

(1995) 02 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 8857 (W) of 1994

Calcutta Industries and Others

APPELLANT

Vs

The Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17(A)
Penal Code, 1860 (IPC) — Section 406, 409

Citation : (1995) 1 CALLT 419a

Hon'ble Judges : Nisith Kumar Batabyal, J

Bench : Single Bench

Advocate : Biswanath Sanyal and Keya Banerjee, for the Appellant; Jayanta Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Nisith Kumar Batabyal, J.—In this application under Article 226 of the Constitution of India, the petitioner Company and its Partners have come before this Court for the following, amongst other, reliefs :

- (a) A writ of and/or order and/or directions in the nature of Mandamus commanding and/or directing the respondents and/or their agents and/or their servants and/or each of them not to proceed with further the criminal prosecutions as detailed in Annexure "A" and not to initiate criminal proceedings in respect of the subsequent periods as per Annexure "B" to the writ petition under the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952 and Employees Family Pension Scheme, 1975 and Employees Deposit Link Insurance Scheme, 1976 and Rules and Regulations framed thereunder;
- (b) A writ and/or directions in the nature of Mandamus do issue commanding the respondents from giving any effect or further effects to the criminal prosecution detailed in Annexure "A".

(c) A writ of and/or order and/or directions in the nature of Certiorari calling upon the respondents to transmit or send to this Hon"ble Court all records and proceedings being Annexure "A" and "B" respectively and all order or orders so that justice may be done by quashing and/or cancelling the same.

(d) A writ and/or order and/or direction in the nature of prohibition, prohibiting the respondents from giving any further effect to the proceedings ("A" and "B") and other reliefs.

2. It is stated that the petitioner firm due to acute financial stringency for labour unrest and other economic factors could not comply with the statutory obligations from 1979 in making compliance with the provisions of the Employees Provident Fund & Miscellaneous Provisions Act and other related acts. For non-compliance with the mandatory provisions of the P.F. & Miscellaneous Provisions Act, 1952 criminal prosecution has been launched against the writ petitioners as per Annexure "A". From Annexure "B" it appears, that the total dues from the petitioner company comes to Rs. 1,70, 297/-for the period from July, 1990 to May, 1994. Criminal action under Annexure "A" was brought due to failure of the company to pay contribution for the month of July, 1979. The contention of the writ petitioners is that the amounts which were demanded as dues under the Act were determined not in accordance with the provisions of the said Act. It has been further stated that the petitioners have, however, cleared all the dues as demanded without proper determination u/s 17A of the Employees Provident Fund etc. Act, though not in time. According to the petitioners, the criminal prosecution is totally misconceived. The main objective behind the Employees" Provident Fund etc. Act is to safeguard the interests of the employees so that the employees may not suffer. When the dues payable to the funds had been paid and the interest of the employees had not been affected although there was delay in payment of the instalments, the prosecution of the petitioners becomes a ritual specially when they have paid interest for the delayed payment. The petitioners are willing to clear up all dues by making payment of a sum of Rs. 30,000/- in a lump and thereafter by monthly instalments of Rs. 5,000/- along with current payments till the arrears are liquidated. The respondents are alleged to be threatening the petitioners with criminal prosecution for non-payment of the dues as per Annexure "B" to the writ petition. The writ petitioners are willing to pay the entire amount demanded by instalments as stated above with a default clause for enforcement of the payment. It has been further submitted that the criminal proceeding is pending for about last 14 years and therefore, this is violative of Article 21 of the Constitution of India and this is liable to be quashed.

3. In Affidavit-in-opposition, it has been stated that since in its inception the petitioner firm failed and neglected to comply with the provisions of the P.F. etc. Act (Act 19 of 1952) and the Scheme framed thereunder regularly. As a result, several cases had to be instituted against the petitioner firm under different provisions of the said Act 19 of 1952 including prosecution under Sections

406/409 of I.P.C. The alleged difficulties in running the business are baseless. The instant prosecution have been launched against the petitioner company as they are in default in payment of their dues under the Act 19 of 1952. The writ petition is not maintainable as framed.

4. In the Affidavit-in-reply filed by the writ petitioners, it has been stated that the jurisdiction of this Court under Article 226 of the Constitution of India is very vast and wide and this Court can quash the criminal proceedings, that the criminal prosecution suffers from patent and inherent infirmity of law and the continuance thereof is a gross abuse of the process of law, that it was never the intention of the Legislature that the interest of the workers would be served by sending the employers to Jail for default in payment of the dues due to financial stringency for reasons beyond the control of the company and that the petitioners are entitled to reliefs as claimed.

5. In the Supplementary affidavit filed on 2-2-95 on behalf of the writ petitioners, some papers showing payment towards P.F. dues amounting to Rs. 50,057/- since the institution of the writ petition have been annexed.

6. The Learned Advocate, Mr. Biswanath Sanyal appearing on behalf of the writ petitioners has relied upon the decision of the apex court of our. land in Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, . In that case the judgment was passed in two short paragraphs as quoted below :

"We have heard learned counsel for the parties. We set aside the judgment passed by the High Court in each of these cases. In view of the statement made by M/s. T.V.S.N Chari and P.H Parekh, learned counsel for the respondents on behalf of some of the respondents that they have paid all the arrears of Provident Fund in respect of which the prosecution was instituted we direct that the prosecution against them shall not be proceeded with. If any of the respondents has not paid all the arrears in respect of which the prosecution has been instituted they may deposit whatever arrears are due from them on or before 31st December, 1986 and if they do so the prosecution against them shall come to an end. If they do not pay the arrears accordingly, the prosecution shall be proceeded with. This order will not serve as a precedent as it is passed in the peculiar facts and circumstances of these cases.

2. The Criminal Appeals and SLP are disposed of accordingly."

7. The learned Advocate for the writ petitioner company has also placed before this court an unreported decision of a Single Judge of this Court In re : Messrs. Bengal Surgical Private Ltd. and Ors. The judgment is dated 23-5-91. In that case also the writ petitioners filed a writ petition for quashing of the criminal case pending before the learned Metropolitan Magistrate, Calcutta for non-payment of Provident Fund dues. Mr. Biswanath Sanyal, learned Advocate also appeared before that Court on behalf of the writ petitioners and made some submissions relying upon the principles laid down in Provident Fund Inspector, Faridabad's case (supra). His Lordship was pleased to observe as follows :

"Mr. Biswanath Sanyal, Ld. Advocate appearing in support of the writ petitioners, has strongly relied on the observation of the Supreme Court in the case of Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, wherein the Bench consisted of E.S. Venkataramiah and Sabyasachi Mukharji, J.J. (as His Lordship then was) took the view that since the petitioner had paid the arrears of the Provident Fund in respect of which the prosecution was initiated, the prosecution should not be directed to be proceeded with any further."

"In view of the above matter, I dispose of the writ petition by giving liberty to the writ petitioners to make necessary prayer before the Ld. Metropolitan Magistrate, 15th Court, Calcutta for quashing of the criminal proceeding and/or discharge of the criminal case in view of the observation made by the Hon"ble Supreme Court in the aforesaid judgment and in view of the fact that the aforesaid payment had been made after the lodging of the complaint by the Inspector, E.S.I. If any prayer has been made before the Learned Magistrate, the said Magistrate will be entitled to scrutinize whether any payment has been made as referred to hereinbefore. The writ application is thus disposed of as, above"

8. Mr. Jayanta Biswas, Learned Advocate on behalf of the respondent No.1 has submitted that in the decision of the apex court quoted above, it has been specifically laid down by Their Lordships that "this order will not serve as a precedent as it is passed in the peculiar facts and circumstances of this cases". The Ld. Advocate has further drawn the attention of the Court to the principles laid down by the apex court in State of Punjab and others Vs. Surinder Kumar and others, . In that case it was held that a decision is available as a precedent only if it decides a question of law. Thus the temporary Lecturer in a writ petition before the High Court would not be entitled to rely upon an order of the Supreme Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special ground which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of the Supreme Court, it cannot be understood to have been passed without an adequate legal basis therefore. On the question of the requirement to assign reasons for an order a distinction has to be kept in mind between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but; the requirement is not imperative in the case of Supreme Court. It is, therefore, not proper to suggest that if the Supreme Court has passed an order in the circumstances the similar order can also be issued by the High Court. There is still another reason when the High Court cannot be equated with the Supreme Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice in any case or matter pending before it which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed

by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge. It is true that the High Court is entitled to exercise its judicial discretion in deciding Writ Petitions or Civil Revision Applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief, asked for by petitioners, on adequate considerations; and it does not permit the High Court to grant relief on such a consideration alone.

9. Mr. Biswas, Learned Advocate for the respondent No. 1 has further submitted that the decision in Provident Fund Inspector, Faridabad's case (supra) cannot be taken advantage of as an obiter dictum also. In this connection the Learned Advocate has referred to the meaning of, the term "Obiter Dictum" as given in Osborn's Concise Law Dictionary, 6th Edition, at page 233. The relevant portion is quoted below :

"(A saying by the way) An observation by a Judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision. It is therefore not binding as a precedent. But there is no justification for regarding as obiter dictum a reason given by a judge for his decision because he has given another reason also."

10. The Learned Advocate for the respondent No. 1 has therefore submitted that as Provident Fund Authority has discharged their statutory function, therefore, the writ petition should be dismissed.

11. It appears from the submissions made by the learned Lawyers of the contending sides, that the decision in Provident Fund Inspector, Faridabad's case (supra) cannot be used as a precedent as per the observation made by Their Lordships in the body of the judgment. Only the ratio decidendi has got a precedent value. When no express reason for the conclusion of the Learned Judges is there in the reported judgment disposing of a matter, the ratio decidendi in that case cannot be ascertained. Of course, it does not mean that there is no reason for the judgment. This point has been made very clear in the decision of the apex court in Surinder Kumar's case (supra). The question is whether the decision in Provident Fund Inspector, Faridabad's case (supra) can be utilised as obiter dictum of the highest court. In view of the submissions made by the Learned Lawyer of both sides, it appears that only an observation by a Judge on a legal question suggested by a case before him but not arising in such a manner as to require decision can constitute an obiter dictum. In the said case the question was whether direction be given to withdraw prosecution against employers who have paid all arrears or would pay within a stipulated time. That main question was disposed of by giving a direction. There was no other question of law which by the way cropped up and there was no observation by the Hon'ble Judges on any other legal question except the central question as stated above. Therefore, there is no obiter dictum in the said reported decision. In view of this, this court cannot accept the contention of Mr. Sanyal, the learned Advocate for the writ petitioners.

12. Mr. Sanyal has tried to bank upon the Single Bench decision of this court in the unreported case cited above. The Learned Single Judge disposing of the writ petition in that case did not allow the writ petition. His Lordship was pleased to pass an order disposing of the writ petition with the direction that proper prayer be made before the learned Court of the Magistrate where the criminal cases were pending and the learned Magistrate would dispose of the said prayers according to law after verifying whether the payments as claimed by the writ petitioners were made. No order restraining the respondents in that case from proceeding with the criminal case referred to in that case was passed by the Learned Judge. It is obvious that the decision cited by the Learned Advocate for the petitioner is not supporting his contention. The other point which has been agitated by Mr. Sanyal, the Ld. Advocate for the writ petitioners is that this court is competent to quash the criminal proceeding which is pending since 1980. Mr. Biswas, Learned Advocate appearing for the respondent No. 1 has submitted that mere delay in disposal of a criminal case is no ground for quashing the proceeding as the court has to consider many other factors. Moreover, there is a provision u/s 245(3) of the Cr. P.C. [as amended by West Bengal Act 24 of 1983] which lays down when an accused in a case instituted. otherwise, than on a police report, shall be discharged. The petitioner may take advantage of that before the learned Magistrate concerned. So far as the question of delay is concerned, it has been held in Kartar Singh's case, , as follows :-

"The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice."

13. Their Lordships quoted with approval the above observation from *Beavers v. Haubart* (198 U.S. 77, 87) of the Supreme Court of U.S.A. Their Lordships have been pleased to hold at paragraph 92 of the said judgment that "on the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors-(1) length of delay; (2.) the justification for the delay; (3) the accused, assertion of his right to speedy trial; and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

14. In view of the clear observations of the Supreme Court about the matter, it is perhaps not proper in this proceeding to go into all the aspects having a bearing on the justification for the delay, prejudice caused to the accused by the delay etc. etc. Therefore, the question of quashing the criminal proceeding simply on the ground of delay as urged by the learned Advocate for the writ petitioners

does not and cannot arise in this case.

In view of the discussions made above, I hold that the writ petition fails and is dismissed with these observations that the writ petitioners will be at liberty to approach the learned Criminal Court for such order or orders as that court would deem fit and proper in view of the decision of the Supreme Court on the point as referred to above.