

(1969) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 555 of 1967

Gunvantrai Harivallabh Jani

APPELLANT

Vs

Regional Provident Fund Commissioner, Employees' Provident
Fund, M.P., Indore

RESPONDENT

Date of Decision : 19-12-1969

Acts Referred:

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

Citation : AIR 1970 MP 221 : (1975) ILR (MP) 438 : (1970) JLJ 323 : (1970) 15
MPLJ 226

Hon'ble Judges : Shiv Dayal Shrivastava, J;K.L. Pandey, J

Bench : Division Bench

Advocate : M.N. Phadke and A.L. Halve, for the Appellant; B.B.L. Shrivastava,
for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against-

(i) an order dated February 8, 1967 holding that the provisions of the Employees Provident Funds Act, 1952 (hereinafter called the Act) were rightly applied to the petitioner's establishment;

(ii) an order dated April 15, 1967 declining to review the order regarding the applicability of the Act to that establishment;

(iii) a notice dated June 21, 1967 intimating to the petitioner the provisional assessment and permitting him, if he so desired, to make any representation against it; and

(iv) an order dated October 81, 1967 making the provisional assessment final.

The facts giving rise to this petition may be shortly stated. The petitioner carries on the business of manufacture and sale of bidis at Rajnandgaon. The bidi-

making industry is not one of the industries specified in Schedule I to the Act. Even so, by a notification No. G. S. R. 346 dated March 17, 1962, issued u/s 1(3) (b) of the Act, the Central Government applied the provisions of the Act to certain trading and commercial establishments. That notification reads:

"G. S. R. 346. In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby applies the said Act with effect from 30th April 1962 to every Trading and Commercial Establishment employing twenty or more persons each and engaged in the purchase, sale or storage of any goods, including establishments of exporters, importers, advertisers, commission agents and brokers and commodity and stock exchanges but not including part of warehouses established under any Central or State Act."

The respondent endeavoured to apply the provisions of the Act to the petitioner's establishment and that led to some correspondence between them. Ultimately, the petitioner's objection to the applicability of the Act was rejected and, by a communication dated June 28, 1966, he was intimated that the Act applied to that establishment. The petitioner then filed in this Court Miscellaneous Petition No. 387 of 1966 and challenged the action taken by the respondent. That petition and several other like petitions were disposed of by a common order passed on November 9, 1966 in Radhakrishnan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, . It was then held that Clause (b) of Section 1(3) of the Act was wide enough to apply to all non-factory establishments. It was further held that when a notice u/s 7A of the Act was given to the employer, it was open to him to represent his case fully not only on the question of applicability of the provisions of the Act to his establishment but also in regard to the amount payable by him under those provisions. The Court disposed of the case by making the following observations:

"Before us, it was admitted on behalf of the Commissioner that in none of the cases before us an order u/s 7A finally determining the amount due from the employer concerned had been made. Having regard to the fact that the implications of the Act and the Scheme were not understood by all concerned for a long time after the Act was applied by the notification dated the 17th. March 1962 to trading and commercial establishments, the Commissioner rightly and commendably expressed before us his willingness to give to the petitioners, who had not appeared before him and showed cause in response to the" notices issued to them, an opportunity of representing their case before making any final order u/s 7A against any one of them. The Commissioner agreed to hear such petitioners on 15th December 1966".

Following the decision of this Court on 9-11-1966 the petitioner made two representations dated 30-11-1966 and 15-12-1966 stating inter alia that the information given in Annexure X dated July 24, 1965 was incorrect in material particulars. In the impugned order dated February 8, 1967, the respondent referred to a recent report of the Provident Fund Inspector showing that there

was a common establishment, including trading and commercial unit and manufacturing unit, that the staff commonly employed for both the units was liable to be taken into account for purposes of Act and that, in view of the information contained in Annexure X, the provisions of the Act were rightly applied to the petitioner's establishment. On a further representation dated February 15, 1967, the respondent indicated that the subsequent report of the Provident Fund Inspector did not relate to the question of applicability of the Act to the petitioner's establishment and that although that establishment was a composite unit, that was no ground for reviewing the earlier order regarding the applicability of the Act to it. In adopting mat attitude, the respondent observed:

"The documents submitted under your letters dated 2-12-1966 and 8-12-1966 could not be taken in evidence to review your case regarding applicability of the Act, as your earlier conduct in furnishing the information in Annexure X in respect of non-factory establishment in a bona ride way, acted as an estoppel".

The other two impugned communications dated June 21, 1967 and October 31, 1967 relate to the amount found payable by the petitioner under the provisions of the Act. Having made payments towards the provident fund under protest, the petitioner has moved this Court for relief on the several grounds mentioned in paragraphs 3 and 4 of the petition.

In the return, the respondent did not dispute the various orders passed and referred to in the petition but contested the inferences drawn by the petitioner from those orders and also opposed the reliefs claimed by him.

Having heard the counsel, we have formed the opinion that this petition must be allowed. The relevant Section 7A of the Act, which governs the matter, reads:

"7A. (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act or of the Scheme 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 purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, 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 on affidavit;
- (d) issuing commissions for the examination of witnesses;

any such inquiry shall be 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,

(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."

As pointed out by this Court in the case of 1967 MPLJ 71 = (AIR 1967 Madh Pra 157) the employer must be given, before a final order is passed u/s 7A *ibid*, an opportunity to represent his case fully, that is to say, on the question of applicability of the Act to his establishment as well as on the question of quantum of assessment. It was further observed there as follows:

"These contentions may be disposed of by saying that the question whether any particular establishment is a part of factory establishment, or whether certain employees are engaged in factory establishment or other establishments, are questions of fact to be determined by the officer holding the enquiry u/s 7A of the Act,"

As we would show in due course, all this was not done in the enquiry which followed the aforesaid decision of this Court. Before we do so, we consider it necessary to indicate briefly the nature of that enquiry.

It is true that Section 7A of the Act does not provide in so many words that the authority holding the enquiry thereunder must act judicially, but that is not required. Recently, Lord Reid pointed out in *Ridge v. Baldwin* 1964 AC 40 that it is not correct that the judicial element could not be inferred without the statute specifically imposing the duty to act judicially. Even before that., Wanchoo C, J. stated in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, as follows:

"Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively: (*vide* observations of Parker J., in *R. v. Manchester Legal Aid Committee* 1952 2 QB 413.) This view was adopted by the Supreme Court in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, ; *Shri Bhagwan and Another Vs. Ram Chand and Another*, ; *State of*

Orissa Vs. Dr. (Miss) Binapani Dei and Others, and M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, . In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, the Supreme Court observed:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power, one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the frame work of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution, the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours, it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which! are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

Finally, in Regina v. Criminal Injuries Compensation Board, Ex Parte Lain 1967 2 QB 864 the following observations of Lord Parker were quoted with approval:

"The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time, the writ only went to an inferior Court. Later its ambit was extended to a statutory tribunal determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty".

In AIR 1965 SC 3787 (supra) Gajendragadkar C. J., who spoke for the Court, stated:

"If it appears that the authority or body has been given power to determine, questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice."

In cases to which the Act is sought to be applied, the employer is required to make regular contributions towards the provident fund of employees and, therefore, the enquiry to be made by the authority concerned involves a determination of the employer's rights and liabilities in the matter. Although

Section 7A(2) of the Act gives to that authority certain powers of a Civil court and the proceedings before it are judicial proceedings for certain specified purposes only, the authority is not a Court. Even so, having regard to the rights involved and likely to be affected, it must be held that the authority exercises quasi-judicial functions and his procedure must be governed by judicial considerations in the sense that it must conform to the rules of natural justice.

Reverting to the facts of this case, we notice that the respondent proceeded on the assumption that the order he had made earlier was valid and good and all that was required to be done was to review it, if necessary, upon a consideration of the representations made by the petitioner in that behalf. The approach itself was mistaken because, as we have already indicated, the petitioner was entitled to show that the order was wrong and for that purpose he was entitled to correct, contradict or otherwise controvert every fact relied upon in support of it. Further, the respondent had to show the report of the Provident Fund Inspector to the petitioner before he could be called upon to meet it. Finally, when the respondent refused to consider the petitioner's documents and regarded the information given earlier by the petitioner in Annexure X as operating against him as an estoppel, that amounted to a glaring disregard of the rules of natural justice. In these circumstances, the orders impugned in these proceedings cannot be sustained.

The result is that this petition succeeds and is allowed and the orders mentioned in the opening paragraph are quashed. The respondent is also directed to refund to the petitioner the amounts collected from him as contributions towards the provident fund, However, nothing that we have said in this order would preclude the respondent from determining afresh in accordance with law whether the provisions of the Act apply to the petitioner's establishment or any section thereof. In all the circumstances of the case, we direct that the parties shall bear their own costs and that the security amount shall be refunded.