

(1972) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 3 of 1969

Kedarmal

APPELLANT

Vs

Regional Provident Fund Commissioner, M.P., Indore and
another

RESPONDENT

Date of Decision : 12-10-1972

Acts Referred:

Constitution of India, 1950 — Article 13(2), 19, 19(1)(g), 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3),
1(3)(b), 14, 14(B)
Payment of Bonus Act, 1965 — Section 37

Citation : (1974) JLJ 133 : (1973) 18 MPLJ 1074

Hon'ble Judges : G.L. Oza, J;A.P. Sen, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; R.K. Vijayvargiya, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.

This is a petition under Article 226 of the Constitution by the partner of a firm, a trading and commercial establishment, for a writ in the nature of certiorari for the purpose of quashing an order of the Central Government u/s 19-A of the Employees' Provident Funds Act, 1952 declaring the firm to be an establishment falling within the class of establishments to which the Act applies, by virtue of a notification issued u/s 1(3)(b) of the Act, and for a writ of mandamus directing the Central Government and the Regional Provident Fund Commissioner, Madhya Pradesh, to forbear from enforcing the provisions of the Act against the firm in any manner.

The firm is engaged in storage and sale of cut betelnuts along with other articles such as cigarettes and general merchandise. The establishment consists of 7 to 8 persons employed on a permanent basis, apart from 15 to 20 workers engaged on daily wages. That being the normal requirement of the establishment, the

Regional Provident Fund Commissioner, who is charged with the duty administering the Act, was of the view that the firm being a "trading and commercial establishment" employing 20 or more persons, came within the purview of the Act. He, therefore, called upon the firm to implement the provisions of the Act and to institute a provident fund for its employees. The firm contested its liability under the Act in respect of establishment of such a provident fund, on the ground that it only employed 7 to 8 persons on a permanent basis, as registered under the Shops and Establishments Act and was, therefore, exempt from the operation of the Act.

The Regional Provident Fund Commissioner by his letter No. AC/1/MP/889/335, dated 14th May, 1965 served the firm with a notice that it was covered under the Act w. e. f. May 1962 and ordered it to remit the provident fund dues and/or submit the prescribed returns for the period from May 1962 to March 1965, failing which he threatened it with action under sections 8 and 14 of the Employees' Provident Funds Act, 1952, and para 76 of the Employees' Provident Funds Scheme, 1952, as the case may be, besides recovery of damages u/s 14(B) of the said Act for delayed remittances of the Provident Fund contributions and administrative charges thereon. The action taken by the Regional Provident Fund Commissioner was on the basis of a report of the Provident Fund Inspector who visited the business premises of the firm on 5th April, 1965 and held an enquiry. On that day, he recorded the statement of one Mohanlal, an authorised representative of the firm, who stated the normal regular requirement of the establishment, i.e., the number of persons employed by the firm in the course of its trade and business. According to that statement, the firm engaged 15 to 20 workers daily on daily wages for its regular work. Mohanlal also furnished the information required in the prescribed form, marked annexure "X", showing the employment strength of the establishment.

Following the notice of the Regional Provident Fund Commissioner, the firm made a representation to the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) vide its letter dated 14th July, 1965 stating inter alia that the firm actually employed only 7 persons on a permanent basis, and that the Regional Provident Fund Commissioner was wrong in taking into consideration the 15 to 20 persons in addition for purposes of coverage, though such persons were not actually in the employment of the firm, but were only casual workers. The firm contended that these casual workers, according to the usual trade usage prevalent in the market, visit different shops and undertake the business of cutting betelnuts and of returning the cut betelnuts, after completing the job on a contract basis and, therefore, they were not a part and parcel of the establishment, as they were not employees of the firm, there being no relationship of master and servant, nor any kind of control over their work. According to the firm, these casual workers completed the job of cutting betelnuts at their own places, and the job was done not only by them but along with the members of their families.

The firm having raised a dispute u/s 19-A of the Act as regards the applicability of the Act to its establishment, the Central Government took cognizance of the dispute u/s 19-A (iii) of the Act and afforded the firm an opportunity to place its point of view in the matter vide letter No. 5 (III)/65-PF-II dated 16th September, 1967. By that letter, the Central Government disclosed to the firm the nature of the facts elicited by the provident fund authorities and pointed out that the definition of "employee" in section 2(f) of the Act was wide enough to include the 15th to 20th workers engaged by the firm daily on daily wages, in addition to the 7 or 8 persons employed on a permanent basis. On these facts, the Central Government divulged that there was prima facie case for the coverage of the establishment under the Act. In response to the notice, the firm made a written submission dated 13th October, 1967 by which it reiterated that the 15 to 20 persons engaged on daily wages for the purpose of cutting betelnuts were only casual workers engaged on a contract basis, on a piece rate and were, therefore, not "employees" within the meaning of section 2(f) of the Act, and that as there was no employment of these persons, they could not be taken into consideration, for determining the applicability of the Act. After setting out its case, the firm requested the Central Government to re-examine the facts for itself and to advise the Regional Fund Commissioner not to enforce so-called the liability under the Act against it.

The Central Government issued an order u/s 19-A of the Act to the following effect:

No. 5 (iii)/65-PF-II

Government of India Ministry of Labour, Employment and Rehabilitation
(Department of Labour and Employment).

Dated New Delhi 2nd May 1968 Vaisakha 1890 S. E.

To,

M/s. Hiralal Motilal,

163, Ranipura Road,

Indore (M. P.)

Subject: Application of the E. P. F. Act, 1952, Direction u/s 19-A.

Dear Sir,

With reference to your letter dated the 13th Oct. 67 I am directed to say that the Central Government has examined the matter further and it finds the following facts established.

(i) It is not in dispute that your establishment is engaged in storage and sale of cut betelnuts along with other articles such as cigarettes, bidis and general merchandise,

(ii) The establishment, apart from 7 to 8 persons employed on permanent footing, employs 15 to 20 workers daily on daily wages and the workers work in the premises of establishment.

(iii) The employment strength of the establishment was 20 in November 1963.

This has been admitted by you vide Annexure X furnished by you to the Regional Provident Fund Commissioner, M.P., Indore.

In the circumstances, the Central Government hereby directs u/s 19-A of the Employees' Provident Funds Act, 1952 that your establishment is covered under the said Act as a Trading and Commercial establishment with effect from 30th November 1963.

By order and in the name of the President.

Yours faithfully. Sd/- Daljitsingh Under Secretary.

Thereupon, the firm by its letter dated 6th August, 1968 applied for review of the order, drawing the attention of the Central Government to the decision of the Andhra Pradesh High Court in Nazeena Traders (P) Ltd. and Others Vs. Regional Provident Fund Commissioner, Hyderabad and Others, taking the view that casual workers do not fall within the purview of section 1(3) of the Act. Further, it tried, for the first time, to disown the statement made by its authorised representative, Mohanlal, and alleged that it never employed any daily workers on daily wages and the firm should not suffer from the incorrect information given by Mohanlal, which statement was recorded in the absence of the partners. In other words, the firm tried to assert that the information given by Mohanlal in Annexure "X" was incorrect in material particulars. The Central Government by its letter dated 5th September, 1968 declined to reconsider its decision, on the ground that there was no provision in the Act for review. Thereafter, there ensued a long correspondence between the firm and the Regional Provident Fund Commissioner, on the question of implementing the provisions of the Act, and the Regional Provident Fund Commissioner started proceedings u/s 7-A of the Act, but the firm instead of complying with the notice issued to it, has filed this petition challenging the impugned order.

Before stating the contentions raised by the learned counsel for the petitioner, we think it convenient to set out the relevant provisions of the Act having a bearing on the questions to be determined. Section 1(3) of the Act provides, subject to the provisions contained in section 16 for the applicability of the Act to "establishments". Under clause (a) thereof the Act applies to every establishment which is factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed. By clause (b) it applies 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 that behalf. Section 2 deals with definitions. u/s 2(f), the expression "employee" is defined as under:

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

Section 16 exempts the enumerated industries from the applicability of the Act. Section 4 gives to the Central Government the power to add to the enumerated industries in Schedule I. Section 7-A deals with determination of the amount due from any employer under the Act or the Scheme. Section 8 deals with the manner of recovery of the amount due from the employer. Section 19 provides for the appropriate Government delegating any power, authority or jurisdiction exercisable by it under the Act or the Scheme to the officers mentioned therein. Section 19-A confers power on the Central Government to make an order or to give direction, not inconsistent with the provisions of the Act, for the removal of the doubt or difficulty, in respect of any of the matter specified in clauses (i) to (v), and the order of the Central Government, in such cases, is final.

Section 19-A of the Act reads as follows:

19-A -- Power to remove difficulties. If any difficulty arises in giving effect to the provisions of this Act, and in particulars, if any doubt arises as to--

(i) Whether an establishment which is a factory, engaged in any industry specified in Schedule I;

(ii) Whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under Cl. (b) of sub-section (3) of Sec. 1;

(iii) The number of persons employed in any establishment; or

(iv) the number of years which have elapsed from the date on which an establishment has been set up; or

(v) Whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

In support of the petition, the learned counsel for the petitioner contends:

(i) that section 19-A of the Act abridges the freedom of trade and business guaranteed under article 19(1)(g) of the Constitution, inasmuch as it confers arbitrary and un-controlled power on the Central Government to arrive at a decision, left to its subjective satisfaction, without any guidelines, which constitutes an unreasonable restriction;

(ii) that section 19-A of the Act is ultra-vires the Parliament as the conferral of

powers upon the Central Government amounts to delegation of legislative functions;

(iii) that the firm was entitled to be heard "orally", inasmuch as the power to arrive at an adjudication u/s 19-A implies the exercise of quasi judicial functions and, therefore, the Central Government had the "duty to hear" the person affected by its decisions; and

(iv) that casual workers do not fall within the definition of "employee" as contained in section 2(f) of the Act and, therefore, such persons employed on a contract basis, cannot be taken into consideration while determining whether a particular establishment falls within the class of establishments covered by the notification issued u/s 1(3)(b) of the Act.

There is no substance in any of these contentions. The fundamental right of a citizen to carry on any occupation, trade or business under Article 19(1)(g) of the Constitution is not absolute; it is subject to reasonable restrictions which may be imposed by the State in the interest of general public. Clause (h) of article 19, in terms, authorises the State to impose "reasonable restrictions" upon the freedom of trade, occupation or profession in the interest of the general public. The expression "interest of the general public" is comprehensive enough to embrace within itself economic welfare of the community and "welfare of labour". The State may, therefore, undertake legislation to ensure social justice for the labour in an industry, i. e. the labourer should enjoy adequate living wages, provide for payment of compensation to workmen on "retrenchment" or "closure" of an industry in order to mitigate their misery resulting from unemployment, provide for the fixation of "fair wages" by a Board constituted of the representatives of the employer and the employees, even when there is no "industrial dispute"; extend the definition of "employer" or "employee" in order to bring within the purview of the Industrial Disputes Act or the Provident Funds Act employers who engage contractors for doing industrial work.

The Act is a piece of social legislation. From a review of the sections, it would be seen that the Act is essentially a measure for the welfare of the employees, and if the Act applies and a Scheme has been framed for an establishment, the employer is bound to make the contributions as provided for u/s 6. There is statutory liability on an employer to pay the contribution at the rate mentioned in section 6. Stringent provisions have been made for the non-compliance with the requirement of the statute and very drastic powers have been given to the authorities to recover the contribution due from an employer, and for very valid reasons. Though there is a hierarchy of officials, nevertheless it is only the Central Government that has been given the power u/s 19-A to give a direction, not inconsistent with the provisions of the Act, if any doubt arises regarding one or other matters referred to in clauses (i) to (v) and that power is to be exercised when any difficulty or doubt arises in giving effect to the provisions of the Act. The conferral of such power was essentially to ensure the success of the measure. No doubt, section 19-A of the Act makes the order of the Central

Government final. It is equally true that there is no provision for any appeal or representation by the party aggrieved by the order. The Government is also not required to disclose its reasons for making any order. Further; it is true that the matter is left to the subjective satisfaction of the Government. These considerations, however, are not sufficient to warrant the submission that thereby the Government is invested with arbitrary or uncontrolled power, without any guide-lines. The view taken by Bose, J. in *Bharat Board Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others*, striking down section 19-A of the Act, on the ground that it lacks the element of reasonableness and violates the fundamental rights guaranteed by article 19(1)(g) and was, therefore, void under article 13(2) of the Constitution, can no longer be accepted as good law, in view of the later pronouncement of the Supreme Court.

In *Mohmedalli and Others Vs. Union of India (UOI) and Another*, , their Lordships have upheld the constitutionality of the Act as a whole. While dealing with the powers of the Central Government u/s 1(3)(b) Sinha, C. J. speaking for the Court, stated as follows:

It cannot be asserted that the powers entrusted to the Central Government to bring within the purview of the Act such establishments or class of establishments as the Government may by notification in the Official Gazette specify is uncontrolled and uncanalised. The whole Act is directed to institute provident funds for the benefit of employees in factories and other establishments as the preamble indicates. The institution of provident fund for employees is too well established to admit of any doubt about its utility as a measure of social justice. The underlying idea behind the provisions of the Act is to bring all kinds of employees within its fold as and when the Central Government might think fit, after reviewing the circumstances to each class of establishments. Schedule 1 to the Act contains a list of large variety of industries engaged in the manufacture of diverse commodities, mentioned therein. To all establishments which are factories engaged in the industries enumerated in Schedule I, the Act has been made applicable of its own force, subject to the provisions of S. 16, which has indicated the establishments to which the Act shall not apply. The Schedule is liable to be added to or modified so as to include other categories of industries not already included in Schedule I. So far as establishments which do not come within the description of factories engaged in industries the Central Government has been vested with the power of specifying such establishments or class of establishments, as it might determine, to be brought within the purview of the Act. The Act has given sufficient indication of the policy underlying its provisions, namely, that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons. This Court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine

which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees.

The same line of reasoning has to be adopted while adjudging the validity of section 19-A of the Act, without which the Act as a whole would be unworkable. The Parliament envisaged that difficulty may arise in giving effect to the provisions of the Act, and doubt may also arise as to any of the matters enumerated in clauses (i) to (v) therein. The Parliament, therefore, in its wisdom had provided for a forum for the removal of such difficulties. The conferral of such power on the Central Government u/s 19-A to remove difficulties can, by no stretch of imagination, be regarded as uncontrolled or uncanalised. The Act furnishes a complete guide-line, lays down criteria and proper standards, but left the application of these principles and standards to individual cases in the hands of the Executive. There has to be an instrument for its enforcement. Further, when any doubt arises on the existence of certain facts, as to the applicability of the Act, there has to be an adjudication of the dispute. To adopt the language of Sinha, C. J. in Mohmedalli's case (supra) where the discretion to apply the provisions of a particular statute is left with the Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The provisions contained in section 19-A of the Act must, therefore, be upheld as constitutionally valid u/s 19(6) of the Constitution.

The decision of their Lordships in Mohmedalli's case (supra) is an authority for the proposition that the Act does not suffer from the vice of excessive delegation. While dealing with this aspect, Sinha, C.J. observed as follows:

.....the question whether or not a particular piece of legislation suffers from the vice of excessive delegation must be determined with reference to the facts and circumstances in the back-ground of which the provisions of the statute impugned had been enacted. If, on a review of all the facts and circumstances and of the relevant provisions of the statute, the Court is in a position to say that the legislature had clearly indicated the underlying principle of the legislation and laid down criteria and proper standards but had left the application of those principles, and standards to individual cases in the hands of the executive, it cannot be said that there was excessive delegation of powers by the legislature. On the other hand, if a review of all those facts and circumstances and the provisions of the statute, including the preamble, leaves the Court guessing as to the principles and standards, then the delegate has been entrusted not with the mere function of applying the law to individual cases, but with a substantial portion of legislative power itself. Applying those principles which are now well established by quite a number of decisions of this Court, can it be said in the instant case that the legislature had not indicated clearly the principles underlying the legislation and the standards to be applied? In our opinion, the answer must be an emphatic "No"

While it is true that there was no occasion for their Lordships to deal with section 19-A of the Act in Mohmedalli's case (supra), but the Act has been upheld as a

whole. Placing strong reliance on the decision of their Lordships of the Supreme Court in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , the learned counsel for the petitioner contends that section 19-A of the Act is void because it involves delegation of legislative functions. In that case, their Lordships were, dealing with section 37 of the Payment of Bonus Act, 1965 which authorised the Central Government to provide by Order for removal of all doubts and difficulties in giving effect to the provisions of the Act, subject to the qualification that the order should not be inconsistent with the purposes of the Act. Shah J., who delivered the majority judgment, observed:

If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the Legislature to remove, that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority. Sub-section (2) of section 37 which purports to make the order of the Central Government in such cases final accentuates the vice in sub-section (1), since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient to remove the doubt or difficulty, and whether the provision enacted is not inconsistent with the purposes of the Act.

The observations of their Lordships in the majority judgment were not meant to lay down an universal proposition of law. The qualification that the removal of difficulties was "normally" a function of the Legislature, leaves the door open to upholding removal of difficulties clauses, if the Court holds that the impugned law does not fall within the "normal" function of the Legislature. It is not within our province to go into the question any further but we would like to quote from Seervai's Constitution, p. 891, where the learned author criticises the majority judgment, in these words:

It is submitted that the reasons given are unsatisfactory and that the decision denies to the Legislature power to enact provisions which would enable the Act to work smoothly. Legislative "machinery can be set in motion only at stated times and involves considerable delay, factors which may cause grave hardship and prevent smooth working of a comprehensive measure of social legislation.

We are, however, not concerned with all that. Section 19-A of the Act is in two parts. Within the first part, the Central Government has the right and the duty to issue directions of a general nature, if any difficulty arises in giving effect to the provisions of the Act. This is a piece of conditional legislation and the nature of the section shows that the direction issued will be of a general nature, not necessarily having reference to any particular case in hand. The first part envisages what the Delhi High Court observes in *Wire Netting Stores v. Regional Provident Funds Commissioner and others* A I R 1970 Del 143 as a "rule-making power". That is entirely an administrative power exercised by the Central Government to make prospective provisions and orders of general application to

future cases. Under the second part, the Central Government is given power to make a quasi-judicial adjudication by an order based on the existing facts of a particular case. The present case relates to the adjudication of a dispute arising u/s 19-A (ii), whether the establishment owned by the firm is in establishment falling within the class of establishments to which the Act applies, by virtue of the notification u/s 1(3)(b) of the Act. So far as the quasi judicial power of the Central Government to give an opinion by way of a decision on an existing controversy is concerned, the doctrine of excessive delegation of authority has no application. (See: *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,* . We would, however, like to quote from the judgment of the Delhi High Court, where the learned Single Judge distinguishes the decision of their Lordship in *Jalan Trading Co.*'s case (supra) in these words:

Section 37 of the Bonus Act, 1965 was held invalid on the above grounds. With the greatest respect, it may be submitted that the delegation of power u/s 19-A is not of legislative power comparable to that of the Parliament. Secondly, section 19-A gives no power to the Central Government to alter in any way the provisions of the Act. Lastly, by the use of the word "normally" the Supreme Court has not altogether ruled out the legality of the grant of power to the Central Government by the Legislature to remove difficulties in the application of a statute. The delegation u/s 19-A being hedged in by strict conditions and being limited in its application to specific matters, it would appear that the delegation of power u/s 19-A is not to be viewed with the disfavour with which section 37 was viewed by the Supreme Court. Further, section 19-A of the Act is distinguishable from section 37 of the Bonus Act inasmuch as the detailed restrictions on the exercise of the power by the Central Government which are imposed in section 19-A were not to be found in section 37 of the Bonus Act. Lastly, the finality of the order of the Central Government u/s 19-A must be construed to be for departmental purposes only. For, in so far as the orders or provisions made by the Central Government are contrary to the Act, they would be invalid by the terms of section 19-A itself which authorises the Central Government to issue the orders and directions "not inconsistent with the provisions of the Act". The civil Courts, the High Courts and the Supreme Court would always have the jurisdiction to hold such an order of the Central Government as ultra vires the Act.

We respectfully adopt the same view.

It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. The nature of the "duty to hear" has been succinctly stated by Lord Loreburn:

Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many

others, what comes for determination "is a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view.

The dictum of Lord Loreburn is the most frequently quoted statement on the subject. It combined a complete acceptance of the rule requiring a fair hearing as "a duty lying upon every one who decides anything" with an acknowledgment of its practical limitations when applied to administration. (See: Wade's Administrative Law, 2nd Edn., p. 173). Granted that a fair hearing must be given, does it imply a giving of an "oral hearing"? The trend of judicial decisions try to reconcile with the procedure of a Government department with the legal standards of natural justice. In *Local Government Board v. Arlidge* L R 1915 A C 120, Lord Haldane, L. C., stated:

My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to in the spirit with the sense of responsibility of fit tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same.The Minister at the head of the Board is directly responsible to Parliament like other Ministers. The volume of work entrusted to him is very great.... Unlike a judge in a Court, he is not only at liberty but is compelled to rely on the assistance of his staff. When, therefore, the Board is directed to dispose of appeal, that does not mean that any particular official of the Board is to dispose of it..... It is said that the report of the inspector should have been disclosed. "It might or might not have been useful to disclose this report, but I do not think the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to.

This case was a turning-point, representing against the judicialisation of administrative procedure. (See: Wade's Administrative Law, 2nd Edn., p. 175).

The duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute, with the assistance of the well established general principles. In *Board of*

Education v. Rice (1915) A C 179, H L the Board of Education was required to determine dispute between a body of school managers of local education authority of Swansea. In Local Government Board v. Arlidge (supra) the Hampstead Borough Council made a closing order against a house as being unfit for human habitation. In Nakkuda Ali v. M. F. de S. Jayaratne L R (1951) A C 66, the Privy Council had to deal with a textile trader who was deprived of his trading licence without any kind of hearing. The charge against him was that his firm had falsified paying in slips when banking coupons under the scheme of control. The Controller in fact wrote to the trader and offered him the opportunity of explaining himself and of inspecting the documents in the case. The judgment of their Lordships, delivered by Lord Radcliffe, was that there was no ground for holding that the Controller was acting judicially or quasi-judicially. In Ridge v. Baldwin and others L R (1964) A C 40, the chief constable of Brighton had been tried and acquitted of a criminal charge to obstruct the course of justice. Two other police officers were convicted and the Judge twice took opportunities to comment adversely on the chief constable's leadership of the force. Thereupon, the Brighton watch committee, without giving any notice or affording any hearing to the chief constable, dismissed him from service. The House of Lords by a majority 4 to 1, held that the dismissal was void since the chief constable was not given a notice of any charge against him and any opportunity of making his defence. The observations of Lord Reid to the following effect, must be read in the context in which they were made:

....It is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forums used in ordinary judicial procedure, but he had a "a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice....

That was a case of dismissal and the watch committee while exercising its disciplinary powers to inflict a punishment had to observe the rules of natural justice and to give him a fair hearing when it thought that he was negligent in the discharge of his duty, or was otherwise unfit for retention in service. The initial dismissal was not only a breach of the principles of natural justice; it was contrary to the expressed provisions of the statutory regulations governing the police discipline, which in cases of misconduct require notice of the charge and an opportunity for self-defence.

The Central Government was not bound by any rules as to procedure or evidence but it had to conduct the enquiry u/s 19-A according to the requirements of substantial justice. The Delhi High Court in Wire Netting Stores v. Regional Provident Funds Commissioner (supra) has observed that the audi alteram partem rule of natural justice has to be observed by the Central Government before giving any decision u/s 19-A of the Act. A difficulty or doubt may arise in giving effect to the provisions of the Act, as a result of a dispute raised by a

particular employer in respect of a matter specified in clauses (i) to (v) of section 19-A. An order made by the Central Government to decide such an objection would be in the nature of an adjudication of an existing dispute. Such an adjudication is final and binds the person at the instance of whom it is made. It is but just and proper, therefore, that such a person should be heard before his objection is decided upon, but the right of hearing does not extend beyond an opportunity to make a representation. In the present case, there was no failure to observe the rules of natural justice, i.e., the essentials of a fair hearing. The firm had adequate opportunity of presenting its case. The rules of fair-play was, therefore, observed. The duty to hear employer by the rule of audi alteram partem in section 19-A of the Act does not extend to the giving of an oral hearing.

The Act applies by its own vigour to every establishment which is a factory engaged in any industry, specified in Schedule I, subject to the provisions contained in section 16, and in which 20 or more persons are employed, by virtue of clause (a) to section 1(3) and to any other establishment employing 20 or more persons or class of such establishment which the Central Government may by notification under clause (b) of section 1(3) specify. The emphasis is, therefore, on the employment of 20 or more persons. Their Lordships of the Supreme Court in the *Provident Fund Inspector, Guntur v. T. S. Hariharan* A I R 1971 S C 1519 laid down the following test:

In other words, the employment of requisite number of persons must be dictated by the normal regular requirement of the establishment reflecting its financial capacity and stability. It, therefore, follows from this that the number of persons to be considered to have been employed by an establishment for the purpose of this Act has to be determined by taking into account the general requirements of the establishment for its regular work which should also have a commercial nexus with its general financial capacity and stability. This seems to us to be the correct approach under the statutory scheme.

The word "employment" must, therefore, be construed as employment in the regular course of business of the establishment. In that case due to a total failure of rains, the employer had to employ two or three persons on a contract basis of supplying water to the hotel for a short period, their Lordships held that such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the employer. The decision in *Provident Fund Inspector, Guntur v. T. S. Hariharan* (supra) is not an authority for the proposition that casual labour employed in the regular course of business of the establishment, on a contract basis, which is a normal feature, i, e., constituting the normal regular requirement of the establishment, cannot be taken into account as not falling within the definition of the word "employee" as contained in section 2(f) of the Act.

The result, therefore, is that the petition fails and is dismissed with costs. Hearing fee Rs. 100, if certified. The remaining amount of security deposit, if

any, shall be refunded to the petitioner.