed :

Does the absence of a right of appeal render the procedure unreasonable ? It depends. Where the subject-matter is substantial and fraught with

serious consequences and complicated questions are litigatively terminated summarily, without a second look at the findings by an appellate body,

it may well be that unfairness is inscribed on the face of the law, but where little men, with petty debts, legally illiterate and otherwise handicapped,

are pitted against money - lenders with stamina, astuteness, awareness of legal rights and other superiority, if the purpose of instant relief is to be

accomplished, the provision of an appeal may, in many cases, prove a built-in body trap that frustrates and ruins the hand-to-mouth debtor. No

surer method of baulking the object can be devised than enticing the debtor into an appellate bout! Daughter gone and ducats too, will be the

sequel! Of course, where the enquiry is a travesty of justice or violation of provisions, where the finding is a perversity of adjudication or fraud on

power, the High Court is not powerless to grant remedy, even after the recent package of Constitutional amendment.

8. Under the circumstances, the attack on validity of Section 7-A of the Act has to be repelled.

9. The learned counsel for the petitioner has brought to our notice the case of Wire Netting Stores Delhi and Another Vs. The Regional Provident

Fund Commissioner and Others, , in which Delhi High Court has taken a view that Section 7-A suffers from the vice of unreasonableness and,

therefore, is violative of Article 14. On the other hand, the learned counsel for the Commissioner invited our attention to the case of Balasore

Automobile Works v. The Regional Provident Fund Commissioner 1983 L.I.C. 1219 and Sukhchain and Company v. Food Corporation of India

1984 (65) F.J.R. 337, in which validity of Section 7-A has been upheld by Orissa and Punjab and Haryana High Court. In our judgment the ratio

of Organo Chemical (supra) applies to the instant case. Moreover the view taken by Orissa and Punjab and Haryana High Courts commends itself

to us.

10. To conclude, there is no merit in this petition. It is dismissed. Rule discharged. No order as to costs.