

**(1969) 08 MAD CK 0008**  
**In the Madras High Court**

K.R. Subbaier, Tape Factory

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

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**Date of Decision :** 21-08-1969

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 196

**Citation :** (1970) 1 MLJ 497

**Hon'ble Judges :** M.M. Ismail, J

**Bench :** Division Bench

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**Judgement**

M.M. Ismail, J.—The petitioner herein runs a factory from 1942 for manufacturing tapes, lampwicks, etc. with more than fifty persons in his

employ. At an anterior stage, the petitioner disputed the fact that the provisions of the Employees' Provident Funds Act, 1952 (XIX of 1952)

hereinafter referred to as "the Act" would apply to the firm, and the question was settled only when the Central Government passed an order on

29th September, 1958 u/s 19-A of the Act holding that the Act applied to the petitioner's firm. It is thereafter that the petitioner filed Writ Petition

No. 888 of 1959 on the file of this Court challenging the order of the Regional Provident Fund Commissioner, the respondent herein, demanding

from the petitioner the payment of (1) the employer's share of the contribution to the Provident Fund from 1st November, 1952 (the date on

which the Provident Fund Scheme framed under the Act became applicable to the firm) upto 30th April, 1957, (the date when the petitioner was

called upon to pay the contribution by a notice); (2) administrative charges in full, calculated on both the employees' and employer's share of the

contribution to the provident fund (under Clause 39 of the Provident Fund Scheme read with the notification of the Government dated 31st

October, 1952, the percentage of administrative charges payable by the employer was fixed at 3 per cent. of the total employer's and employees' contribution); and (3) damages for default calculated at 6 1/4 per cent. per annum from the date on which the arrears fell due, upto the date of

remittance (under Section 14-B of the Act, a maximum of 25 per cent. of the amount of arrears can be fixed as damages). The petitioner submitted

in the Writ Petition that the claim for the back period was unsustainable and the provisions of the Act and the Scheme did not contemplate such

retrospective levy. Jagadisan, J., following the decision of the Calcutta High Court of a single Judge, Mukherji, J., reported in Aluminium

Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, , upheld the contentions of the petitioner, and directed the issue

of a writ of mandamus against the Regional Provident Fund Commissioner to forbear from making collections from the petitioner by levy of

contributions and management Expenses for the period from 1st November, 1952 to 30th April, 1957. I may here point out that the period from

1st November, 1952 to 30th April, 1957 was called pre-discovery period because the notice was issued only on 30th April, 1957. With regard to

the claim for damages, the learned Judge accepted the contention of the respondent that the claim for damages had not yet been settled, but was

under investigation, and therefore did not grant any relief with regard to it. Against the Judgment of the learned Judge, writ Appeal No. 80 of 1962

was preferred by the respondent herein, and that came to be disposed of by a Bench of this Court consisting of Anantanarayanan, O.C.J. as he

then was and Ramakrishnan, J., by a judgment dated 20th January, 1966. This judgment is reported as Aluminium Corporation of India Ltd. Vs.

Regional Provident Fund Commissioner and Others, ,

2. The learned Judges elaborately went into the provisions of the Act as well as the scheme and came to the conclusion as follows:

It appears to us, on the other hand, with due respect to the learned Judge that there is considerable force in the contrary view which holds that the

main purport of the Act and the Scheme framed thereunder is to bring into existence a compulsory provident fund applicable to all industries to

which the Act applies, with effect from the date when the scheme has been declared applicable to them. The principal duty is laid upon the

employer to put the scheme into operation forthwith, and to make the contributions of both the employer's and employees" for the purpose of

adjusting it against the amount, which they had paid to the fund in advance. In Clause 26 of the scheme extracted earlier, the words used are "

every employee shall be entitled and required to become a member of the Fund." In the context of the Act, the word "entitled " means that the

employee has got an absolute right to get the benefits of the Act. The word " required " implies an obligation on the employer to treat all the

employees, who are qualified and who are not exempted, as members of the fund, and to pay the contribution to the fund (both the employers and

the employees) from the date of the coming into force of the scheme without allowing any interval to lapse either for the awaiting of a notice of

demand from the Provident Fund Commissioner or for clearing a point of doubt or difficulty by getting an order from the Central Government u/s

19-A.

The learned Judges then went into the meaning of the word "required " with reference to the dictionaries and authorities and came to the

conclusion that it meant a mandate or a command. The learned Judges then observed as follows:

In view of the obligatory nature of the provisions of the Provident Fund Act and the scheme framed thereunder, giving no choice to the employer to

postpone the application of its provisions, it appears to us that the word " required" in Clause 26 of the scheme, has to be given a mandatory and

not a directory meaning, and that it implies an obligation whose effect is that every employee who is not exempted, and who, satisfied the required

qualification of service, automatically becomes a member of the fund from the date of the coming into force of the scheme.

The learned Judges again point out as follows:

If there is a rule which casts automatically upon the employer, as the Act does, the obligation to make the contribution, there is no logic in fixing the

date of the notice by the provident Fund Commissioner as the starting point, for making a valid claims. On the other hand, the Provident Fund

Commissioner might have had more than one reason for the delay in the issue of notice. He might not have an adequate staff to make a speedy

investigation in respect of every factory in his jurisdiction, or the investigation

might have taken a long time. In such circumstances, an indifferent or recalcitrant employer, who deliberately ignores the provisions of the Act, cannot urge, that he was awaiting the issue of a notice from the Provident Fund Commissioner, for the purpose of implementing the Act and the scheme in his establishment, and should therefore be given relief for the period prior to the issue of the notice.

A consideration which greatly influenced Mukherji, J., of the Calcutta High Court as well as Jagadisan, J., of this Court was that if a demand is

made in respect of the pre-discovery period, that may prove to be oppressive and harsh in the sense that certain employees might have left the

service of the employer or might have retired or dead. Dealing with that consideration, the learned Judges point out that the question of hardship

which weighed with Mukherji, J., and Jagadisan, J., cannot have much substance subsequent to the amendment which incorporated Section 7-A

into the Act in 1963. The learned Judges pointed out that that section give an opportunity to the employer to press his objections before the

authorities mentioned therein to any claim for payment made against him, and this will include the ground that it is oppressive or unjust in nature. In

their opinion, it is in the course of such an enquiry that an individual case of hardship should be pleaded, and relief obtained, for example, regarding

employees who have left the service during the pre-discovery period, employees who have been dismissed, employees who are dead, and

employees in whose cases the employer did not have an adequate opportunity to recover their contributions. With regard to the claim for

administrative charges, the learned Judges pointed out that though the claim is clearly admissible, it might not be admissible in respect of

employees' contribution which has been given up by the respondent himself. In relation to the question of hardship as well as damages, the learned

Judges again point out as follows:

What transpires from the above is that it will not be legitimate to infer a default, merely because there was no payment by the employer of the

contribution during the pre-discovery period. Each case must be examined carefully with respect to its own facts, for an inference about the

default. Section 7-A of the Act has provided for such an examination in disputed cases. The amendment introducing Section 7-A came after the

passing of the present orders now in appeal. Therefore, we will remit the claim for damages to a fresh consideration by the appropriate authority

u/s 7-A of the Act. Likewise, other difficulties in the enforcement of the demand, for example, claims in respect of persons who have left the

employment or persons who have died or whose whereabouts are not known and persons who have been dismissed, should all be the subject

matter of a detailed claim and consideration by the authority u/s 7-A on application made to it for that purpose, and a fresh opportunity will have to

be given to the petitioner for obtaining such a relief, in view of the enactment of Section 7-A after the orders now in dispute had been passed.

In the result, the learned Judges allowed the Writ Appeal, set aside the order of Jagadisan, J., issuing a writ of mandamus and observed that it will

be open to the petitioner to urge a claim for necessary reliefs, including claims in respect of damages and also in respect of contribution relating to

individuals like those who have left the employment, and so on during the period from 1st November, 1952 to 30th of April, 1957 in an application

to be filed before the appropriate authority u/s 7-A.

3. After the disposal of the appeal, after giving an opportunity to the petitioner the respondent herein passed a fresh order. As far as the damages

are concerned, u/s 14-B of the Act, it has to be determined by the appropriate Government and that section gave a discretion to the said

appropriate Government, the stage when Jagadisan, J., dealt with the writ petition, no orders with regard to damages had been passed and

therefore the learned Judge did not issue any direction with reference thereto. During the pendency of the writ appeal also no order with regard to

damages was passed. It is under these circumstances, the respondent herein subsequent to the disposal of the writ appeal has not passed any

orders with regard to damages, and naturally if and when the appropriate authority contemplated by Section 14-B of the Act comes to pass an

order for damages, that authority will have to take into consideration, the observations of this Court in the judgment in the writ appeal, as well as

any objections that may be put forward by the petitioner herein, On the other hand, the present writ petition praying as it does for the issue of a

writ of Certiorari to quash the order of the respondent dated 8th March, 1967 is in essence confined to the conclusion of the respondent that no

remission with regard to the employer's contribution for the pre-discovery period could be given under the provisions of the Act, and to the claim

for administrative charges. The impugned order is not clear as to what exactly is the basis on which the administrative charges are claimed.

However, Mr. Ramasubramaniam, learned Counsel for the respondent states that the claim for administrative charges is only in accordance with

the judgment of this Court in the writ appeal, namely, only on the amount of employer's contribution for the pre-discovery period and not on the

employees' contribution which was not demanded or recovered. Now the substantial question which arises for consideration in relation to the

impugned order of the respondent is with regard to the demand for payment of the employer's share of contribution to the provident Fund for the

pre-discovery period in respect of all the employees of the petitioner irrespective of the fact whether they had retired or ceased to be in service or

died in between 1st November, 1952 and 30th April, 1967. With regard to these aspects, in the impugned order, the Regional Provident Fund

Commissioner pointed out that for the period from 1st November, 1952 to 30th April, 1957 the employer, namely, the petitioner is statutorily

liable to pay the employer's share of contributions for all persons who became eligible for membership as stipulated in para 26 of the scheme, and

it is immaterial whether the employee has subsequently died or had left service and it is obligatory on the part of the employer to remit his share of

contributions even in respect of such persons. He further pointed out that it was the responsibility of the Regional Provident Fund Commissioner to

see that the amount is paid in respect of persons who had left or died, and that it was open to a member to claim the employer's share of

contributions from the place where he is residing or working and it was the duty of the Provident Fund authorities to pay the amounts to the

members who had left the service. He further pointed out that under the Death Relief Fund Scheme, in respect of persons who had died, the

organisation is obliged to make lump sum payment to the extent of Rs. 500 to the nominees or legal heirs of the deceased even though the

contribution paid by the employer or both put together falls short of Rs. 500. The only complaint of Mr. Manivannan, learned Counsel for the

petitioner is that in passing the impugned order, the Regional Provident Fund Commissioner had not given effect to or acted according to the

injunctions of this Court in its judgment in the writ appeal. Learned Counsel relies upon the passages extracted above by me from the judgment

with reference to Section 7-A of the Act and contends that the learned Judges contemplated that the petitioner can obtain relief in respect of the

employer's share of contribution to the Provident Fund for the pre-discovery period in an enquiry u/s 7-A of the Act. On the other hand, the

Regional Provident Fund Commissioner, the respondent herein, has taken the stand that under the statute, there is no scope for granting any such

relief.

4. For the purpose of understanding and disposing of this argument, it is necessary to refer to Section 7-A of the Act, as well as to the legal

consequences flowing from the application of the provisions of the Act as well as the scheme to a particular establishment. Section 7-A is as

follows:

(1) The Central Provident Fund Commissioner, and Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may by

order, determine the amount due from any employer under any provision of this Act or of the scheme and for this purpose may conduct such

inquiry as he may deem necessary.

(2) The Officer conducting the enquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a

Court under the Code of Civil Procedure, 1908 (V of 1908) for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196

of the Indian Penal Code (XLV of 1860)

(3) No order determining the amount due from any employer shall be made under Sub-section (1) unless the employer is given a reasonable

opportunity of representing his case.

(4) An order made under this section shall be final and shall not be questioned in

any Court of law.

Thus, it will be seen that Section 7-A (1) gives power to the authorities mentioned therein to determine the amount due from an employer under

any of the provisions of the Act. Sub-section (3) of that section imposes an obligation on the authority to give an opportunity to the employer

before determining the amount. I asked Mr. Manivannan, the learned Counsel for the petitioner to bring to any notice any provision in the Act or in

the scheme under which the Regional Provident Fund Commissioner has got power or authority to remit or waive the claim for employer's share of

contribution to the Provident Fund for the pre-discovery period on the ground of hardship or oppressiveness based upon any particular employee

having left the service or retired or died. The learned Counsel was not able to draw my attention to any such provision either in the Act or in the

scheme, and he contented himself by repeating that the learned Judges of this Court when they disposed of the writ appeal contemplated such a

relief being obtained. I am unable to accept this interpretation of the learned Counsel of the Bench judgment of this Court in the writ appeal. I have

extracted enough from that judgment to show that the learned Judges were of the view that when once the factory came within the scope of the

Act and the scheme, from 1st November, 1952 onwards the employer was under a statutory obligation, without any notice from the authority, to

make his share of the contribution to the fund. If that is so, I am unable to agree with the contention of the learned Counsel for the petitioner that

the learned Judges contemplated at that time that there is any power in the Regional Provident Fund Commissioner to waive such an amount which

statutorily the employer is under an obligation to pay, simply because he was of the view that there is any hardship or oppression involved in a

particular case. As I pointed out already, Section 7-A (1) of the Act merely refers to the determination of the amount due under any of the

provisions of the Act, and so long as the employer's share of the contribution is due under the provisions of the Act, Section 7-A can have nothing

whatever to do with the waiver or remission of any such amount, and admittedly neither the Act nor the scheme confers any power on the

authorities to waive any such amount. It is one of the basic principles of administration of law that the creature of a statute will have to function

within the four corners of the statute, and it has no power or authority to do anything outside the scope of the statute, whether by way of imposing an obligation or by way of conferring a benefit or by way of making a remission. In all these matters, it is the statute that defines and circumscribes the power, jurisdiction and authority of the Officer concerned, and once on considerations of hardship or equity, a power to go outside the statutory limits is recognised in any officer, that will mean the negation of the very principle of rule of law. Under these circumstances, and with reference to the observations of the learned Judges in the judgment in the writ appeal, I am unable to hold that the learned Judges were of the view that the Regional Provident Fund Commissioner had power to waive the demand for payment of the employer's share of contribution to the Provident Fund for the pre-discovery period simply on the ground that during that period an employee ceased to be in service, or retired or died. On the other hand, the reasons given by the Provident Fund Commissioner, to which I have already made a reference, for demanding payment of contribution to the provident fund even in respect of those persons who had left the service or died, will be valid, and nothing was brought to my notice by the learned Counsel for the petitioner to show that those reasons were not warranted by the terms of the statute or the scheme as the case may be. As a matter of fact, the respondent himself has rightly pointed out in his order that the High Court order only directed the appropriate authority to consider the reliefs that could be given in respect of those persons who had left the service or died, and as there is no provision in the law to give such a relief in respect of the employer's share of the contribution to the Provident Fund, the respondent was unable to grant any further relief to the establishment.

5. One other aspect must be made clear immediately. The learned Judges who delivered the Judgment in the writ appeal, nowhere in the judgment, state that the employer is not liable to make the contribution under the provisions of the Act or the scheme in respect of an employee who has retired from the service or died or left the service after the scheme and the Act became applicable to the establishment in question. Under these circumstances, I am unable to see any error in the impugned order either with reference to the legal position or with reference to any direction

contained in the judgment of this Court in writ Appeal No. 80 of 1963. I may repeat that all that the learned Judges pointed out is that u/s 7-A of

the Act, the petitioner can put forward all his objections on the ground of hardship or oppression to the claim for the payment of the employer's

contribution" to the provident fund for the pre-discovery period, and nowhere the learned Judges say that the respondent was entitled to or

competent to waive or give up the claim under provisions of the statute or the Scheme. It is too much to contend or hold that the learned Judges

expected the respondent to do something which he cannot do under the statute or the scheme. Consequently, so long as the respondent has

considered the objections of the petitioner and came to a conclusion of his own, which conclusion cannot be said to be illegal with reference to the

provisions contained in the Act and the scheme, there is no justification whatever for interfering with that order. Under these circumstances, the

Writ Petition fails and it is dismissed.

6. I must again point out that it has been specifically conceded before me by the learned Counsel for the respondent that the claim for payment of

administrative charges was only based on the employer's share of contribution for the pre-discovery period and not on the employees' share

which was not demanded or recovered. There will be no order as to costs.