

(2016) 03 OHC CK 0032
In the Orissa High Court
Case No : W.P.(C) No. 6686 of 2003

Governing Body of Laxmi Narayan Mohavidyalaya	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1,
Section 1(3), Section 14B, Section 14-B, Section 15, Section 16, Section 16(1)(b),
Section 17, Section 3, Section 7A, Secti

Citation : (2016) 03 OHC CK 0032

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : A.K. Mohanty (A) and R.K. Behera, for the Appellant; P.K. Khuntia,
for the Respondent

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—1. The petitioner being aggrieved with the order dated 20.02.2003 (Annexure-3) and demand notice dated 2.7.2003 (Annexure-6) is before this Court by this writ petition.

2. Facts of the case as has been pleaded by the petitioner in this writ petition is that it is a College in the name of Laxmi Narayan Mahavidyalaya, Balasore in the district of Balasore, an aided College w.e.f. 1.6.1984 and established in the year 1976. This college is an aided College within the meaning of Section 10(b) of the Orissa Education Act and Rules framed thereunder. According to the petitioner in view of the provision as contained in Section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the "Act 1952") the provision of the Act will not be applicable, but such an establishment where other Provident Fund Schemes are applicable which is no less favourable than that of the benefits payable under the Act 1952, since the employees of the petitioner's College are covered under the Orissa Aided Educational Institutions, the G.P.F. Rules, 1983, is applicable and as such the provisions of the Act, 1952

will not be applicable to the petitioner's College and as such the College in question will be said to be exempted from the provisions of Section 16 of the Act 1952 but the opposite parties illegally and arbitrarily included the petitioner's college under the purview of the Act 1952 and thereafter imposed heavy liability upon it by making assessment under Section 7-A, imposed damage under Section 14-B of the Act 1952.

3. The sole contention raised is that since the employees of the College in question is covered under various provisions of G.P.F., C.P.F. and Pensions Scheme, hence the provision of the Act 1952 will not be application and as such the order passed by the authorities is contrary to the statutory provisions as contained in the Act 1952.

4. The petitioner has filed a review under Section 7-B of the Act 1952 questioning the illegality and propriety of the order passed by the authority under Section 7-A of the Act 1952 but even the authorities have not reviewed the said order and affirm the views already taken while passing the order under Section 7-A of the Act 1952, hence this writ petition has been filed.

5. This Court has issued notice on 6.8.2003 and an interim order has been passed to the effect that not to take any coercive action against the petitioner but no counter affidavit has been filed, however learned counsel for the opposite parties has argued the case on the basis of material available on record and has submitted that this writ petition is not maintainable on the ground of availability of alternative remedy of appeal as provided under the Act 1952.

6. He has further submitted that the petitioner cannot be permitted to challenge the applicability of the Act after passing of the order under Section 7-A of the Act 1952 as because the Act has been made applicable with respect to the petitioner w.e.f. 6.3.1982 and no such objection has ever been raised regarding the applicability of the Act 1952 rather the petitioner has also been provided with a specific Code No. OR/5958 and as such the submission of the learned counsel for the petitioner is that provision of the Act 1952 is not applicable is without any foundation.

It has been submitted that the order passed under Section 7-A (Annexure-3) does not warrant any interference as because the said order has been passed on the basis of admission of the petitioner regarding the default from 3/82 to 3/2000 and it is settled that when any order is being passed on the basis of admission of the party, the party will be ceased to challenge the same.

Accordingly, it has been submitted that Annexure-6, which is a demand notice in consequence of the order passed by Annexure-3 also does not warrant any interference. He has further submitted that the Act is very well applicable to the College in question since the College has been brought under the purview of Section 1(3) of the Act 1952 by virtue of Government notification published in the official gazette notification on 6.3.1982 by which the Colleges whether affiliated or not to a University has been brought under the purview of the Act

1952, hence the arguments advanced on behalf of the learned counsel for the petitioner regarding non-applicability of the Act is absolutely frivolous. Moreover, the said Gazette Notification dated 6.3.1982 has not been challenged by the petitioner.

7. Heard learned counsel for the parties and perused the documents on record.

8. Before going into the merit of the case of the petitioner, it would be necessary to adjudicate the issue regarding availability of the alternative remedy of appeal as provided under Section 7-I of the Act 1951, a ground which has been taken by the learned counsel representing the opposite parties.

9. There is no denial about the fact that there is provision of appeal as provided under Section 7-I of the Act 1952 which is being reproduced herein below:-

"7-I. Appeals to Tribunal - (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7B or Section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

10. This writ petition has been filed on 7.7.2003, notice has been issued on 6.8.2003 with an interim order which is being reproduced herein below:

"W.P.(C) No. 6686 of 2003

Heard.

Issue notice on the question of admission indicating therein that the matter may be disposed of at the stage of admission.

Requisites by registered post shall also be filed by 8.8.2003. The notice shall be made returnable within four weeks.

List this case after service of notice.

Misc. Case No. 6445 of 2003

Heard.

Issue notice as above.

Accept one set of process fee.

In the interim, we direct opposite parties 1 and 2 not to take any coercive action against the petitioner for a period of eight weeks.

Urgent certified copy be granted, on proper application."

11. There is no denial in the settled proposition of law that if there is any

alternative remedy of appeal available under the statute, the High Court sitting under Article 226 of the Constitution of India should not interfere since the same will amount to snatching of power of the appellate authority but however, there is no straight jacket formula rather it is self-imposed restrictions.

12. This writ petition is pending since 7.7.2003 and as such about 13 years the matter is pending before this Court and if after lapse of about 13 years, this writ petition will be held to be not maintainable on the ground of availability of alternative remedy of appeal that too after notice being issued and in interim order has been passed, it would not be proper for this Court to do at this stage. In this regard reference may be made to the judgement of the Hon''ble Supreme Court in the case of Hirday Narain vrs. Income-tax Officer, Bareilly reported in , AIR 1971 SC 33 wherein their lordships has been pleased to hold which is being quoted herein below:-

"we are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on merit."

Further in the case of Durga Enterprises (P) Ltd. and another vrs. Principal Secretary, Government of U.P. and others reported in (2004) 13 SCC 665 wherein their lordships has been pleased to hold that the writ petition was pending for a long period of thirteen years and summarily dismissed on the ground that there is remedy of civil suit by the High Court and should not have dismissed without deciding the writ petition on merit.

13. This Court has passed an interim order to the effect that not to take any coercive steps and as such ratio laid down by the Hon''ble Supreme Court as referred hereinabove is applicable with the facts and circumstances of this case, hence after the matter being pending for last 13 years with an interim order it would not be proper for this Court in summarily rejecting the writ petition on the ground of availability of alternative remedy otherwise question of limitation will arise and also in order to avoid further litigation, it would be appropriate to decide the matter on merit. In view of this, instead of seeking alternative remedy of appeal before the Tribunal, the writ petition is being decided on merit.

So far as the merit of the case is concerned, ground taken by the petitioner in challenging the order passed under Section 7A of the Act 1952 is regarding; (i) non-applicability of the Act 1952 and (ii) employees of the college in question since covered under the various provisions of a statute giving them the benefit of G.P.F. and other pensionary benefits, hence the College in question will be said to be under the purview of the provisions of Section 16(1)(b) of the Act 1952 but these aspects of the matter has not been touched by the authorities while adjudicating the issue under Section 7A of the Act 1952.

Further the contention of the petitioner is that review has also been filed under Section 7B of the Act 1952 but even thereafter no consideration has been given

regarding the contention of the petitioner.

14. In order to examine this submission, it would be necessary to go through the order passed under Section 7A of the Act, 1952 which is impugned in this writ petition.

From its perusal, it is evident that the establishment has been brought under purview of the Act 1952 in view of the notification of the Government of India notified in the Gazette notification dated 6.3.1982 which is being quoted herein below:-

"6th March 1982 (167 to 172)

167. Any University

168. Any College, whether or not affiliated to a University.

169. Any School, whether or not recognised or aided by the Central or a State Government.

170. Any scientific institution.

171. Any institution in which research in respect of any matter is carried out.

172. Any other institution in which the activity of imparting knowledge or training is systematically carried on."

15. After applicability of the Act in the college in question a Code number has also been supplied being Code No. OR/5958, the petitioner has not pleaded anywhere in the writ petition or even before the authority adjudicating the matter under Section 7A or 7B of the Act, 1952 that any objection has ever been raised regarding applicability of the Act 1952 rather it is for the first time this point is being raised before this Court that too under its writ jurisdiction and as such this point cannot be entertained after lapse of about 21 years from the date of applicability of the Act.

16. Moreover, the petitioner has admitted the default as would be evident from the order passed under Section 7A of the Act 1952, relevant part of the order showing the admission on the part of the petitioner is being quoted herein below:-

"The establishment admits the default from 3/82 to 3/2000 and stated that they are paying PF dues regularly from 3/2000 onwards. As such, I do not find any justification for prolonging the proceedings and proceed with the finalisation of present 7A proceeding on the basis of facts available on record.

AND WHEREAS the establishment has admitted the default in payment of Provident Fund dues for the present 7A inquiry period and have countersigned & confirmed the dues payable statement on 31.10.2002 & 10.2.2003."

It is on the basis of admission on the part of the petitioner, the authorities has

passed an order under Section 7A of the Act 1952 putting the liability for depositing the amount for the period from 3/82 to 10/2002 and also the interest under Section 7Q and damage under Section 14-B of the Act.

17. The contention of the petitioner is that various pension schemes is applicable to the employees of the petitioner hence the Act itself is not applicable does not deserve any consideration after the Act having been made applicable having not been objected by the petitioner and after the admission regarding the default for not remitting the insurance due for the period from 3/82 to 10/2002.

18. On examination of the order passed under Section 7A when the amount has been determined under Section 7A in consequence thereof, the authorities have also calculated the interest as per the provision made under Section 7Q which provides that

"the employer shall be liable to pay simple interest @ 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment. Provided that higher rate of interest specified shall not exceed the lending rate of interest charged by any scheduled Bank".

From perusal of the order passed under Section 7Q, it is evident that the interest has been calculated in consonance with the provision as contained in 7Q of the Act 1952.

19. So far as other part of the order which pertains to damage as provided under Section 14-B which provides the power to recover damages is being quoted herein below for ready reference:-

"14.B. Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 of in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme."

20. On perusal of the order, it is evident that even the calculation of the damage having been done by the authorities under Section 14-B is in consonance with the statute and there is no dispute in the fact that the Act, 1952 is a welfare legislation to support the beneficiaries who are to be benefited by the Act, 1952. If any Act has been promulgated for the welfare of the employee who are not being supported by any scheme like the pension scheme or the insurance scheme, the statutory provision has to be followed and for that purpose the Act, 1952 has been promulgated giving the authorities ample power to implement it.

The provision of Section 7A has been made for deciding the applicability of the dues of the employee to be deposited by the employer. The employer who used not to deposit the amount and to restrain these activities and attitude the provision of section 14B has been inserted by way of Act 37 of 1953 w.e.f. 12.12.1953 providing power to the authorities to make recovery in case of default of making any delay in contribution of the fund. The scope of Section 14B has further been stated in the case of Employees" State Insurance Corporation vrs. H.M.T. Ltd. and another reported in , (2008) 3 SCC 35 wherein at paragraph-19 after placing reliance upon the judgment rendered in the case of Hindustan Times Ltd. vrs. Union of India reported in , (1998) 2 SCC 242 has been pleased to hold at para 29 as follows:-

"Para.29. From the aforesaid decision, the following principles can be summarized:-

The authority under Section 14B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14B."

Thus, the law is settled that the power of authority under Section 14B is very wide, that is only for the purpose that there may not be any restriction in implementation of the statutory provision.

21. Here in this case, since it is the admission on the part of the petitioner that even after coverage of the Act 1952, dues has not been remitted for the period from 3/82 to 10/2002 and they have said that they were paying PF dues regularly from 3/2000 onwards and considering this aspect of the matter, the authorities have passed an order under Section 7A of the Act 1952 and the moment the establishment in question has committed default in remitting the amount, consequence will be by way of an order passed under Section 7Q of the Act 1952 which has been done in the instant case.

22. So far as the contention of the learned counsel for the petitioner is that the competent authority has not appreciated the facts which has been raised before it in an application filed under Section 7B of the Act 1952.

Before answering this, it would be appropriate to refer the provision of Section 7B which is being reproduced herein below:-

"7B. Review of orders passed under Section 7A. - (1) Any person aggrieved by an order made under sub-section (1) of Section 7A, but from which no appeal

has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or would not produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the Officer who passed the order.

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that,-

(a) No such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) No such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under Section 7A."

23. From perusal of the provision as contained in Section 7B, it is evident that the power of review has been conferred to a person aggrieved with an order passed under sub-section (1) of Section 7A against which no appeal has been preferred under this Act and who from discovery of new matter or evidence, after the exercise of due diligence was not within his knowledge or could not be produced by him when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order.

24. From perusal of the order passed under Section 7B, the authorities while disclosing the entire things have passed the order stating therein that the Act, 1952 is applicable to all the educational institutions by virtue of Government of India's Notification S.O. 986 dated 19.2.1982 to deposit the dues from 1.3.1982 and the college in question has rightly been covered w.e.f. 6.3.1982 and accordingly, Enforcement Officer has forwarded survey/investigation report duly

signed and sealed by the Principal which implies that Act is rightly applicable which is within the knowledge which is also accepted by the College by depositing P.F. and allied dues from 3/2000 onwards hence the Act is very well established.

It has been clarified that the Act is applicable from the date of coverage/ notification which is suo moto.

For answering this issue, the authorities have taken the help of the judgement rendered in the various cases and thereafter rejected the case of the petitioner.

The authorities have also taken note regarding calculation of dues and found that there is no illegality in the same.

It has been stated that the order has been passed under Section 7A after providing sufficient opportunity to the establishment and as such no occasion was found to review the order.

25. From perusal of the order impugned, it transpires that the authorities has come to the conclusion that no such ground is available for review of the order and accordingly rejected. Hence, there is no infirmity in the same.

In view of foregoing reasons, in my considered view there is no infirmity in the order dated 20.02.2003 passed under Section 7A and in consequence thereof, there is no infirmity in the demand notice dated 2.7.2003 (Annexure-6).

Accordingly, this writ petition is dismissed.