

(1994) 12 RAJ CK 0003
In the Rajasthan High Court
Case No : C.W.P. No. 2791 of 1984

Mahaveer Textiles

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 19A, 7A

Citation : (1995) 2 LLJ 1057 : (1995) 2 WLC 49

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : M.L. Kala, for the Appellant; M.S. Vyas, For Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The petitioner-establishment has filed the instant writ petition under Article 226 of the Constitution of India with a prayer that he should be declared to be entitled for infancy period u/s 16 of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act of 1952") and order passed by the Regional Provident Fund Commissioner, Jaipur (respondent No. 2) dated May 18, 1982 followed by recovery proceedings dated August 17, 1982 Annex. 9 and 10 respectively be quashed. It is further prayed that the order passed by respondent No. 4 in exercise of his powers u/s 19A of the said Act passed on October 23, 1992 Annex. 12 to the writ petition may also be quashed.

2. The aforesaid reliefs are being prayed by the petitioner- establishment on the ground, inter alia that it is an establishment which came into existence on September 3, 1979 by an instrument of partnership-deed Annex. 1 to the writ petition executed between the partners viz. Shri Shanti Lal and Smt. Premi Bai. It is also stated that prior to the commencement of the partnership, Shri

Shantilal was running this concern in his individual capacity as Proprietor w.e.f. March 1, 1978, which ultimately, converted into partnership firm under the name and style of M/s. Mahaveer Textiles, Sojat Road, Pali which was constituted by Shri Shanti Lal s/o. Shri Mangal Chand having 60 per cent share and Smt. Premi Bai w/o. Shri Chanan Mal having 40 per cent share. It is also alleged in para 4 of the writ petition that the petitioner- establishment was never inspected by the Provident Fund Inspector or any other higher authority before the provisions of the Act of 1952 were made applicable to the petitioner-establishment. In the same paragraph, it is alleged by the petitioner-establishment that the impugned order Annex. 9 to the writ petition on May 18, 1992 was passed by respondent No. 2 without affording to the petitioner-establishment a reasonable opportunity of being heard as contemplated under Sub-section (3) of Section 7A of the Act of 1952. According to the allegations made in paragraph 5 of the writ petition, the Unit of the petitioner-establishment known as Mahaveer Textiles is a separate and distinct unit. It has its separate power. Its Accounts are maintained separately. The partners/proprietor of this firm were not the partners in any other firm. The petitioner-establishment has no direct or indirect control on any other establishment and it is an independent concern. All its operations are being done in a quite independent manner.

3. It is also alleged in paragraph 13 of the writ petition that earlier to the instant writ petition, the petitioner-establishment had already filed a writ petition being S.B. Civil Writ Petition No. 2065/82 in which notices were issued to the respondents and an ad interim stay order was granted. In the said writ petition, reply was filed by the respondents and rejoinder to the reply was also filed by the petitioner-establishment. It is further stated that the aforesaid writ petition was withdrawn with liberty to file fresh writ petition. The aforesaid prayer was accepted by the learned Single Judge of this Court vide order dated April 20, 1984 Annex. 13 to withdraw the said writ petition with liberty to file fresh petition.

4. After service of notices, respondents No. 1 to 4 have filed a detailed reply to the writ petition denying the allegations made therein. In reply to the writ petition, it is stated on behalf of respondents No. 1 to 4, that actually the petitioner- establishment has been covered under the provisions of the Act of 1952 by clubbing it with other two Units viz. M/s. Gandhi Textile Agencies and M/s. Shanti Power-loom Factory, which are running in the same premises. M/s Gandhi Textiles was established in the year 1968 and M/s Shanti Power-loom Factory was established in October 1973. The present establishment M/s Mahaveer Textiles along with aforesaid two factories are established in one compound and are engaged in manufacturing coarse cloth by powerloom. There is a common telephone for all the three establishments. The partners of the factory are related to each other. The employees of all the three establishments are utilised in each other establishments mentioned above. According to respondents No. 1 to 4, there is a Unity of ownership, general unity of the purpose, geographical proximity and unity of employment treating all the three

units as one Establishment, is quite justified. The allegation made in paragraph 4 of the writ petition to the effect that no Provident Fund Inspector has ever visited the petitioner- establishment, was denied and it is categorically stated that the Provident Fund Inspector visited the petitioner-establishment on September 18, 1980 and submitted a detailed report to respondent No. 2 on December 3, 1980. The report of the Provident Fund Inspector, Udaipur addressed to the Regional Provident Fund Commissioner (respondent No. 2) on December 3, 1980 as well as confidential Enquiry Report dated October 6, 1980 Annex. R/1 and R/2 respectively are filed alongwith the reply. The allegation made in the writ petition about not affording of reasonable opportunity of being heard under Sub-section (3) of Section 7A of the Act of 1952, was also denied. It is stated that the petitioner-establishment was issued notice giving an opportunity under Sub-section (3) of Section 7A of the Act of 1952 but the petitioner-establishment failed to avail the opportunity, as such respondent No. 2 had no option except to pass an ex parte order on May 18, 1982. It is also averred in the reply that notice directing the petitioner-establishment to appear before respondent No. 2 at Jaipur, was duly served but inspite of notice being served, the petitioner-establishment failed to appear wilfully and deliberately, therefore, according to respondents No. 1 to 4, it is wrong to allege that no opportunity of being heard was afforded to the petitioner-establishment in pursuance of Sub-section (3) of Section 7A of the Act of 1952. It is also brought on record by the respondents by filing reply to the writ petition that the petitioner-establishment itself had admitted the receipt of notice dated April 16, 1982 fixing the date for hearing on April 17, 1982.

5. I have Heard Mr. M.K. Kala, learned counsel for the petitioner as well as Mr. M.S. Vyas, learned counsel for the respondents and critically gone through the material available on record.

6. The main thrust of argument of Mr. M.L. Kala, learned counsel for the petitioner is as follows:

(i) it is argued on behalf of the petitioner-establishment that respondent No. 2 has not given a reasonable opportunity of being heard as contemplated under Sub-section (3) of Section 7A of the Act of 1952, therefore, the ex parte order passed by him u/s 7A of the Act of 1952 is void ab initio and is not sustainable in the eye of law.

(ii) Second argument of learned counsel for the petitioner before me is that in the present case, the Provident Fund Inspector has not visited the petitioner-establishment hence, the order passed by respondent No. 2 even if ex parte order is not sustainable in the eye of law, inasmuch as, there is no material to sustain the order.

(iii) Third argument of the learned counsel for the petitioner is that the petitioner-establishment came into existence on September 3, 1979 by an instrument of partnership deed executed between the parties, which is an independent

establishment and it has nothing to do with the other two establishments i.e. M/s. Gandhi Textiles and M/s. Shanti Power-Loom Factory. According to the learned counsel for the petitioner, prior to the commencement of the partnership on September 3, 1979 Shri Shanti Lal was running this establishment in his individual capacity as a Proprietor w.e.f. March 1, 1978 which was ultimately converted into partnership firm under the name and style M/s. Mahaveer Textiles, Sojat Road, Pali. The respondent No. 2 was under the statutory obligation to compute the infancy period of 5 years at the most from the date of commencement of the present establishment dated March 1, 1978.

7. The aforesaid arguments advanced on behalf of the petitioner are being refuted by Mr. M.S. Vyas, learned counsel appearing on behalf of respondents No. 1 to 4. During the course of argument, Mr. M.S. Vyas, learned counsel for the respondents No. 1 to 4 has invited my attention towards Annex. 11 filed by the petitioner himself along with his writ petition, which reveals that the petitioner himself has admitted about the visit of the Provident Fund Inspector to the Establishment in paragraph 2 of Annex. 11 at page 40 of the Paper-book and has also admitted about the service of notice of hearing on April 27, 1982 before respondent No. 2 but he could not attend due to his own marriage on the same day. The learned counsel for the respondents urged before me that in the present writ petition the petitioner-establishment is guilty of material concealment and has not come before this Court with clean hands, therefore, the equitable relief under Article 226 of the Constitution of India may be refused on this ground alone without any further ceremony.

8. I have given my thoughtful consideration to the argument advanced at the bar and I am of the opinion that in the instant writ petition, the petitioner is guilty of material concealment and has also not come to this Court with clean hands, therefore, the relief prayed for is to be denied on this ground alone.

9. A close scrutiny of Annex. 11 to the writ petition throws a flood of light that the Provident Fund Inspector has visited the petitioner-establishment. In paragraph 4 of the writ petition the petitioner establishment has stated that the premises of the petitioner-establishment was never inspected by the Provident Fund Inspector or any other higher authorities, which is factually incorrect and runs counter to the admission made by the petitioner in Annex. 11 of the writ petition, where he himself admitted about the visit of the Provident Fund Inspector. Secondly, a close scrutiny of the aforesaid Annex. 11 further reveals that notice was issued by respondent No. 2 to the petitioner-establishment fixing April 27, 1982 as the date for hearing alongwith a direction to produce all relevant documents to establish that the petitioner-establishment is an independent unit. Irrespective of service of notice on the petitioner-establishment, he did not care to appear on April 27, 1982 on the pretext that his marriage was to be solemnised on the same day. No material has been brought on record that on April 21, 1982 the marriage of any one of the partners was to be performed. It is not understandable that even if on April 27, 1982 any

one of the partners" marriage was to be performed then he ought to have sent a telegram to the Regional Provident Fund Commissioner, Jaipur (respondent No. 2) informing him about his marriage. The petitioner-establishment did not care to send his nominee to attend the office of respondent No. 2 on April 27, 1982 for the reason best known to him. Irrespective of fact that notice was served on the petitioner- establishment and full opportunity of being heard was afforded to the petitioner-establishment, yet in paragraph 4 of the writ petition, it is alleged that the impugned order was passed on May 28, 1982 without affording a reasonable opportunity of being heard to the petitioner-establishment.

10. The aforesaid averment made in the writ petition further runs counter to his own admission made by the petitioner-establishment in Annex. 11 to the writ petition. This Court may take judicial notice of the fact that ordinarily this Court used to decide lis between the parties on the basis of averment made in the writ petition supported with affidavit and annexures and also on the basis of counter, rejoinder, affidavits filed by the parties. In view of the facts and circumstances of the case, before invoking the extra-ordinary jurisdiction under Article 226 of the Constitution of India the petitioner-establishment was required to come with clean hands and if the petitioner has not come with clean hands, he is not entitled to get equitable relief contemplated under Act 226 of the Constitution of India. In my humble opinion, in the present case, the petitioner has not come with clean hands, therefore, he is not entitled for the relief claimed by him in the present writ petition.

11. Although, in the instant writ petition, the petitioner- establishment is not entitled to get equitable relief under Article 226 of the Constitution of India for the reasons stated above but in my humble opinion, justice should not only be done but it must appear to others that justice has been done.

12. Keeping the aforesaid principle in view, I would like to discuss the arguments advanced by the learned counsel for the petitioner ad seriatim.

13. As regards the first argument of the learned counsel for the petitioner Shri M.L. Kala, to the effect that the petitioner- establishment has not been afforded a reasonable opportunity of being heard, therefore, the impugned order passed by respondent No. 2 followed by recovery proceedings dated August 17, 1982 Annex. 9 and 10 respectively are void ah initio. It is well to remember that such criticism to the impugned order depends upon the terms of the legislation which creates statutory authority to function according to its obligation as laid down in the Statute. If the statutory authority has done all that it was required by the Statute to do, it cannot be said that it has failed in the discharge of the statutory duty. Now, the impugned order Annex. 9 passed by respondent No. 2 of May 18, 1982 is to be tested on the anvil of the proposition of law stated above.

14. A close scrutiny of Section 7A of the Act of 1952 reveals that under Sub-section (3) of Section 7A of the Act of 1952, respondent No. 2 is permitted to pass an order under Sub-section (1) of Section 7A of the Act provided he has

afforded a reasonable opportunity of representing the case to the petitioner-establishment. The second statutory obligation of respondent No. 2 was that in case a reasonable opportunity is afforded to the petitioner-establishment but 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. In order to avoid repetition and to maintain brevity, suffice it to state that in Annex. 11, the petitioner-establishment has admitted about the service of notice for hearing on April 27, 1982 alongwith a direction to produce the relevant documents to prove that the petitioner-establishment is independent and is also entitled to get the benefit of Section 16 of the Act of 1952. The aforesaid notice issued from the office of respondent No. 2 on April 16, 1982 clearly indicates that the petitioner-establishment was directed to appear before respondent No. 2 at 11.00 a.m. on April 27, 1982 calling upon to attend the said inquiry to state its case and produce in his support thereof all evidence, muster-roll, registers, cash-books, vouchers, ledgers etc. relevant to the period in question. The period has also been shown in the said notice Annex. R/3 indicating the amount due for the period. There was a stipulation in Annx. R/3 that if the petitioner-establishment failed to attend the said inquiry, the Regional Provident Fund Commissioner (Respondent No. 2) shall proceed to hold the inquiry in the aforesaid matter on the basis of material available with him and determine the amount accordingly. Respondents No. 1 to 4 alongwith its reply had filed inquiry reported and confidential report Annex. R/1 and R/2 respectively. These two materials i.e. Annx. R/1 and R/2 were on record before respondent No. 2 to dispose of the amount due against the petitioner establishment, if no material is placed in its rebuttal.

15. From the aforesaid discussion, I am fully convinced that the Regional Provident Fund Commissioner (Respondent No. 2) before passing the impugned order dated May 18, 1982 Annx. 9, has fulfilled his statutory obligation as laid down in the Statute. If respondent No. 2 has done all that it was required by law to do, it cannot be said that respondent No. 2 has failed in the discharge of his statutory duty on the date of passing the impugned order dated May 18, 1982 Annx. 9 to the writ petition and in such argument of the learned counsel that the petitioner-establishment has not been afforded reasonable opportunity of being heard does not hold water and is hereby repelled as fallacious.

16. Second limb of argument of the learned counsel for the petitioner is that compliance of the statutory provisions is not sufficient but there must be compliance of natural justice and fair play as well. In my humble opinion, the aim of the rules of natural justice and fair play is to secure justice or to put it negatively to prevent the miscarriage of justice between the parties. In my considered opinion, un-natural expansion of natural justice without reference to

the administrative realities and other facts of a given case, cannot be accepted as a device to hoodwink legal order passed by the statutory authority in discharge of his statutory duty. The principle of natural justice cannot be allowed to be stressed upto finical or fanatical zenith point which instead of advancing justice between the parties, may lead allowing a few fortunate to prostitute the rule of law or the principles of natural justice evolved by the courts under the guise of the principles of audi alteram partem, which mandates that no one shall be condemned unheard. I am satisfied that in the present case, notice of hearing was served on the petitioner-establishment and the petitioner-establishment deliberately and wilfully did not care to appear on that date or send any information either by sending a telegram to respondent No. 2 or sending a representative to inform about the cause which has prevented the petitioner-establishment to appear and produce evidence in rebuttal on April 27, 1982.

17. Reasons for deliberate and wilful absence on April 27, 1982 before respondent No. 2 by the petitioner-establishment are not far to seek inasmuch as, in paragraph 3 of Annx. 11 to the writ petition filed by the petitioner himself in the end of the same paragraph, it is admitted that the present establishment started to recover provident fund from the eligible staff of M/s. Ma-haveer Textiles w.e.f. September 1, 1980 and told the Commissioner that the amount so recovered will be remitted on receipt of the Code Number. It is undisputed and admitted by the petitioner himself that he received Code number from the office of respondent No. 2 and on receipt of Code Number dues amounting to Rs. 8580.50 w.e.f. September 1, 1980 to August 31, 1981 were remitted and it is further admitted that from September 1, 1981 to date, the regular recoveries are being made from the staff and are being remitted monthly towards the provident fund of M/s. Mahaveer Textiles, Sojat Road, Pali (petitioner-establishment).

18. The aforesaid discussion leads towards an irresistible conclusion that M/s. Mahaveer Textiles had started to recover the provident fund contribution from its employees and after recovery, had paid the provident fund dues from September, 1980 and is continuously depositing the provident fund upto date monthly. It is further borne out from the material on record that it is only when the petitioner-establishment was insisted upon to pay dues from March 1978 then it has proposed to contest the coverage under the Provident Funds Act, 1952 by filing a representation Annx. 11 to the writ petition u/s 19A of the Act of 1952. Obviously, this is an afterthought. Had it been a truth that the petitioner-establishment is entitled for 5 years' infancy period u/s 16 of the Act of 1952 w.e.f. March 1, 1978 then it is not understandable as to why the petitioner-establishment started to recover provident fund from its employees in the year 1980 and started to pay the provident fund dues of the petitioner-establishment from September, 1980 and is continuously paying the provident fund dues upto date. Had it been a truth that the petitioner-establishment is entitled to infancy period of 5 years w.e.f. March 1, 1978 then there was no question to pay provident fund dues by the petitioner-establishment from September 1980 and they ought to have refused payment of the provident fund upto March 1, 1983.

In my considered opinion, this claim put-forth by the petitioner in the present writ petition is an afterthought. As a matter of fact, all the three factories viz. M/s. Gandhi Textiles, M/s. Shanti Power-loom Factory and M/s. Mahaveer Textiles have been manufacturing the same products. All the three factories have been functioning in the same compound adjacent to each other. The employees of each establishment are working in each other as and when required. This was the reason due to which the petitioner-establishment deliberately and wilfully avoided to appear before respondent No. 2 on April 27, 1982 in pursuance of the notice dated April 16, 1982 Annex. R/3 issued from the office of respondent No. 2 i.e. the date of hearing on April 27, 1982.

19. For the reasons stated above, the first argument advanced by the learned counsel for the petitioner is not acceptable to me and is hereby repelled.

20. As regards the second argument of the learned counsel for the petitioner based on the basis of allegations made in paragraph 4 of the writ petition to the effect that the petitioner-establishment was never inspected by the Provident Fund Inspector, hence, the Inspector's Reports Annex. R/1 and R/2 cannot be formed the basis of the order passed by respondent No. 2 on May 18, 1982. As already held-in the preceding paragraphs of my judgment that this allegation made by the petitioner in paragraph 4 to the writ petition is falsified by admission made in Annx. 11 to the writ petition where the petitioner himself had admitted about the visit of the Provident Fund Inspector in Para 2 of Annx. 11 to the writ petition. In order to avoid repetition, it is sufficient to observe that once it is admitted that the Provident Fund Inspector had inspected the petitioner-establishment then by necessary implication the correctness of two reports Annx. R/1 and R/2 should be believed to be true and it cannot be said that on the date of passing of the order, there was no material before respondent No. 2 to pass the impugned order on May 18, 1982. It is pertinent to mention that no rejoinder has been filed by the petitioner in reply to the averments made in the return filed on behalf of respondent No. 1 to 4 asserting therein that an opportunity of hearing was afforded to the petitioner-establishment and inspector had visited its precincts and there was material before respondent No. 2 i.e. Annx. R. 1 and R. 2 to pass the impugned order on May 18, 1982 Annx. 9 to the writ petition, hence, the averments made in the reply should be taken to be true. I am not satisfied with the second argument of the learned counsel for the petitioner for the reasons stated above.

21. As regards the third argument of the learned counsel for the petitioner, it is based on factual investigation. It must be taken to be settled law that this Court cannot enter into the disputed question of fact. In view of the finding recorded by the respondent No. 4 vide Annx. 12 to the writ petition, to the effect that the petitioner-establishment has not substantiated their stand that the employees of M/s Mahaveer Textiles are not utilised in other two units viz M/s. Gandhi Textiles and M/s Shanti Powerloom Factory working in the adjacent premises is to be taken to be a finding of fact. Against the impugned order dated May 19, 1982

passed by respondent No. 2 in exercise of his powers u/s 7A(1) of the Act of 1952, the petitioner has filed a representation u/s 19 A of the Act of 1952 which was in existence at that time although later abrogated and repealed by the Amending Act.

22. A careful scrutiny of the representation Annex. 11 reveals that this fact has not been disputed by the petitioner-establishment. Thus, there is no question to go behind the aforesaid finding recorded by respondent No. 4. Nothing has been brought to my notice by the learned counsel for the petitioner that the finding of fact recorded by respondent No. 4 vide Annex. 12 to the effect that there is unity of ownership, general unity of purpose, Geographical proximity and unity of employment to justify treating all the three units as one Establishment, is incorrect. I am fully satisfied of the petitioner-establishment being part and parcel of the covered unit of M/s. Gandhi Textiles set up in 1968 and as such, is not entitled to any fresh infancy benefits. This was the reason that M/s. Mahaveer Textiles the present establishment being part and parcel of the covered Unit, has started to recover provident fund contribution from its employees from the year 1980 and started to pay provident fund dues from September 1980. It is only when the employer was insisted upon to pay the dues from March 1978 by impugned order passed by respondent No. 2, that the present establishment proposed to contest its coverage under the Act of 1952. It is admitted by the petitioner in Annex. 11 to the writ petition that from September 1980 till date, he is continuously paying the provident fund. Thus, in my considered opinion, obviously this is an afterthought.

23. It is also admitted in paragraph 2 of the Annx. 11 to the writ petition by the petitioner himself that the petitioner- establishment has started to recover provident fund from the eligible staff w.e.f. September 1, 1980 and the said amount remitted on receipt of the Code number. The petitioner- establishment has deposited the provident fund after receipt of the Code Number w.e.f. September 1, 1980 to August 31, 1981 and from September 1, 1981 till date, regular recoveries are being made from the eligible staff of M/s. Mahaveer Textiles and are being remitted monthly. These recoveries are being made by the petitioner-establishment from his poor employees who have also civil rights and rule of law is meant for them also, which cannot be allowed to be reduced only on paper and not in reality. In my considered opinion, interference with the impugned order dated May 28, 1982 followed by a recovery proceedings dated August 17, 1982 Annex. 9 and 10 would cause serious prejudice to the poor employees of M/s. Mahaveer Textiles from whom contribution of provident fund is being recovered from M/s. Mahaveer Textiles from September 1, 1980 till date.

24. I am of the opinion, the equity should always guide judicial approach as a great Indian Rishi, Brahspati had said:-

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i.e. is to say, the Court should not give its decision by merely following the letters of law, if the decision is wholly unreasonable, injustice will follow.

25. In support of his last argument, learned counsel for the petitioner has placed reliance on a decision rendered by the Division Bench of this Court in Aditya Synthetics Pvt. Ltd. Vs. Union of India (UOI) and Another, According to learned counsel for the petitioner, since in the aforesaid case of M/s. Aditya Synthetics Pvt. Limited (supra), the petitioner- Company was held to be a separate and independent establishment entitled for the infancy benefit in accordance with the provisions of Section 16(1)(d) of the Act, therefore, on the basis of the aforesaid decision, the petitioner should also be extended the same benefit. The facts of that case are not applicable to the present case. As a matter of fact, in case of M/s Aditya Synthetics Pvt. Ltd. (supra), the Division Bench of this Court, on the basis of the material available on record came to this conclusion that the petitioner-company in that case was a separate and independent establishment, therefore, it was found to be entitled , for the infancy benefits in accordance with the provisions of the Act of 1952 but in my considered opinion, the petitioner-establishment is not a separate and independent unit and being part and parcel of the covered Unit of M/s. Gandhi Textiles set- up in the year 1968, is not entitled to any fresh infancy benefit.

As a result of the afore-mentioned discussion, the instant writ petition is dismissed with costs assessed to be Rs. 500/-. The ad interim stay order passed by this Court on September 6, 1985 is hereby discharged.