**(2007) 08 GAU CK 0084**

**In the Gauhati High Court**

Employees'' Provident Fund Organisation APPELLANT

Vs

Hotel Broadway and Others RESPONDENT

**Date of Decision :** 31-08-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 21, 80, 9
Constitution of India, 1950 — Article 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 13, 14, 14B, 2
Penal Code, 1860 (IPC) — Section 193, 196, 228, 6C, 6D

**Citation :** (2008) 118 FLR 453 : (2008) 2 LLJ 36

**Hon'ble Judges :** Anima Hazarika, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

A. Hazarika, J.—Challenge in these writ petitions have been made under Article 227 of the Constitution of India to the orders dated April 9, 2003, March 1, 2004 and December 3, 2003 passed in Misc. Case No. 11 (H)03 in Title Suit No. 8 of (H)03. Misc. Case No. 5(H) in T.S. No. 5(H)04 and-Misc. Case No. 125(T) of 3 in T.S. No. 51 (T) of 3 respectively, whereby and whereunder the learned Munsif/ Assistant to the Deputy Commissioner, Shillong granted ad interim injunction restraining the petitioners herein from further proceedings in the matter of assessment, review or any other allied matters of the respondent (herein) firm till further order/orders or till the final disposal of the Misc. case;

2. These three writ petitions are taken together for disposal since the matters involve the same question and the relief sought for are the same.

3. Brief reference to the factual aspects would suffice:

The petitioners herein are the authorized Officers u/s 2(aa) of the Employees Provident Funds and Miscellaneous Provisions Act. 1952 (hereinafter referred to as the Act only), who had initiated a proceeding u/s 7A of the Act against the respondents which culminated in filing the Title Suits and Misc. cases as indicated above.

4. For convenience, this Court at the first instance took up W.P. (C) No. 395(SH)04 wherein, the Hotel Broadway and Broadway Restaurant were clubbed together (respondent herein) and was covered under the provisions of the Act with effect from April 1, 1996 and a communication was issued to that effect on November 16, 1998. On receipt of the aforesaid communication, the respondent vide their letter dated November 24, 1998 raised the question of applicability of the provisions of the Act and urged that the Act would not be applicable to the establishment and requested to give a chance of hearing in the matter. Not satisfied with the reply of the letter, they again represented vide their letter dated December 14, 1998, praying for review of the order. Consequent upon the request so made, the petitioner and/or his authorized Officers issued a notice u/s 7A of the Act, fixing January 12, 1999 for hearing which was deferred to February 16, 1999 on the request of the establishment (respondent). The hearing took place on February 16, 1999. Wherein, one Dilip Kumar Vaswani, one of the partner raised the question that Hotel Broadway and Broadway Restaurant are two separate establishments run by different management and therefore urged that these two establishments are not eligible to be clubbed and hence, not eligible for the coverage under the provisions of the Act. On the other hand, the Officers under the Act had brought on record that the Hotel Broadway is run by the husband and the restaurant is run by the wife, but in fact, they are not legally separated. Therefore, held that the claim of separate entity is not genuine and hence, these two establishments have been rightly clubbed u/s 2A of the Act. Moreover, it was brought on record that the control, supervision and management of both these establishments are under Hotel Broadway. The establishment of Broadway Restaurant has been set up as an extension of the activities of the Hotel Broadway, which is already existing. Therefore, the authorized Officer in exercise of power u/s 7A of the Act brought both the establishments under one establishment, more so, when the establishments have employees 26 in numbers and having come to a finding as aforesaid, the Assistant Provident Fund Commissioner under the Act had determined the dues to be paid from April 1, 1996 till February, 1999 amounting to Rs. 2,94,897/- which shall be paid within 15 days and the establishment was directed to deposit the same within the stipulated period. Thereafter, it appears from the record that the matter was taken up by the establishment for review as provided u/s 7B of the Act and the Commission under the Act kept the matter reserved for final order. When the matter was kept reserved the respondent herein took up the matter before the Civil Court and got ad interim injunction on April 9, 2003 passed in Misc. Case No. 11 (H) 3 T. S. No. 8(H) 3, which is under challenge in this petition.

5. The second writ petition being W.P. (C) No. 396(SH)04 has been filed challenging the order dated March 1, 2004 passed in Misc. Case No. 5(H)04 in T.S. No. 5(H) of 4 wherein and whereunder the learned Munsiff, Shillong, stayed the order dated December 15, 2003 whereby recovery of Rs. 1,05,811,00/- was

 

made u/s 7A of the Act by way of attachment of Respondent''s bank account. The Respondent herein had filed another suit being. T. S. No. 4(H) of 4 along with Misc. Case 4(H) of 4 against the proceeding u/s 7A of the Act for determination of Provident Fund dues and as a consequence, final order was passed on September 25, 2003, levying interest and damages as provided under Sections 7Q'' and 14B of the Act, 1952.

6. In W.P. (C) No. 398(SH) 4, the petitioners have challenged the order dated December 3, 2003 passed in Misc. Case No. 125(T) 3 in T.S. No. 51(T)03 wherein, the learned Assistant to the Deputy Commissioner stayed the proceeding u/s 7A of the Act including the attachment orders dated May 8, 2003 and November 25, 2003 issued by the Commissioner as authorized by the provisions of the Act.

7. In all the writ petitions, the petitioners pray for quashing the proceedings filed by the respondents herein. Relief also has been sought by way of prohibitory order directing the subordinate judiciary within the State of Meghalaya not to entertain any Civil Suit pertaining to the provisions of law under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and other allied subjects.

8. In advancing the argument, Choudhury, learned Counsel appearing for the petitioners has drawn the attention of the Court, to various provisions of the Act and urged that while initiating the proceedings u/s 7A of the Act, by any of the authorized officers as provided under the Act in determining the dues from the employers, are vested with the same powers of Civil Court as provided u/s 7A(2)of the Act and the enquiry, if made, is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code. Sub-section (3) of Section 7A of the Act provides that no order shall be made under Sub-section (1) of Section 7A unless the employer concerned is given a reasonable opportunity of representing his case. Section 7A(4) of the Act provides that in case, an order is passed ex parte, the employer may come up for setting aside the order passed ex pane. There is a provision of appeal if an order passed ex pane against the employer. Section 7B provides for review of order passed u/s 7A(1) of the Act but from which no appeal has been preferred under this Act, may apply for a review of that order, to the Officer, who passed the order. It is also provided that the Officer may also on his won motion review his order, if he is satisfied that it is necessary so to do on any such ground. There is also provision for appeal u/s 7D of the Act. There is a provision for recovery of money due from the employer u/s 8 to 8F of the Act. Section 8G has made a provision of application of certain provision of Income Tax Act, 1961 and the Income Tax (Certificate Proceeding) Rules, 1962. Therefore, urged that the Civil Court jurisdiction has been barred in a proceeding initiated under the provision of the-Act, 1952.

9. The second contention raised in regard to violation of Section 80(2) of the CPC while issuing ad-interim injunction which is a precondition before exercising the power of granting ad-interim injunction. The orders passed by the Courts below

 

would show that said requirement has not been adhered to and as such the orders passed are required to be interfered with since the provisions of the Act are meant for beneficial legislation enacted for the weaker Section of labour class.

10. Per contra the counsel appearing for the respondents have urged that the establishments would not come within the purview of the Act and hence, the Civil Court has jurisdiction to try the case in order to determine the us between the parties and supported the orders passed by the learned Munsiff/Assistant to the Deputy Commissioner, Shillong.

11. The other contentions raised by the respondent herein that no writ under Article 227 of the Constitution of India would lay in view of the order passed by the Civil Court, which are only interlocutory orders, more so, when the petitioners have filed their written statements showing causes against the miscellaneous applications: and the further contention raised to the pleadings of the petitioners, who have failed to raise the question of territorial jurisdiction as provided u/s 21 and/or under Order 7. Rule 11 of the C.P.C. and having failed to raise these questions, they are now precluded to raise the question in these writ proceedings.

12. Considered the submissions made by the rival parties. On perusal of the materials on record it reveals that the order u/s 7A(1) of the Act were passed by the petitioners, who are authorized Officers, only after giving opportunity to the respondents holding due enquiry as-per Sub-sections (2) and (3) of Section 7A of the Act. A close scrutiny of the various provisions of the Act, more particularly Sections 1, 2(aa), (c), (e), (f), 6, 6A, 6C, 6D, 7A, 7B, 7C, 7D, 7Q, 8, 8A, 8B, 8C, 8F, 8G, 13, 14, 14B etc., read with Section 9 of the Code of Civil Procedure, this Court hold that the Civil Courts jurisdiction is impliedly barred in a proceeding initiated under the various provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952.

13. Therefore, the contentions raised in regard to the territorial jurisdiction as provided u/s 21 and/or under Order 7 , Rule 11 of the C.P.C. by the respondents cannot be a valid ground to be decided in these cases because this Court has held that jurisdiction of the Civil Court is impliedly barred under a proceeding initiated under the Act 1952 as indicated above.

14. It is also made clear that the orders made u/s 7A of the Act and as per Sub-section (4) thereof shall not be questioned in any Court of law. The effect of decree sought for by the plaintiff in a suit is to nullify the order passed by the Commissioner/authorized Officer under the Act. Therefore, the suit filed by the respondents in a Civil Court cannot be allowed to defeat the bar contained in Sub-section 4 of Section 7A. There is a remedy under the Act. Section 7A provides for holding an elaborate enquiry before an order is passed under Sub-section (1) of Section 7A of the Act. The Office conducting the enquiry under Sub-section (1) of Section 7A of the Act has the same powers as are vested in a Court under the CPC for trying a suit in respect of the matters such as:

(a) enforcing the attendance of any person or examining him on oath,

(b) requiring the discovery and production of documents,

(c) receiving evidence on affidavit,

(d) issuing Commission for the examination of witnesses.

15. It would further reveal that such an enquiry is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Penal Code. Sub-section (3) of Section 7A of the Act further provides that 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. Thus, all the provisions of judicial proceeding are grafted into the process of determination to be made u/s 7A(1) of the Act. The employer has the remedy under the Act if he feels aggrieved against the order passed under the provisions of Section 7A of the Act. In all the cases, the determination have been made and in spite of provisions contained in Sub-section (4) of Section 7A of the Act. If held to be open to challenge by seeking relief in a Civil Court either in the form of injunction or declaration, it will be nothing but defeating the scope, aim and object of the Act, which cannot be allowed in the facts and circumstances of the case.

16. The other point raised in relation to violation of Section 80(2) of the Code of Civil Procedure, this Court has no hesitation to hold that the learned Court below has committed an error granting ad-interim injunction without the pre-conditions for exercising of such power being fulfilled in the case in hand. Section 80(2) of the Code provides that the Public Officer should be given a reasonable opportunity of showing cause in respect of relief prayed for in a suit before granting relief, more so when a demand is made for deposit of money under the Act, 1952, which is a beneficial legislation for the weaker Section of the people.

17. In the result, this Court has no other option but to hold that in a proceeding initiated under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the jurisdiction of Civil Court is impliedly barred u/s 9 of the Code of Civil Procedure. Therefore, the orders passed on April 9, 2003, March 1, 2004 and December 3, 2003 passed in Misc. Case 11(H)03 in T.S. No. 8(H)03. Misc. Case 5(H)04 in T.S. No. 5(H)04 and Misc. Case No. 125(T)03 in T.S. No. 51(T)03 are set aside and quashed being a nullity. This Court further directs the Provident Fund Commissioner and/or his authorized Officer to proceed with the case in accordance with law.

18. The writ petitions are allowed accordingly with the above direction.

19. The parties are left to bear their own cost.

 