

(2003) 09 DEL CK 0161

In the Delhi High Court

Case No : CW 924 of 1988

Lido Restaurant

APPELLANT

Vs

The Regional PF Commissioner

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7D, 7E, 7F, 7G

Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2003) 7 AD 449 : (2003) 107 DLT 618 : (2003) 71 DRJ 432 : (2004) 1 LLJ 558 : (2004) 2 SLJ 310

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Amit Bhasin, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule has already been issued in the writ petition on 7th October, 1988. Accordingly, this petition is taken up today for final hearing.

2. This writ petition mainly challenges the constitutional validity of Section 7-A of the Employees Provident Fund Miscellaneous Provisions Act, 1952(in short the 'Act').

3. The said Section 7-A of the Act reads as follows:-

"7A. Determination of moneys due from employers.—(1) the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,___

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this

Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry 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 (5 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 (45 of 1860).

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party."

4. While the writ petition was pending in this Court, the Full Bench of this Court has rendered the decision in M/s Jay Priestesses Products Ltd., & Another Vs Union of India & Others reported as 2002 LAB. I.C. 1 which according to the learned counsel for the respondents, Shri R.C. Chawla fully covers the present case.

5. The Full Bench of this Court in M/s Jay Priestesses Products Ltd., & Another(supra) held that Section 7-A of the Act is not vocative of Article 14 merely because of the absence of provision for appeal from the order of Regional Provident Fund Commissioner in view of the subsequent insertion of Sub-section 7D to 7P of the Act and functioning of an appellate tribunal for orders passed u/s 7-A of the Act. The Full Bench in M/s Jay Priestesses Products Ltd., & Another(supra) held that the validity of the provision has also been upheld by the High Courts of Patna, Madras, Bombay and Rajasthan. The Full Bench also noted that after the establishment of the Tribunal the controversy has really become academic.

6. No other plea in support of the writ petition was urged before me.

7. In this view of the matter, the present writ petition is squarely covered by the aforesaid judgment of the Full Bench of this Court in the case of Jay Priestesses Products Ltd (supra) and is accordingly dismissed.