

(1972) 04 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 53 of 1970

Hazi Ali Mohammed Oswan and Others	APPELLANT
Vs	
The Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 20-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(4)

Citation : (1972) 38 CLT 571

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : S. Misra, S.K. Mohanty and B.N. Das, for the Appellant; Government Advocate, for the Respondent

Judgement

R.N. Misra, J.—The Petitioners are the partnership firm of Hazi Ali Mohammed Oswan and its partners. They have in this application under Articles 226 and 227 of the Constitution of India challenged the determination of the amounts due from them as employer under the provisions of Section 7-A of the Employees' Provident Funds Act, 1952 (hereinafter referred to as the Act) by the opposite party.

2. As it appears the liability of the firm under the Act was being investigated into. Annexure-C to the counter affidavit is a report of an Inspector of Provident Fund dated 21-6-1969. Therein he had stated that he was not in a position to give any conclusive position about the liability of the establishment. Annexure-8 is a different report of another Provident Fund Inspector dated 31-10-1969 wherein it has been stated thus:

The Managing Partner Mazid Alii Mohammad and Sri Bankim Behari Das, clerk were discussed and they were unwilling about the engagement of contractor's employees and the applicability of the statutory Act, 1952 and the partner present was willing to pay the P.F. dues in respect of the eligible employees after

consultation with other partners and in this condition they wanted 15 days time. Time may kindly be allowed and necessary action taken in case of non-compliance after 15 days. The cash book stated above was kept by me for further verification.

While the matter stood at such stage, the opposite party passed an order u/s 7-A of the Act raising a demand of Rs. 2,236-50 and Rs. 66-15 for account numbers 1 and 2 respectively covering the period between February, 1968 and January, 1969.

3. The Petitioners dispute their liability to pay any contribution under the Act and allege that their liability has really not been determined. A Bench of this Court in the case of Balasore Motor Association Vs. The Regional Provident Fund Commissioner, while quashing a demand raised under the Act observed:

...It is patent from the materials on record that liability was being disputed by the Petitioner and therefore, a determination of the liability was a condition precedent to the making of an order u/s 7-A of the Act, liability does not appear to have been determined by any other separate order; at least there is none placed on the record though a counter affidavit has been filed....

Those observations fully apply to the present case Power u/s 7-A of the Act appears to be very wide and, as a matter of fact, there is no provision for any forum where the demand u/s 7-A can be questioned. Sub-section (4) of Section 7-A makes the demand final and even the jurisdiction of the civil Court has also been barred. It is of paramount importance that where wide powers have been vested in a statutory authority and further provision has not been made to challenge that order, exercise of that power should be made in a careful manner so that the result may not be arbitrary. In two subsequent decisions of this Court the self-same view has also been expressed. See *Tribhundas Raghaji and Company v. Regional Provident Commissioner Orissa Bhubaneswar* and *Chotram Agarwalla v. The Regional Provident Fund Commissioner Orissa*.

4. We would accordingly quash the order dated 10-12-1969 (annexure-9) and leave it open to the opposite party to proceed in accordance with law. The Petitioners shall be entitled to costs. Hearing fee is assessed at rupees fifty.

B.K. Ray, J.

5. I agree.