
(1987) 06 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 451 of 1980

Mafatlal Group Staff Association and Others	APPELLANT
Vs	
Reg. Commi. Provident Fund and Others	RESPONDENT

Date of Decision : 25-06-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1987) 89 BOMLR 341 : (1995) 3 LLJ 359 : (1987) MhLj 648

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : Anand Grover, for the Appellant; R.C. Master and M.I. Sethna for Respondent No. 1 and S. Vidhyasagar, for Respondent Nos. 2 to 10, for the Respondent

Final Decision : Allowed

Judgement

H. Suresh, J.—By Act of 16 of 1971 the Employees Provident Funds and Miscellaneous Provisions Act, 1952, was amended whereby the Central Government was empowered to frame a scheme to be called the Employees' Family Pension Scheme for the purpose of providing family pension and life assurance benefits to the employees of any establishment or class of establishments to which the said scheme applies. But, while introducing the said scheme the Government divided the employees into two classes, namely, the employees to whom the Act was applicable but who were in service prior to March 1, 1971 and the employees to whom the Act was applicable but who were in service from and after March 1, 1971. To the former class, an option was given to join the scheme or not to join, while to the latter class the scheme was made compulsorily applicable and they had to join. The petitioner's before me are the persons who have been compelled to join the said Family Pension Scheme and they say that this compulsion is in terms ultra vires Article 14 of the Constitution of India.

2. The relevant provisions in this behalf are as follows:

"6A. Employees" Family Pension Scheme

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees" Family Pension Scheme for the purpose of providing family pension and life insurance benefits to the employees of any establishment or class of establishments to which this Act applied.

(2) There shall be established, as soon as may be after the framing of the Family Pension Scheme, a Family Pension Fund into which shall be paid from time to time in respect of every such employee,

(a) such portion, not exceeding one-fourth of the amount payable u/s 6 as contribution by the employer as well as the employee, as may be specified in the Family Pension Scheme,

(b) such sums as are payable by the employer of an exempted establishment under Sub-section (6) of Section 17, and

(c) such sums being not less than the amount payable in pursuance of Clause (a) out of the employer's contribution u/s 6, as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify.

(3) The Family Pension Fund shall vest in and be administered by the Central Board.

(4) The Family Pension Scheme may provide for all or any of the matters specified in Schedule III.

(5) The Family Pension Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme."

Schedule HI of the Act provides for matters for which provisions may be made in the Family Pension Scheme. The Employees" Family Pension Scheme 1971 came into force with effect from March 1, 1971. The relevant provisions which are necessary to be quoted for the purpose of this petition are in paragraph 3 of the said scheme and which read as follows:

"3. Membership of the Family Pension Fund

Subject to sub-paragraph (3) of paragraph 1, this Scheme shall apply to every employee-

(a) who becomes a member of the Employees" Provident Fund or of Provident Funds of Factories and other establishments exempted u/s 17 of the Act on or after the 1st day of March, 1971;

(b) who has been a member of the Employees" Provident Fund or of Provident Funds of Factories and other establishments exempted u/s 17 of the Act immediately before the commencement of this Scheme and opts to exercise his option under paragraph 4:

Provided that an employee who attains the age of more than (59) years on the date on which he would, but for this proviso have become eligible for membership or have been required to become a member of this Scheme shall not be eligible for membership under this Scheme".

3. If the scheme is undoubtedly beneficial to every employee there would have been no difficulty to all. Similarly, if the option had been given to every one to join or not to join, again there would have been no difficulty. But the difficulty arises when the scheme compels some employees to join, and gives an option for some, not to join. The petitioners have been able to demonstrate before me that the Scheme is not wholly beneficial, as has been claimed by the Government. Essentially, the scheme is in the nature of an insurance. It covers risk. But beyond that it does very little. If an employee lives up to his full serviceable age i.e. upto the age of sixty years, whatever be his contribution to the scheme, he gets only nine thousand rupees, and nothing more. If he dies before that, subject to the number of years he has served and depending upon his salary, his widow and his other legal heirs and representatives would get a certain amount for a certain number of years. In other words, there is no guarantee under the scheme that whatever the employee contributes and whatever is contributed by the employer and the Government would come back to the employee on his retirement, or during his old age, or when he needs it most.

4. The petitioners have pointed out how this scheme would work to the detriment of an employee. Under the scheme there is a table under Clause 32 showing two columns viz., the number of full years contribution paid and the amount payable on attainment of sixty years of age, or earlier retirement. If a person serves for forty years and contributes his share to the scheme for the said period, and despite an equal amount of contribution from the employer and also from the Government, the maximum amount, he would get back on retirement is only Rs. 9000/-. If a person joins the scheme at the age of thirty, the maximum years of service he would put in would be thirty, and in that event he would get back only a sum of Rs. 4,135/-. If any employee dies after the age of superannuation, or after he ceased to be in service, he or his widow would not get anything back from the scheme. In other words, if an employee dies during the period he/she is in service, upto a certain number of years, his/her widow or widower, as the case may be, would get a certain amount for a certain number of years. Clauses 28 onwards provide for the rate of family pension in such cases, and I need not deal with the same.

5. During the pendency of this petition, the petitioners called upon the Government to disclose the amounts so collected by the fund, and pursuant to the directions given by this Court, the respondents have filed an affidavit disclosing the figures. The relevant figures are as follows:

"(Amounts given in Crores)

Year	Employers' Share of Contribution	Employees' Share of Contribution	Govt. Share of Contribution	Total Contribution
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1970-80	26.165	26.165	20.10	72.43
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1980-81	33.07	33.07	24.00	90.11
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1981-82	40.15	40.15	28.00	108.30
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1982-83	46.86	46.86	28.00	121.72
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1983-84	56.87	56.87	28.75	142.49"
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The total interest credited per year for the years 1979 to 1984 is as follows:

"Year Interest Credited

1979-80	15.72 crores
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1980-81	20.97 crores
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1981-82	36.00 crores
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1982-83	48.13 crores
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1983-84	60.95 crores"
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The total number of subscribers claiming Family Pension for the year 1979-84 are as follows:

"Subscribers claiming Family Pension

Year	No.
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1979-80	2899
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1980-81	3792
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1981-82	5838
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1982-83	6243
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1983-84	10920"
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The total disbursement for the same period under the scheme are as follows:

"Year Monthly family pension authorised for payment every year. Total disbursements made every year in the form of from 1980-84 pension The total number of claims made in the lumpsum withdrawal benifit every year for the year 1980-84. The total disbursement made every year in the form of lumpsum withdrawal benefit every year. Life Assurance Benefit (LAB) disbursed every year from 1980-84

(Rupees in lakhs) (Rupees in lakhs) (Rupees in lakhs)

1979-80	5.14	72.67	17.75
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1980-81 15.83 191.23 3.73

1981-82 22.10 215.65 32.67

1982-83 64.94 314.71 19.91

1983-84 144.00 492.89 59.75"

These figures indicate that the Government could amass a considerable amount of money running into about Rupees 142 crores and odd and as against that the disbursement under the scheme come to about Rupees 144 lakhs only, which means that hardly one-tenth of the amount has been distributed amongst the beneficiaries of the Scheme. Having regard to the availability of increased facility for medical and health care, the majority of the employees would survive beyond the age of superannuation, which would further inflate the fund with no corresponding benefit for the employees at all.

6. In the case of Provident Fund Scheme, the employees or their legal heirs and representatives are entitled to get back all that they have contributed and all that stands in their credit. In the case of Life Insurance the insured or his heirs would get the entire amount covered by the policy. But in the case of Family Pension Scheme the employees would only have to hope to die during the period of their service, and the family members would get some relief for certain number of years and nothing more. Per chance he survives subject to the number of years that he has put in, he would get a maximum of Rs. 9,000/- and nothing more. Very often, the employees' contribution alone, exceeds this amount. The trouble with the Government was as to when the scheme was introduced, it was introduced with a laudable objective as a social welfare measure, but with no actuarial guidance and advice in this behalf.

7. This position was apparently realised by the Government and accordingly, recently, in March 1987, the Government secured an Actuarial Valuation Report of the scheme. At the instance of the petitioners a copy of the report has been produced before me. From the report it is clear that in the scheme, today, there are accumulations of staggering balance in the fund. The report was primarily concerned with the inadequacy of the quantum of the benefit available under the scheme against the contribution payable to the fund of the scheme. After taking into account the various data, the report shows that there is considerable difference between actual contribution and actuarial contribution which is in fact much larger than 0.44% and that would explain the huge accumulation of fund. Thereafter the report says that the scheme, as it functions, does not ensure that the amount of contribution paid is at least returned, and the benefit is not related to the contribution at all. The benefit does not even equal in terms of money, to the return of contribution with a realistic rate of interest. Having regard to all these defects the actuarial report suggests alternative methods wherein contribution would be actuarially determined. One does not know as to what the Government has done after the receipt of this report. But the report justifies the criticism that is levelled against the scheme and certainly the

scheme, as it functions today, is not universally beneficial to the employees.

8. Mr. Master, appearing for the respondents, pointed out on the basis of the affidavit filed in this proceedings that this is a measure of social welfare legislation and the Court should not strike it down. In that connection he drew my attention to the statement of objects and reasons which lead to the introduction of this scheme. The relevant part of the statement is as follows:

"The Coal Mines Provident Fund and Bonus Schemes Act, 1948 and the Employees' Provident Funds Act, 1952 provide for the institution of provident funds for employees in coal mines, factories and other establishments. Provident Fund is an effective old age and survivorship benefit but when the employee happens to die prematurely, the accumulations in the Provident Fund are too small to render adequate and long-term protection to his family. With a view to providing long term financial security to the families of industrial employees in the event of their premature death, it is proposed to introduce a Family Pension Scheme for the employees covered under the two Acts, and to create a Family Pension Fund for this purpose by diverting a portion of the employer's and the employee's contributions to the Provident Fund, to which will be added a contribution by the Central Government. Out of the Fund so set up, it is proposed to pay Family Pension at prescribed scales to the survivors of employees who die while in service before reaching the age of superannuation....."

Mr. Master submitted that the Scheme has been framed to fulfill the objects of the directive principles of the State policy and to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Thus the Government concedes that the scheme is essentially a risk oriented scheme framed on principles analogous to insurance and intended to provide life assurance benefits to the family members of the deceased employees. I have no quarrel with any of these objectives set out in this affidavit. Perhaps, the scheme would be more appropriate in the case of employees. Working in an industry where the risk rate is high, such as coal mines. For that reason the scheme could have been selectively introduced. But the acclaimed benefit being not universally true, could any employee be compelled to join such a scheme ?

9. When the scheme was introduced on March 1, 1971 all those employees who were members of Employees Provident Fund immediately before the commencement of this scheme, were given an option to join or not to join this scheme (para 3(b) of the scheme). But the other employees who become members, on or after March 1, 1971 have to compulsorily join the scheme (para 3(a) of the scheme). This dichotomy at once introduces two classes amongst the employees, the one having a choice, while the other with no choice, despite the fact that the scheme is one and the same, and as has now been seen, not universally beneficial. The fortuitous circumstance which favours the former is the specified date when the scheme was introduced. What is the justification for

this disparity? The Government has not been able to give an answer. Nothing has been placed before me as to how an option given to one and compulsion imposed on the other would necessarily promote the object of the scheme. If the scheme was undoubtedly beneficial to every employee, the same should have been made compulsorily applicable to all. But if it was not so beneficial, option should have been given to every employee. Either way, this division which classified the employees into two classes is not based on any rational principle, and whatever principle, if there be any, has absolutely no nexus to the object sought to be achieved by the introduction of the scheme. That is how the classification becomes ultra vires Article 14 of the Constitution of India See D.S. Nakara and Others Vs. Union of India (UOI), . What is the way out ?

10. Here, I would adopt the same line of approach as has been done by the Supreme Court in D. S. Nakara. I do not have to strike down the scheme, as such. It is for the Government to revise and reform; but in the meanwhile so much of the scheme as contained in para 3(a) and so much of the scheme that compels an employee to join the scheme must necessarily go, and will have to be deleted as ultra vires Article 14 of the Constitution of India. In other words in the present case, as the case of D.S. Nakara, it is possible for me to sever the pernicious part of the provisions from the rest of it which is constitutional. Consequently, para 3(b) will have to be suitably altered so as to retain the date of implementation of the scheme, but with an equal option to all concerned, to join or not to Join?

11. I may also mention that in the petition there is a challenge to the scheme based on Article 300A of the Constitution of India. But I must make it clear that the petitioners have not argued on that basis at all and, therefore, it is not necessary to go into that question.

12. I, therefore, pass the following order:

Para 3(a) of the Family Pension Scheme is hereby struck down as ultra vires Article 14 of the Constitution of India. Consequently sub-para (b) will have to be read as follows:

"(b) who is a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted u/s 17 of the Act and opts to exercise his option under paragraph 4:"

Consequently, no deduction can be made for the Family Pension Scheme unless the employee opts to join the same.

In the circumstances of the case, there will be no order to costs.

Order accordingly.