

(1990) 11 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 2915 of 1987

Damjibhai L. Shah

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

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

Citation : (1992) 1 LLJ 244

Hon'ble Judges : M.L. Dudhat, J

Bench : Single Bench

Judgement

1. The petitioner is the owner and proprietor of the trade mark known as "Anchor" used in respect of electrical accessories. The petitioner has filed the present writ petition against the order dated June 29, 1987 passed by the Regional Provident Fund Commissioner, Maharashtra and Goa - respondent No. 1. The said order was passed by respondent No. 1. The said order was passed by respondent No. 1. u/s 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as "the Act of 1952" of the sake of brevity. By the said order respondent No. 1 came to the conclusion that about 46 establishments in Bombay are nothing but the branches and/or departments belonging to the petitioner, formed only with the objective of subterfuging the laws meant for the purpose of social security of various employees under the Act of 1952.

2. The said order is challenged by the petitioner mainly on the ground of violation of rules of natural justice. It was contended on behalf of the petitioner that the enquiry contemplated u/s 7-A of the Act of 1952 is a quasi-judicial enquiry and in order to come to a conclusion about the determination of the amount from any employer due under the provisions of the Act, reasonable opportunity should be given to the concerned employer so as to enable him to defend his case properly. It was contended by the learned counsel Shri Ramaswami, appearing on behalf of the petitioner, that respondent No. 1 failed

to give such opportunity as contemplated in the enquiry u/s 7-A of the Act of 1952 and, therefore, the order dated June 29, 1987 passed by respondent No. 1 is illegal, void and inoperative and is not binding on the petitioner. Shri Mehta, learned Counsel appearing on behalf of respondent No. 1, contended that in fact reasonable opportunity was given to the present petitioner but it is because of the attitude of the petitioner in refusing to co-operate with the respondent No. 1, respondent No. 1 was required to pass the said order on the basis of the evidence which was available before respondent No. 1.

3. Shri Kochar, learned Counsel appearing on behalf of Respondent No. 2, contended that in fact it is because of the complaint made by respondent No. 2, the said enquiry against the petitioner was commenced and according to him the decision given by respondent No. 1 is legal taking into consideration the facts and circumstances of the case.

4. In order to appreciate the rival contentions on both the sides, it is desirable to understand the nature of enquiry contemplated u/s 7-A of the Act of 1952. Section 7-A is as under :-

"7-A. Determination of moneys due from employers -

(1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Provident Fund Commissioner or any Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme, or the Insurance Scheme as the case may be, and for this purpose, may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under sub-section (1) shall, for the purpose of such inquiry, have same powers as were vested in a Court under the Code of Civil Procedure, 1952, 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 as affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code.

(3) No order determining the amount due from any employer shall be made under sub-section (1), unless the employer is given a reasonable opportunity of representing his case.

(4) An order made under this section shall be final and shall not be questioned in any court of law".

5. After going through the aforesaid Section 7-A of the Act of 1952, more particularly sub-section (3), it is clear that before passing the order u/s 7-A, respondent No. 1 has to give reasonable opportunity to the petitioner. Therefore, the question in this writ petition is as to whether in the present case it can be said that respondent No. 1 has given reasonable opportunity to the petitioner before arriving at the conclusion which is challenged in this writ petition.

6. Before commencing the said proceedings against the petitioner, on September 30, 1980 and January 27, 1984 respondent No. 1 gave notice to the petitioner. In the said notice dated January 27, 1984 respondent No. 1 contended that 46 establishments shown in the list enclosed to the said notice were part and parcel of the petitioner establishment. In order to come to the aforesaid conclusion in the said notice, respondent No. 1 gave reasoning as under :-

"(1) All the so called establishments belong to the same family.

(2) they are all engaged in the same line of business viz., manufacturing and sale of electrical goods.

(3) They are manufacturing goods under the Trade name "Anchor"

(4) Most of the units are located in the Bombay Talkies Compound, Malad (W), Bombay-400 064, Sidhpura Industrial Estate, Andheri (E), Agarwal Industrial Estate, Jogeshwari, Saraf Kesar Industrial Estate, Jogeshwari, Rambaug Industrial Estate, Goregaon (E) Universal Industrial Estate, Goregaon and the adjacent Galas. From the above it could be stated that there is geographical proximity and unity of management."

7. I have minutely scrutinized the said show cause notice, more particularly the purported reasons given in the said notice. According to me, the said reasons, as mentioned above, are no reasons at all for coming to the conclusion that all the 46 establishments are part and parcel of the petitioner establishment. All the four alleged reasons are in fact the conclusions of respondent No. 1 and surprisingly in the said notice no reference is made as to how respondent No. 1 came to the aforesaid conclusion. According to me, without giving the documents or evidence, on the basis of which respondent No. 1 has come to the conclusion, it is impossible for the petitioner to provide explanation to justify his contention in respect of the said notice. According to me respondent No. 1 ought to have given the documents on the basis of which he has come to the aforesaid conclusion. Since respondent No. 1 failed to do that it has definitely affected the petitioner's vital right to defend prejudicially and, therefore, the said notice dated January 27, 1984 given by respondent No. 1 which is at Exhibit "J" to the petition is in fact illegal and void, as the same is in violation of sub-section (5) of Section 7-A of the Act of 1952 and plea in violation of the rules of material justice.

8. Further respondent No. 1, in his order dated June 20, 1987, has come to the conclusion that the present petitioner tried to subterfuge the case and also tried

to suppress the evidence. To come to the aforesaid conclusion, respondent No. 1 has not given any reasoning in the said order. According to me coming to the aforesaid conclusion against the present petitioner without giving any reason to that effect by itself is sufficient to set aside the impugned order.

9. Further, it is pertinent to note that in para 40 of the petition, the petitioner has specifically contended that on no occasion did the Department or the Commissioner called upon the petitioner to produce any document allegedly in his possession and hence the petitioner would not be alleged to have suppressed the documents, if any, in his possession. Surprisingly, in the reply filed to the present petition by respondent No. 1 there is no denial of the said contention made by the present petitioner and, therefore, it appears that the said observations made by respondent No. 1 are without any substance.

10. It appears from the tenor of para 10 of the impugned order that the said Commissioner has also prejudicially affected the interest of the petitioner, as respondent No. 1 has drawn adverse inference on that ground and, therefore, on this ground also the said impugned order dated June 29, 1987, is liable to be set aside.

11. I may further point out that apart from the facts that no opportunity was given to the petitioner to see the voluminous evidence after analysing the same. Therefore, the said order passed by respondent No. 1 is also liable to be set aside as the same as unreasonable.

12. In view of the aforesaid legal position, I set aside the show cause notice dated September 1980 and January 27, 1984 and also the final order dated June 29, 1987 passed by respondent No. 1 on the grounds mentioned as above.

13. I further observe that in the event respondent No. 1 decides to proceed against the present petitioner to find out as to whether the 46 alleged establishments are the parts or the departments of the present petitioner, then respondent No. 1 may give notice to the petitioner as well as all the alleged concerns. In the said notice respondent No. 1 should also give particulars on the basis of which respondent No. 1 has come to the aforesaid conclusion and also the evidence on the basis of which respondent No. 1 came to the aforesaid conclusion. After giving the full opportunity to the present petitioner to go through the aforesaid documents and other evidence relied on by respondent No. 1 respondent No. 1 shall also give opportunity to the present petitioner to cross-examine the witness who will produce the said documents to fortify their contention. Respondent No. 1 shall also give opportunity to the present petitioner and other establishment mentioned in the said notice to lead the evidence to support their contention, if they desire to do so. after allowing both the parties to lead the evidence, respondent No. 1 should hear the arguments on both the sides and then finally come to the conclusion in sub-section (3) of Section 7-A of the Act of 1952.

14. I further direct that since the said proceedings are pending since the year

1980, respondent No. 1 may try to finish the said proceedings as far as possible within six months from today.

15. With the aforesaid observations and directions, I allow the writ petition and set aside the show cause notices dated September 30, 1980 and January 27, 1984 and also the final order June 29, 1987 passed by respondent No. 1. Rule made absolute in terms of prayer clause (a) with no order as to costs.