

(1969) 08 OHC CK 0033
In the Orissa High Court
Case No : O.J.C. No. 294 of 1965

Balasore Motor Association

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 18-08-1969

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 7A

Citation : AIR 1970 Ori 199 : (1969) 35 CLT 1022 : (1970) 1 LLJ 559

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : R. Mohanty, S.C. Ghose and U. Sahu, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application under Articles 226 and 227 of the Constitution of India made on behalf of the Balasore Motor Association through its manager challenging a demand raised by the Regional Provident Fund Commissioner by virtue of the powers conferred upon him u/s 7A of the Employees' Provident Funds Act, 1952. The petitioner contends that it is not an establishment employing 20 or more persons, and as a matter of fact, apart from being an Association of bus owners, it does not carry on any business by itself. It does not employ 20 persons or more and therefore" is not able under the provisions of the Central Act No. XIX of 1952 to make any contribution as provided for u/s 6 of the Act. In the circumstances, the determination of the amount alleged to be due from it under the provisions of the Act is without jurisdiction and incompetent. In the counter affidavit filed by the opposite party it was asserted that enquiries had been made by an Inspector, under the establishment of the Regional Provident Fund Commissioner, before whom two statements had been given by the petitioner. Therein, it is alleged in the counter-affidavit, it has been conceded that there are more than 20 employees in the establishment.

2. Section 1 (3) (b) of "the Act provides that the provisions of the Act would

apply to any establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify. A notification dated 29-7-61 published in the Gazette of India on 5-8-61 has been placed before us along with the counter affidavit to show that the provisions of the Act have been extended to Road Motor Transport Establishments. For convenience, the notification may be extracted:--

Government of India Ministry of Labour & Employment Dated, New Delhi, the 29th July, 1961, Notification

G. S. R. 1013. Whereas the Employees' Provident Funds Act, 1952 (19 of 1952), has already been applied to the following classes of establishments wherein 50 or more persons are employed.

Now, in exercise of the powers conferred by clause (b) of Sub-section (3) of Section 1 of the said Act, as amended by Act No. 48 of 1960, the Central Government hereby directs that, with effect from the 31st July, 1961 the said Act shall apply to the following classes of establishments, in each of which 20 or more persons are employed, namely:--

1. Plantations of Tea (other than those in the State of Assam), and Plantations of Coffee, rubber, cardamom and pepper.
2. Iron, Ore, Lime Stone, manganese, Gold and mica mines.
3. Coffee curing establishments.
4. Road Motor Transport Establishments.
5. Every cane farm owned by a sugar factory.

(No. 4/10/61/PF--II)."

It is on the basis of this notification that the opposite party contends that the petitioner is an establishment to which the provisions of the Act must be taken to have been made applicable.

3. The two statements appended to the counter affidavit as Annexures B and C clearly go to show that employees who constituted "drivers, cleaners and conductors were being employed under individual bus owners, and therefore cannot be taken to be employees under the petitioner-Association Annexure B shows that there were 7 employees under the petitioner who were paid on monthly basis, while Annexure C shows that there were 6 such employees. On the basis of this information it is difficult to accept the contention in the counter-affidavit that the requirement of Section 1 (3) (b) of the Act is satisfied in this case to confer jurisdiction on the authorities set up under the Act to require the petitioner to comply with the provisions of the Statute."

4. This is all the more so on account of the fact that the order purporting to be u/s 7-A of the Act does not record any findings of liability nor does it indicate the basis which has led the Regional Provident Fund Commissioner to hold that the

petitioner is liable under the Act. The impugned order dated 17-2-1965 reads as follows :--

"Office of the Regional, Provident Fund Commissioner, Orissa. No. Enf. 80-64/1280/RPF, Dated, Cuttack the 17th February, 1965. ORDER

defiance of the registered notice u/s 7-A of the Employees' Provident Funds Act, 1952, the Management of Balasore Motor Association, Balasore, have failed to produce their records in my office so as to enable me to assess the total Provident Fund contribution etc., due from the management, I, Sri D. P. Tripathi, I. A. S., Regional Provident Fund Commissioner, Orissa in exercise of the Powers conferred on me u/s 7-A of the Employees' Provident Funds Act 1952, hereby order that a sum of Rupees 5,000/- (Rupees five thousand only) being the estimated amount due from the management be recovered through revenue recovery proceedings.

Sd/- D. P. Tripathi Regional Provident Fund Commissioner, Orissa.

x x x x x"

It would appear on a bare look at the order that it does not specify the requirements of law. It is patent from the materials on record that liability was being disputed by the petitioner, and therefore a determination of the liability was a condition precedent to the making of an order u/s 7-A of the Act. Liability does not appear to have been determined by any other separate order; at least there is none placed on the record though a counter-affidavit has been filed. No material is forthcoming from the impugned order as to how and on what basis a sum of Rs. 5,000/- was estimated as the amount due from the Management. Section 6 of the Act provides the rates of contribution and any determination u/s 7-A of the Act has to be only on the basis of the calculations to be arrived at by adopting the rates indicated in Section 6 of the Act. The demand in this case, therefore, seems to be not in compliance with the provisions of the Statute and cannot be justified.

5. Power u/s 7-A of the Act appears to be very wide, and, as a matter of fact, there is no provision for a forum where the demand u/s 7-A can be questioned. Sub-section (4) of Section 7-A makes the demand final, and in fact the jurisdiction of the Civil Court has also been barred. It is of paramount importance that where wide powers are vested in the statutory authority and further provision is not made to challenge such order, the exercise of that power should be made in a careful manner so that the result may not be arbitrary.

6. On the aforesaid analysis, the order dated 17-2-65 made by the opposite party cannot be sustained. We issue a writ of certiorari to quash the impugned order and direct that the opposite party be restrained from taking any action to enforce the demand raised in the said order. This writ application is, therefore, allowed with costs. Hearing fee of Rs. 100/- (one hundred).

G.K. Misra, C.J.

7. I agree.