(1999) 08 DEL CK 0114

In the Delhi High Court

Case No : Civil Writ Petition No. 1062 of 1973

Katari coloring Factory APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(1)(3), 7A

Citation : (1999) 51 DRJ 498 : (2000) 1 LLJ 1041

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—Hopefully, this decision Will bring an end to this litigation which has been pending since 1973.

2. The Petitioner is a partnership firm which came into existence on 1st April, 196 with three partners namely, Amar Singh Katari, Sant Singh and Jagdish Singh. The business of the firm is to manufacture ink. The firm is said to maintain two premises both of which are registered for the purposes of sales tax under the local laws as well as under the Central Sales Tax Act. The premises are also registered under the provisions of the Delhi Shops and Establishment Act, 1954.

3. Sometime in August 1969, Respondent No. 1 asked the Petitioner to furnish information for the purpose of examining whether the Petitioner would be covered by the provisions of the Employees'' Provident Funds and Family Pension Fund Act, 1952 which is now known as the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act).

4. The Petitioner supplied the information and asserted that its maximum employee strength was 17 employees. It appears that thereafter an officer of

Respondent No. 1 namely, Raj Kumar examined the attendance register, cash book and ledger of the Petitioner and submitted a report dated 29th November, 1969 to the effect that the petitioner had 16 direct employees and 7 contractor''s workers. Accordingly, Raj Kumar was of the view that the Petitioner may be covered by the provisions of the Act under the head "ink industry".

5. As a result of the report prepared by Raj Kumar, a notice dated 3rd February, 1970 u/s 7-A of the Act was sent to the Petitioner in response to which the petitioner sent a letter dated 23rd February, 1970 denying that it was covered by the provisions of the Act and praying for withdrawal of the notice. In support of its contention, the Petitioner submitted an affidavit of its partner Jagdish Singh and one Umrao Ali, the contractor who was allegedly working for the Petitioner. Unfortunately, the notice dated 3rd February, 1970 has not been placed on the record.

6. Proceedings u/s 7-A of the Act were held against the Petitioner and an inquiry was conducted on several dates such as 28-2-70, 16-3-70 and 6-4-70. On these dates of hearing, Raj Kumar "deposed" in support of his report dated 29th November, 1969 while on the other hand Jagdish Singh and Amar Singh Katari submitted that the Petitioner had no connection with the business of Umrao Ali who was an independent contractor, not working exclusively for the Petitioner. After hearing the Petitioner, Respondent No. 1 concluded the enquiry u/s 7A of the Act and by an order dated 6th April, 1970 held that Umrao Ali is a contractor of the Petitioner and is mainly working in and in connection with the work of the Petitioner. It was consequently held that the provisions of the Act were applicable to the Petitioner. By an order dated 23rd April, 1970, the Petitioner was asked to deposit the amount of provident fund due under the Act.

7. The order dated 6th April, 1970 reads as follows:

Present: 1. S. Amar Singh(Pt.)

2. Sh. Raj Kumar (P.F.I.)

3. Accountant of Shri Umrao Ali (Contractor).

Sh. Raj Kumar disposed (sic) that as per attendance registers of this company and the contractors Sh. Umrao Ali''s workers shown in their register, the Combined employment strength is found to be 16 + 7 (23 employees) in April, 69 and as such this establishment has been covered under the Employees Provident Fund Act w.e.f. 1.4.69 but the management have not started compliance of the scheme so far.

He further disposed (sic) that as per records of Sh. Umrao Ali contractor who is working in the factory premise of this estt. at Azad Nagar, Shahdara, Delhi, he is mainly working for this company. As per records, Rs. (12, 109.25) were received by Sh. Umrao Ali as labour charges for the period 1.4.69 to 31.3.1970. Where as at the same time very negligible cash sales was also made to other parties vide details given at 22/-cr. Shri Amar Singh informed that Shri Umrao Ali is not the contractor of the company, but he could not substantiate his argument by documentary proof.

Ordered that Sh. Umrao Ali is the Contractor of this Co. and is mainly working in and in connection with the work of the establishment. The E.P.F. Act, is Therefore, rightly made applicable to this estt. w.e.f. 1-4-69 provisionally.

Ordered that a sum of Rs. 2082/- and Rs. 60/- is determined as PF contributions and admn. charges for the period April, 69 to March, 70.

Further ordered that 7 days notice should be given to M/s Katari coloring factory to deposit the amount failing which the dues may be recovered through the D.C.O. as arrears of Land revenue.

8. Steps were taken by the Petitioner to challenge the orders dated 6th and 23rd April, 1970 and ultimately the Petitioner applied to the Central Government on 30th May, 1970 u/s 19-A of the Act (as it then stood) to have the order dated 23rd April, 1970 set aside. The Petitioner was given a hearing by the officer on special duty in the Ministry of Labour and Rehabilitation on 5th June, 1973 and by an order dated 1st August, 1973, the Central Government confirmed the order of Respondent No. 1 to the effect that the Petitioner is covered by the provisions of the Act.

9. Feeling aggrieved, the Petitioner filed Civil Writ No.1062/73 in this Court praying for a direction to the effect that the Petitioner''s establishment and Umrao Ali''s establishment are two independent entities and for quashing the order of Respondent No. 1 directing the Petitioner to pay the provident fund dues and to quash the apprehended proceedings for prosecution for non payment of the provident fund.

10.Sometime in March 1986, the Petitioner applied for amendment of the writ petition to urge an additional ground to the effect that Section 7A of the Act had been declared unconstitutional by a Division Bench of this Court in LPA No.60/70 - Wire Netting Stores v. Regional Provident Fund Commissioner, 1981 Lab IC 1015 and in view of this judgment, the orders impugned by the Petitioner are liable to be struck down. The amendment was not opposed by the Respondents and was Therefore allowed.

11. A perusal of the judgment of the Division Bench of this Court shows that Section 7A of the Act was declared unconstitutional because of the absence of a provision for appeal against an order passed u/s 7A of the Act.

12. It may be mentioned here that in an order dated 28th July, 1989 this Court has noted that I am told that Section 7A has been struck down by this court and there is an appeal pending in the Supreme Court wherein the order of this court striking down Section 7A has been stayed. "The appeal is apparently still pending in the Supreme Court. In the meanwhile, the Act was amended in 1988 and in view of the amendments brought about, the Supreme Court has, in another appeal, held that"........ the question of challenge to the virus of Section 7A on

the ground that there was no appeal provided under the Act does not survive and it has become academic". Sumedico Corporation and Another Vs. Regional Provident Fund Commr., .

13. In view of the decision of the Supreme Court and since this writ petition is one of the oldest writ petitions pending in this Court, it was decided to take it up for final hearing without awaiting the decision of the Supreme Court in the case of Wire Netting Stores.

14. The writ petition was heard on 23rd April, 1999, 7th, 14th and 21st May, 1999 when judgment was reserved.

15. It was submitted by learned counsel for the Petitioner that Umrao Ali''s establishment is independent and it has nothing to do with the establishment of the Petitioner. In this context, it was submitted that Umrao Ali''s establishment is separately registered and is situated at a distance of about 7 kms from the establishment of the Petitioner. Initially, Umrao Ali''s establishment was a sole proprietorship concern and later it became a partnership firm. However, at no point of time were any of the partners of the Petitioner and Umrao Ali''s firm common. The employees of Umrao Ali drew their wages from him and worked only under his control and supervision and there was nothing on record to show that there was any master - servant relationship between the Petitioner and the employees of Umrao Ali.

16. It was submitted, in the alternative, that even if it is held that Umrao Ali was not an independent contractor, his employees could not be covered by the definition of the word "employee" within the meaning of Section 2(f) of the Act.

17. It was then contended by learned counsel for the Petitioner that Respondent No. 1 did not grant him a reasonable opportunity of hearing and that the finding arrived at by Respondent No. 1 is perverse. It was submitted that the proceedings before Respondent No. 1 are quasi judicial proceedings and that there must be some evidence on record before Respondent No. 1 can give an adverse finding against the Petitioner. It was contended that in the instant case the report of Raj Kumar was neither exhibited nor proved nor was Raj Kumar produced in evidence so that he could be cross examined. On the other hand, the Petitioner had filed affidavits of its partner, and Umrao Ali but these were not even taken note of by Respondent No. 1.

18. It was finally contended that Respondent No. 1 was duty bound to pass a speaking order, in accordance with the principles of natural justice.

19. Learned counsel for the Respondents has disputed the contentions advanced on behalf of the Petitioner. It was submitted that the Petitioner and Umrao Ali are closely interconnected and in fact Umrao Ali carries on his business in the premises of the Petitioner. It was also submitted that Umrao Ali actually prepares a semi finished product called "roshanai" which is supplied to the Petitioner who in turn prepares ink out of this semi finished product; the ink is not prepared by

the contractor as a finished product. It was further submitted that most of the supply of Umrao Ali is to the Petitioner and a negligible amount goes to some other dealers.

20. Learned counsel for the Respondents also submitted that the Act is a social welfare legislation, intended for the benefit of the employees and it should be given a liberal construction and not a narrow and pedantic interpretation. It was further submitted that the proceedings were conducted fairly and the Petitioner was given ample opportunity to present its case and there has been no violation of any of the principles of natural justice.

21. Having heard learned counsel for the parties and having perused the written submissions filed by them, I am of the view that the impugned orders are liable to be affirmed.

22. However, before examining the material on record, it is necessary to reproduce Section 1(3) and Section 2(f) of the Act (as it then stood) which read as follows :-

"1(1) xxx xxx

1(2) xxx xxx

1(3) Subject to the provisions contained in Section 16, it applies -

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months'' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

1(4) xxx xxx

1(5) xxx xxx

2(f) Employee means any person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes and person employed by or through a contractor in or in connection with the work of the establishment."

23. What has to be seen in the present case is whether the employees of Umrao Ali are covered by the last part of this definition and are persons employed by or through a contractor in or in connection with the work of the Petitioner. This will necessarily involve an examination of several aspects of the relationship between

the Petitioner and Umrao Ali.

24. There is no dispute about the fact that Umrao Ali carries on his business of preparation of black ink (roshanai) at 25-A, East Azad Nagar, Delhi. This is as per his affidavits dated 23rd February, 1970 and 1st May, 1970.

25. The initial notice dated 14th August, 1969 which was sent by the office of the Regional Provident Fund Commissioner (for short RPFC) to the Petitioner was at 25, East Azad Nagar, Delhi. This notice was received by the Petitioner who also sent a reply thereto on 30th August, 1969. It is not understood how the Petitioner received the notice at this address if it had no connection with it. Moreover, in its reply, the Petitioner did not take any objection to the letter being addressed to it at this address. It appears, Therefore, the Petitioner carried out some activity at 25, East Azad Nagar, Delhi apart from its two other premises.

26. In the counter affidavit dated 16th October, 1978, it has categorically been averred that the Petitioner has a manufacturing unit at 25, Azad Nagar, Delhi but the same has not been denied by the Petitioner. Moreover, in the proceedings held on 6th April, 1970, Raj Kumar had deposed that as per the records of Umrao Ali, he (Umrao Ali) is working in the factory premises of the Petitioner at Azad Nagar, and he is mainly working for the Petitioner. This statement of Raj Kumar indicates that the manufacturing unit at 25, East Azad Nagar was that of the Petitioner and that Umrao Ali was working there. As per the record of proceedings of 6th April, 1970 this statement of Raj Kumar went unrebutted.

27. Accordingly, it is quite clear that both the Petitioner and Umrao Ali carry on the activity of manufacture of ink at the same premises, that is, 25, East Azad Nagar, Delhi.

28. Furthermore, the report prepared by Raj Kumar dated 29th November, 1969 (Annexure C to the writ petition) indicates that he had examined the attendance register, cash book and ledger of the Petitioner from April, 1969 till November, 1969. In fact, these documents were produced by Jagdish Singh who is one of the partners of the Petitioner on 24th and 29th November, 1969. Two lists of employees as in April, 1969 and from January, 1969 to November, 1969 were also prepared and signed by Jagdish Singh. These have been annexed to the counter affidavit as Annexures R-2 and R-2A. These two documents show that the number of persons employed by the Petitioner clearly exceeds the figure of 20. As such, the Petitioner would be covered by the provisions of the Act.

29. In this context, it is worth noticing that it has been stated by the Respondents in reply to the application filed by the Petitioner under the provisions of Order VI Rule 17 of the CPC that "...... In the attendance register of the Petitioner''s firm examined by Shri Raj Kumar, Provident Fund Inspector, it was found that Umrao Ali''s workers are shown in the Petitioner''s register for which no Explanation was/or is given by the, Petitioner. Nor has this fact been denied by the Petitioner that the workers of Shri Umrao Ali are not in the Petitioner''s register." This averment has not been controverter by the Petitioner.

30. The record of proceedings conducted u/s 7A of the Act also indicates that sufficient opportunity was given to the petitioner to establish its case that there was no interconnection between the Petitioner and Umrao Ali. On 28th February, 1970 an opp that amongst other things, the right of rejection can constitute in itself an effective degree of supervision and control.

31. More recently, in the case of Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner 1997 Lab. IC 146, the and Jagdish Singh on 16th March, 1970 to produce all the documents including attendance register, wages register, cash book, ledger and sales tax registration of Umrao Ali. It appears that no documentary evidence was produced on the next date also, that is, 6th April, 1970 and it was recorded that Amar Singh could not substantiate his arguments by documentary proof. It was then held that Umrao Ali is the contractor of the Petitioner and is mainly working in and in connection with the work of the Petitioner.

32. Another factor which is of importance is that the major supply of Umrao Ali is to the Petitioner. In fact, in his statement recorded on 6th April, 1970, it was stated by Raj Kumar that during the period 1st April, 1969 to 31sl March, 1970, a sum of Rs. 12,109.25 was received by Umrao Ali as labour charges from the Petitioner, whereas very negligible cash sale was also made to the other parties. This statement, which was based on the available records was not refuted by the accountant of Umrao Ali or by the partner of the Petitioner both of whom were present at the hearing. (It may be clarified that the figure of Rs. 12,109.25 is not actually mentioned in the order dated 6th April 1970 as filed in this Court : the figure has, however, been mentioned in paragraph 10 of the writ petition and was in any case, not disputed by any of the learned counsel).

33. In view of this, it is quite clear that on facts, at least, the Petitioner cannot gel out of the position that it is interconnected with Umrao Ali.

34. Learned counsel for the Petitioner then submitted that there are several other factors which are in favor of the view that there is no interconnection between the Petitioner and Umrao Ali. These factors include the fact that there are no common partners in the Petitioner''s firm and Umrao Ali''s firm; the employees of Umrao Ali are paid their wages by him, they work under his direct control and supervision and that there is no master servant relationship between the Petitioner and the employees of Umrao Ali; and finally, that Umrao Ali is independently registered under the provisions of the Delhi Shops and Establishments Act, 1954.

35. It appears to me that in view of the above findings, the fact that the employees of Umrao Ali receive their wages from him and that he is separately registered under the provision of Delhi Shops and Establishments Act, 1954 are not of much significance. These are really very minor matters and they can very well be only a facade to hide the substance of the relationship. In any case, as per the definition of "employee" in Section 2(f) of the Act, whether the employer

pays the wages directly or indirectly is of no consequence.

36. Learned counsel for the Respondents submitted that in the proceedings held on 28th February, 1970, it was stated by Jagdish Singh that Umrao Ali is an independent ink seller who supplies ink and gum for manufacture of ink while the rest of the ingredients are mixed by the Petitioner. It was contended by learned counsel for the Respondents that this clearly shows that Umrao Ali supplied a semi-finished product called "roshanai" which would then be mixed with certain ingredients for the manufacture of ink. While this may be so, there does not appear to be sufficient material on record to hold that Umrao Ali only supplied a semi-finished product to the Petitioner.

37. However, the crux of the matter, as rightly contended by both the learned counsel is whether the Petitioner exercises any control and supervision over the work being done by the employees of Umrao Ali. What exactly is the nature of supervision and control that is required to attract the provisions of Section 2(f) of the Act?

38. In Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, , the Supreme Court has held in para 7 that "In construing the provisions of the Act, we have to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act."

39. Similarly, in the case of Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, , a case relating to Section 2(9) of the Employees State Insurance Act, 1948, the Supreme Court expressed the view that in the field of labour jurisprudence, welfare legislation and statutory construction must have due regard to Part IV of the Constitution. A ideological approach and social perspective must play upon the interpretative process.

40. It is in this light that it would be profitable to examine some decided cases.

41. In the case of Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, , the Supreme Court came to the conclusion that the prima facie test to determine the relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he should do his work. This decision was rendered in the context of the definition of "workman" in Section 2(s) of the Industrial Disputes Act, 1947. This line of reasoning was followed by the Supreme Court in the case of Chintaman Rao and Another Vs. The State of Madhya Pradesh, with regard tot he definition of "worker" as appearing in Section 2(1) of the Factories Act, 1948.

42. While following Dharangadra Chemical Works (supra), the Supreme Court expressed the view in Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments 1947 Lab. IC 133 that the degree of control and

supervision would be different in different types of business and if the ultimate authority over the worker in the performance of his work resided in the employer so that he was subject to the latter''s direction, that would be sufficient. It was also held that a person can be a servant of more than one employer and a servant need not be under the exclusive control of one master. Incidentally, this case pertained to the interpretation of the words "person employed" occurring in Section 2(14) of the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 195 1.

43. While dealing with the interpretation of the words "in connection with" occurring in the definition of "employee" in Section 2(9) of the Employees State Insurance Act, 1948, the Supreme Court held in the case of Royal Talkies (supra) that a canteen or cycle stand or a cinema magazine booth is incidental to the purpose of a theater. "The cinema goers ordinarily find such work an advantage, a facility, an amenity and sometimes a necessity." The Supreme Court was of the view that the operations of keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theater. The Supreme Court held that "the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are in the work or are merely in connection with the work of the establishment."

44. The decisions cited above are under different statutes, but they have a common thread running through them : that the dominant test for establishing a master-servant relationship is the extent of control and supervision of one over the other. Nothing has been shown to me why this line of thought which has been accepted by the Supreme Court should not be followed for understanding the meaning of "employee" as defined in Section 2(f) of the Act.

45. Insofar as the definition of "employee" in the Act is concerned, the Supreme Court held in the case of P.M. Patel & Sons and Ors. v. Union of India and Ors. that amongst other things, the right of rejection can constitute in itself an effective degree of supervision and control.

46. More recently, in the case of Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, 1997 Lab. IC 146, the Supreme Court relied upon a variety of factors such as unity of purpose, the place of business being common, the management being common, the letterheads having the same telephone numbers, several partners being common, etc. to hold that the RPFC was not wrong in treating two establishments as one for the purposes of the Act. The Supreme Court also found nothing wrong in the RPFC piercing the veil for this purpose.

47. However, learned counsel for the Petitioner relied upon Employers in relation

to the Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen, to contend that since the employees of a non-statutory canteen run in the offices of the Reserve Bank of India were held not to be employees of the said bank, Umrao Ali''s employees cannot be said (on a parity of reasoning) to be the employees of the Petitioner. I am afraid the judgment in this case has no applicability because apart from its distinguishable facts, it was held by the Supreme Court in this case that there was an absence of any effective or direct control of the Reserve Bank in supervising and controlling the work done by the workers in the canteen.

48. On a consideration of all these decisions of the Supreme Court, it is quite clear that any one test is not decisive in coming to a conclusion whether there exists a master and servant relationship, or an employer and employee relationship. Several factors are involved and the importance to be given to each factor depends upon the nature of the business. The Supreme Court has said in the Silver Jubilee Tailoring House case (supra) that "It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all the these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction."

49. Applying the principles laid down by the Supreme Court, it is quite clear that the following facts are material, namely, unity of purpose, that is, the similarity of business being carried on by the Petitioner and Umrao Ali; that the same business is being run from the same premises; that the major supply of Umrao Ali is to the Petitioner and most importantly, that the records of the Petitioner show the employees of Umrao Ali as the employees of the Petitioner. Cumulatively, these facts indicate that Umrao Ali is not an independent contractor and that his workers are actually the employees of the Petitioner.

50. On the basis of these facts, there can be no doubt that for the purpose of the Act, the establishment of the Petitioner and Umrao Ali are one.

51. With regard to the question whether the Petitioner was given a reasonable opportunity to present its case before the Respondents, it may be stated at the outset that there is no dispute about the fact that the proceedings are quasi-judicial in nature. However, this does not mean that the RPFC can decide the issues before it without any findings of fact. At the same time, it must be stated that the RPFC is not required to follow a rigid procedure as one would expect before a judicial forum.

52. Learned counsel for the Petitioner submitted that the inspection report prepared by Raj Kumar had to be formally exhibited and proved on record. Nothing has been shown by the learned counsel to substantiate this submission. The report prepared by Raj Kumar was available on the record and he himself had attended the proceedings. If the Petitioner had wanted to test the correctness of the report, he could very well have cross-examined Raj Kumar but chose not to do so. Apart from this, the Petitioner was given ample opportunity to produce documents in its favor but it failed to do so.

53. Further in this regard, learned counsel for the Petitioner submitted that several documents which had been filed by the Petitioner (mentioned in Paragraph 9 of the writ petition) have not been considered by the Respondents. In the first place, it is not clear where these documents were filed - whether in the proceedings u/s 7A of the Act or in the proceedings u/s 19-A of the Act (as it then stood). The writ petition is completely silent in this regard. On the other hand, in the counter affidavit, the Respondents have categorically stated that except the sales-tax registration certificate, "the petitioner never produced any other documents mentioned in this para before the Respondent No. 1 on 6.4.1970 as alleged".

54. Assuming that these documents were produced before the Respondents, it does appear that they only confirmed certain undisputed facts, namely, that the Petitioner is a duly registered partnership firm and that it has two establishments. The fact that both the Petitioner and Umrao Ali are registered for the purpose of sales-tax was also not in dispute. The only other document that was on some relevance was the affidavit of Umrao Ali who stated, inter alia, that he had no concern with the Petitioner. This affidavit (Annexure-M) is dated 1st May, 1970, that is, after the impugned orders dated 6th April, 1970 and 23rd April, 1970. Obviously, Therefore, this affidavit could not have been considered by Respondent No. 1.

55. However, a somewhat similar affidavit of Umrao Ali was sent by the Petitioner Along with its letter dated 23rd February, 1970 which was in response to the notice dated 3rd February, 1970. Unfortunately for the Petitioner this affidavit cannot be relied on for the simple reason that (unlike Raj Kumar) Umrao Ali did not at all attend the proceedings u/s 7A of the Act. In fact, the record of proceedings of 10th March, 1970 shows that a summons was directed to be issued to Umrao Ali to appear as a witness on 6th April, 1970. On the adjourned date of 6th April, 1970 Umrao Ali did not appear. Instead, his accountant appeared. Consequently, I am not inclined to attach much credence to the affidavit of Umrao Ali affirmed in February, 1970.

56. Under these circumstances, I am of opinion that it is not correct to contend that the Petitioner was not given a reasonable or adequate opportunity of presenting its case.

57. The final submission of learned counsel for the Petitioner was that a speaking

and reasoned order ought to have been passed by the RPFC. Reliance was placed by learned counsel for the Petitioner on India Mica and Micanite Industries Ltd. v. RPFC 1974 Lab. IC 415 and Chatram Agarwala v. RPFC 1972 (i) LLJ 603.

58. On a perusal of the order dated 6th April, 1970, it is quite clear that the RPFC has relied upon the statement of Raj Kumar and the records maintained by the Petitioner and Umrao Ali including the records pertaining to the payments received by Umrao Ali. The RPFC has also relied upon the fact that the Petitioner could not produce any evidence to substantiate his submission that the relationship between the Petitioner and Umrao Ali was at arms length. It is after taking these facts into consideration that he came to the conclusion that Umrao Ali is a contractor of the Petitioner and is mainly working in and in connection with the work of the Petitioner. In my view, the RPFC is required to indicate some reasons for arriving at his findings, but is not required to deliver a judgment. This has been done by the RPFC and accordingly I am satisfied that the RPFC has passed a speaking order which meets the requirements of law.

59. The two decisions relied upon by learned counsel for the Petitioner pertain to a situation where "off the cuff demands were made and the basis of the calculations for the demands was not indicated. In the case of M/s Mica and Micanite Industries Ltd. (supra) it has been stated in paragraph 6 that "Admittedly, in the present case, no basis has been indicated", the decision, Therefore, proceeded on an admission. Similarly, in the case of Chakram Agarwalla (supra) it is stated in paragraph 7 that "The third contention that the impugned order (Annexure 11) ex facie does not show the reasons which influenced the opposite party to come to the conclusion that certain amount was to be deposited by the petitioner towards the provident fund is sound". This decision also turned n its own facts.

60. While I have no quarrel with the proposition of law laid down in these cases, in the present case, however, the facts are different. The Petitioner was issued a notice dated 2nd April, 1970 to attend the enquiry in the office of the RPFC on 6th April, 1970 ''for determining u/s 7A of the Employees'' provident Fund Act, 1952 amount due from you as employer of M/s Katari coloring Factory''. Unfortunately, this notice has also not been filed by any of the parties to the writ petition. In any event, the Petitioner did attend the hearing on 6th April, ''1970 and (as stated in the order dated 23rd April, 1970) on the basis of the material available with him, the RPFC passed an order determining the provident fund contribution and administrative charges for the period April, 1969 to March 1970 at Rs. 2,082/- and Rs. 60/- respectively. It is true that the RPFC has not given the arithmetical calculations, but I really do not think it was imperative for him to do so. The reason for this is that in a letter dated 17th December, 1969 the office of the RPFC had advised the Petitioner to deposit the arrears of contributions at the rate provided in paragraph 29th of the Employees Provident Fund Scheme, 1952 as well as administrative charges at a fixed percentage. As such, the Petitioners cannot claim blissful ignorance of the basis for calculation of the

demand made.

61. No other submissions were made by learned counsel for the parties, either on the merits of the case or on the dues for any subsequent period.

62. In view of the above discussion, I affirm the finding of the Respondents that Umrao Ali is not an independent contractor and that his employees are the employees of the Petitioner within the meaning of Section 2(f) of the Act. As such, the establishment of the Petitioner is governed by the provisions of the Act. The writ petition is accordingly dismissed.

63. However, there will be no order as to costs.