
(1992) 11 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9060 of 1979

India Supplies Engineering Works Limited and Another

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 10F
Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
15, 16, 17, 17(2)

Citation : (1992) 4 AWC 235 Supp

Hon'ble Judges : N.B. Asthana, J; B.L. Yadav, J

Bench : Division Bench

Advocate : S.P. Srivastava and Kameshwar Prasad, for the Appellant; J.N. Tiwari and V.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

B.L. Yadav, J.—Whether the principles of natural justice were required to be followed by the State of U.P. before passing an order for imposing damages of penalty on the Petitioners, the employers for their failure, either to make contribution towards provident fund of the workmen or to transfer the amount deposited by the workmen towards the provident fund accounts (Known as Employees Provident Funds) under the provisions of the Employees Provident Funds and other Misc. Provisions Act, 1952 (for short the Act), is the short question for our determination in the present petition under Article 226 of the Constitutions, with the prayer to quash the orders dated 28th September, 1968, 7th January, 1970 and 20th January, 1971 (Annexures 4, 5 & 6) to the amendment application) by issuing a writ of certiorari. These orders have been passed u/s 14B of the Act.

2. The factual matrix of the case is that the Petitioners are employees and there are 49 workmen on the roll of the Petitioners. All workmen make contribution from their pay, every month, towards the provident-fund-account. Similar

amount is to be contributed by the employers. It transpired that the employers failed to either make the contributions or to transfer (he amount deposited by the workmen. Consequently, the State Government passed the impugned orders imposing damages and penalty etc. and the same was sought to be recovered by issuing a recovery certificate against the, Petitioners Hence, the present petition has been filed.

3. Shri Kameshwar Prasad, learned Counsel for the Petitioner urged that the provisions of Section 14B, before the amendment made by Act 40 of 1973 (which came into, force on 1st November, 1973) were applicable. But there was no proviso added to Section 14B at that time requiring the employers to be given a reasonable opportunity of being heard in the matters of imposing either damages or the penalty etc. But nevertheless the principles of natural justice ought to be complied with and the impugned orders were passed by the , State Government without giving any . opportunity of hearing or, without informing the Petitioners or serving them notices as to why not the damages or the penalty, may be imposed upon them. u/s 7A of the Act. the procedure is for the determination of monies due from employers and the expression monies due from the employers", is so comprehensive that it includes even imposition of damages or penalty etc. and the recovery of the same. The provisions u/s 7A(3) of the Act are that no order determining the amount due from the employer would be made unless the employer is given a reasonable opportunity of representing his case. The provision was contained under the Act, as it was prior to the amendment introduced on 1st November 1973, by an Act 40 of 1973. In view of Sub-section (3) of Section 7A affording a reasonable opportunity for hearing was a must. Consequently, in any case, the impugned orders, imposing damages and penalty and recovery of the same could not have been made without complying with the principles of natural justice. This was also contended that apart from the statutory provisions of Section 7A the general principles of natural justice were applicable and the opportunity of hearing was a must before passing of impugned orders. The reliance was placed on (1) The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, ; (2) Shyam Glass Works Vs. State of U.P. and Others, ; (3) M/s. Madras Bangalore Transport Co. v. Commissioner, Regional Provident Fund, Madras 1970 Lab. I.C. 96 .

4. Shri J. N. Tewari, learned Counsel for the Central Provident Funds Commissioner, one of the Respondents, urged that the notices and the amendment application were served on the Standing Counsel appearing for the State of U.P. but no counter-affidavit has been filed. The counter-affidavit has, however, been filed by Sri Tewari and we have perused the same and heard him on merits. Mr. Tewari was fair enough to concede that under the circumstances of the case the rights of the Petitioners as employers in respect of the imposition of damages or penalty and the recovery of the same were involved, hence principles of natural justice ought to have been complied with before passing the impugned orders. But it was urged that conduct of the Petitioners was such that no relief could be given to them. It was pointed out that the Petitioners as

employers did not transfer the contribution made by the workmen, nor it transferred the contribution made by the employees. In a welfare state like ours, the Petitioners have no justification to get any relief from this Court. Consequently, the relief prayed for may be refused.

5. Having considered the submissions of the learned Counsel for the parties, we are of the opinion that there are two points that fall for our consideration in the writ petition. First, is whether the general provisions of principles of natural justice as prevailing under the common law would be applicable and whether the provisions of Section 7A and 14B read together as they stood prior to the amendment Act 40 of 1973, the principles of natural justice were to be complied with by the State of U.P. before passing the impugned orders.

6. As regards first point suffice it to say that there is an old maxim AUDI ALTERAM PARTEM, which connotes that no one be condemned unheard. The corollary of which is that he has to be afforded a reasonable notice of the nature of the case to be met. (See: *Errington v. Minister of Health*. 1935 KB 249 *John v. Rees* (1970) ChD 345 *Herring v. Templeman* (1973) 3 All ER 569). This principle has been followed to the extent that even though there may not be any statutory provisions providing for a reasonable opportunity of hearing to the person whose rights are affected by the impugned orders, nevertheless, the principles of natural justice are to be read in those provisions, which are silent about it.

7. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, It was observed as follows:

In such matters where a statute is silent regarding observance of such rule (i.e. principles of natural justice), it shall be read into the statute as an inbuilt provision. The rule must be held to be a necessary postulate in all cases where a decision is to be taken effecting a person's rights or interest, unless such rule is specifically excluded by the statute. Non-observance of this rule of natural justice is itself a prejudice and independent proof of prejudice due to denial of it is unnecessary.

(See: *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, .

8. In *Harbajan Singh Sheila v. Union of India* (1936) 4 SCC 876 it was observed that where even Administrative Authorities are enjoined to decide rights of parties, they must afford reasonable opportunity of hearing to the affected persons and must pass a reasoned order.

9. In *Clevement Board of Education v. James Louder Mill* 470 US 532 84 L Ed 2nd 494 it was observed.

An essential principle of due process is that a deprivation of life liberty or property be preceded by a notice and opportunity of hearing appropriate to the nature of the case. We are also of the view that root requirement of the due process clause is that an individual be given an opportunity for a hearing before he is deprived any significant property interest.

10. In view of the principles aforesaid we are of the considered opinion, that apart from the statutory provisions of the principles of natural justice even if the statute is silent about affording reasonable opportunity of hearing before depriving a citizen of any right or interest in property, in that event an opportunity of hearing appropriate to the nature of the case is a must.

11. Reverting to the next question which emanates from the first one is about deducing the principles of natural justice by reading the provisions of Section 14B of the Act as it stood prior to the amendment by Act 40 of 1973 and Section 7A, and Sections 15-17 of the Act together. Section 14B provides that where an employer makes default in the payment of any contribution to the funds or in the transfer of accumulation required to be transferred by him under Sub-section (2) of Section 15 or Sub-section (5) of Section 17, or in the payment of any charges payable under any other provisions of this Act or of any scheme or under any of the conditions specified under the Section 17, appropriate Government may recover from the employer such damages not exceeding 25% of the amount of arrears, as it may think fit to impose.

12. Section 7A enacts that where an amount is due from the employer, the determination of the same may be made by the Regional Provident Fund Commissioner or by the State Government and the provisions of the Sub-section (3) are that before determination of amount due from the employer he must be given a reasonable opportunity of hearing. The provisions of Sections 14B, and 7A of the Act come in operation at the time when the impugned orders, were sought to be passed. The imposition of damages or the penalty and other amount due can be recovered from the employers u/s 7A. These provisions are couched in a language having very wide sweep, consequently, there is no escape from the conclusion that in case damages were imposed or the penalty was to be imposed or any other amount was sought to be recovered, an opportunity of hearing was a must. The opportunity of hearing under the relevant provisions has not been excluded by any statutory provision.

13. Coming to the cases cited of the bar, Commissioner of Coal Mines Provident Fund Dhanbad v. J.P. Lalla and Sons (Supra) was a case, where their lordships of the apex court, were interpreting Section 10F of the Coal Mines Provident Fund & Bonus Scheme Act, 1948, which was in para materia to Section 7A and Section 14B of the Act. The interpretations by their Lordships of Supreme Court are applicable in the present case as the similar provisions has been interpreted and it has been held that where a body or authority is to determine the matter involving the rights judicially, the principles of natural justice is implied, if the authority affects the individual rights or interest. In such a case having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity of hearing.

14. In State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, , it was observed that whenever judicial powers are to be exercised affecting interests and rights of individuals, the principles of natural justice is implied.

15. M/s. Shyam Glass Works v. State of U.P., (Supra) was a case decided by the Division Bench of this Court interpreting Section 14B of the Act and it was held that as employers' rights were affected by the orders pertaining to the imposition of damages or penalty and recovery of the same or any other amount due from the employer the principles of natural justice was a must. And, consequently, the employers must be given a fair and reasonable opportunity of hearing before passing the impugned orders for damages or penalties.

16. M/s. Madras Bangalore Transport Co. v. Commissioner, Regional Provident Fund, Madras, (Supra), was a case where Section 14B was interpreted and it was held that as method of imposition of damages or the penalty affects rights of the employers, normally rules of natural justice require that the parties affected should be given an opportunity to make representations and be heard even before passing the impugned orders.

17. At one stage our conscience made us hesitant in granting relief as the Petitioner's conduct in not making contribution, in employees' provident fund scheme and in not transferring them to the fund did not justify any relief to them. But we are reminded that in such matters it is the legal conscience which must take decision. We are reminded of certain Latin Maxims, "CONCI-ENTIA LEGALISE, LEGE FUNDATUR", which connotes that the legal conscience must be founded upon the law. The next is CONCIENTIA LEGI NUNQUAM CONTRAVENIT" which connotes that legal conscience never contravenes the law, and the third maxim is "CONSCIENCIA LEGIS EX LEGI PENDET", which connotes that the conscience of the judge in a law court depends upon the law.

18. In our considered opinion an order in respect of imposition of damages was to be made, the penalty was to be imposed and the recovery of these amounts to be made from the employers, consequently, the principles of natural justice, even if not specifically provided u/s 14B of the Act as it stood prior to the amendment by Act 40 of 1973, but these principles have to be read in that provision, and consequently before determining the imposition of damages or imposition of penalty and recovery of the same or initiated any proceedings to that effect, the principles of natural justice must have been complied with. But the Respondents including the State of U.P. failed to serve any notice on the Petitioners to these effects, requiring an opportunity for representation, nor it granted any opportunity of hearing to the Petitioner before passing the impugned orders. The impugned orders are accordingly manifestly erroneous, having been passed in violation of the principles of natural justice hence they cannot be maintained and in our opinion a case for issuance of writ of certiorari has been made out.

19. In view of the premises aforesaid and applying Aristotelian and Baconian methods of reasonings, the petition succeeds and is accordingly allowed. The impugned orders dated 28th September, 1968, 7th January, 1970, and 20th January, 1971 (Annexures 4, 5 & 6 to the amendment application) And the order dated 17th May, 1989, are quashed by issuing a writ of certiorari. It is,

however, made clear that the Respondents may proceed with the matter, if they so choose, after complying with the principles of natural justice. The learned Counsel for the Petitioners made prayer that the penalty deposited by the Petitioners may be refunded, but we direct them to make an appropriate application before the relevant authority. We hope and trust that the relevant authority would pass an appropriate order on that application within three months from the date certified copy of this order is produced before the authority.

20. In the circumstances of the case we refrain from making any order as to costs.