
(1993) 12 BOM CK 0012
In the Bombay High Court

Mandovi Pellets Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner for Goa and Another

RESPONDENT

Date of Decision : 16-12-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 2, 7A

Citation : (1994) 68 FLR 1134 : (1995) 1 LLJ 254 : (1994) 1 MhLj 273

Hon'ble Judges : M.G. Chaudhari, J;E.S. Da Silva, J

Bench : Division Bench

Judgement

M.G. Chaudhari, J.—The applicant, Mandovi Pellets Ltd. Workers" Union, through its General Secretary, has applied for permission to intervene in the Writ Petition filed by Mandovi Pellets Ltd., Company against the Regional Provident Fund Commissioner, Goa, and the Union of India. The petitioners are the employers and the applicant is the Union of Workers. The workers represented by the Union are the employees.

2. The Regional provident fund Commissioner (respondent No. 1), passed an order on 25th June, 1992, u/s 7-A of the Employees" Provident Funds and Miscellaneous to as "the Act") applying the provisions of the act to the petitioners" establishment which manufactures iron ore pellets at their factory at Shiroda, Goa. The Commissioner has acted upon the Notification No. GSR 346 dated 7th March, 1962, issued by the Central Government. The said Order has been challenged by the petitioners in the writ petition. According to them, they are not covered by the provisions of the Act. They prayed for quashing of the order of the Provident Fund Commissioner and meanwhile prayed for interim stay of operation of that order. Rule and interim stay was granted on the petition on 3rd August, 1993. By the present application filed on 27th July, 1993, the applicant seeks to intervene.

3. It is the case of the applicant that in the enquiry conducted by respondent No. 1 in the dispute raised u/s 7-A of the Act by the employers, i.e., petitioners, the

applicant was also heard. The applicant Union also led evidence and cross-examined the witnesses examined on behalf of the petitioners. Despite this fact, the Union has not been made a party to the petitioners. Despite this fact, the Union has not been made a party to the petition. The Union contends that the workers having directly participated in the proceedings are vitally interested in the outcome of the petition and as their interests are likely to be affected by the disposal of the petition, they ought to be allowed to intervene. The learned counsel for the applicant, Mr. Rebello, made a statement that the applicant would confine itself to the questions of law and it will not seek to address the Court on merits and that in order that correct provisions of law and all relevant matters are placed before the Court, the applicant deserves to be allowed to intervene. It is submitted that although the dispute is essentially between the employers and the Provident Fund Authority, it is likely or result in consequences which will directly affect the workers. If the contentions of the petitioners are accepted and the order of the Provident Fund Commissioner is set aside, then the petitioner would be deprived of the benefits as may be available to them under the provisions of the Act. The workers therefore, are ultimately interested in seeing that the matters is correctly decided and their interests are protected.

4. The application is seriously opposed by the petitioners (employers). In the affidavit-in-petitioners (employers). In the affidavit-in-reply, it is inter alia contended that the applicant's locus standi to appear before respondent No. 1 was objected to by the petitioners and that the applicant's representatives were examined by the department merely as witnesses and not as parties. Merely because applicant claims that the workers would be interested in the outcome of the petition they cannot be described as either necessary parties or proper parties to this dispute.

5. Mr. Kakodkar, learned counsel for the petitioners, inter alia submitted that the workers have only contingent interest depending upon the Act being found applicable to the establishment of the petitioners and therefore they have no locus standi to intervene. Even if the petition is allowed in favour of the petitioners, all that it will mean is that the Act was found not applicable to the establishment in question. In that event, the workers could not be said to have any right in them which could be divested. Thus their existing interests cannot be said to be likely to be curtailed or taken away. He further submitted that the presence of the applicant was not necessary to effectually and completely decide the controversy arising in the petition between the petitioners on the hand hand the authorities on the other. He submitted that advisedly under the provisions of the act no right is given to the workers to be joined in the proceedings arising u/ s 7-A of the Act. The learned counsel place heavy reliance upon the provisions of Order I, Rule 10 of the CPC and submitted that the same principle governs the present proceedings also.

6. Mr. Rebello, the learned counsel for the applicant, not he other hand, submitted that benefit made available to the workers under the provident Fund

Scheme under the provisions of the Act when applicable, amount to a right having been conferred upon the workers and before such a right is taken away the workers would be required to be heard on the grounds of principles of natural justice. In this connection he submitted by virtue of Section 1(3) of the Act, the provisions of the Act applied to workers governed under the Act by the operation of the law.

7. In the instant case, notice dated 18th December, 1990 was served by the respondent No. 1 upon the petitioners informing them that the petitioners' establishment is brought within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Rules framed thereunder with effect from 1st October, 1982. The notice has pointed out that the petitioners' establishment was classified as "Trading and Commercial". The petitioners were called upon to implement the provisions of the Provident Fund Scheme from 1st October, 1982 and the Family Pension Scheme from 1st December, 1990. A Deposit Linked Insurance Scheme was also directed to be implemented from 1st October, 1982. The notice itself makes it clear that by virtue of Para 26 of the Employees' Provident Fund Scheme, 1952, an employee working in or in connection with the work of the factory/establishment shall be eligible for membership of the Fund.

8. Upon receipt of this notice the petitioners raised a dispute u/s 7-A of the Act. That section inter alia provides for determination of monies due from employers. Under that section, the Commissioner and other authorities mentioned therein may, by order in a case where a dispute arises regarding the applicability of the Act to an establishment, decide such dispute and for that purpose may conduct any inquiry as he may deem necessary. It further provides that the officer conducting the inquiry shall have the same powers as vested in a Court under the CPC for trying a suit in respect of :

- (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; and
- (d) issuing commissions for the examination of the witnesses.

Sub-section (3) is important and it read as follows :-

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

Heavy reliance is placed upon this provision by Mr. Kakodkar to contend that under the Scheme of the Act the enquiry is contemplated only between the employer and the authorities and the workers no way are concerned with and the workers no way are concerned with this enquiry. According to the learned counsel the Scheme is reasonable because the workers can come into the picture only after an establishment is found covered by the provisions of the Act, but till

then they have no say in the matter. In the submission of the learned Counsel, allowing third parties to intervene in this dispute would widen the scope of the enquiry far beyond what is contemplated u/s 7-A to the prejudice of the employer. He therefore says that at the stage of enquiry, there is no lis between employers and employees. The lis is between the employers and the authorities under the Act. The workers would be the persons interested in the result and consequences of the lis, but they have no say in the determination of the lis. The learned counsel submitted that having regard to the provisions of Order I, Rule 10 of the CPC it cannot thus be said that the presence of the workers before the Court in the dispute of aforesaid nature is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the petition. He submitted that notwithstanding the fact that under explanation to Section 141 of the CPC the procedure prescribed under the Code may not be applicable to the proceedings under Article 226 of the Constitution, nevertheless the principle is wholesome and can be adopted and applied without doing any violence to the provisions of the Provident Fund Act. He relied upon a decision of the Supreme Court reported in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, in *Ramesh Hiranand Kundanmal v. The Municipal Corporation of Greater Bombay & Ors.* In this connection. It was held in that case in the context of Order I, Rule 10 of the CPC that a person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally, i.e., by curtailing his legal rights, who can be joined, but a person whose only object is to prosecute his own cause of action cannot be joined. According to Mr. Kakodkar, since no benefit can be said to have crystallized in favour of the applicant, at this stage, they do not fall within this test. It is not possible to agree with this submission because the benefit has already become available to them under the impugned order and it is only after that the impugned order and it is only after that order is set aside by this Court, if the petition succeeds, that the argument could be appreciated.

Mr. Kakodkar next submitted that there is no procedure prescribed either under the CPC or under the Act or Rules permitting intervention by a third party. Moreover, according to the learned counsel, the powers u/s 7-A are discretionary and therefore, the applicant cannot compel his intervention in the dispute.

9. It is true that a plain reading of Section 7-A particularly sub-section (3) thereof would show that the dispute required to be determined u/s 7-A of the Act is primarily confined to the establishment and the Provident Fund authorities and, strictly, speaking, the workers do not figure in that enquiry. As rightly argued by Mr. Kakodkar, they cannot be regarded as parties to the lis which is the subject-matter of determination. From that point of view, it may be argued that the workers have no locus standi. We may not however, be inclined to place such a narrow construction on the language of Section 7-A. The purpose of Section 7-A has to be understood in the total context of the provisions of the Act. The Act is an essential piece of beneficial legislation. It has been enacted provide

for the institution of Provident Funds, Family Pension Funds and Deposit Lined Insurance Funds for employees in factories and other establishments. The definition of "employee" in Clues (f) of Section 2 shows that it means any person who is employed for wages in any kind of work, monthly or otherwise, in connection with the work of the establishment and who gets his wages directly or indirectly from the employer, etc. The Provident Fund Benefit available under the scheme would fall within the definition of wages so earned. The workers could thus be vitally interested in the establishment being covered by the provisions of the Act. According to us it does not follow, from the language of Section 7-A as a necessary consequence thereof that the workers have no right to appear or be heard in support or opposition. The impugned notice issued to the petitioners clearly shows that on the establishment being found covered by the Act, various benefit under the different schemes would be available to the workers. Thus, if the establishment were to be found covered by the provisions of the Act. These benefits will necessarily be available to the workers.

10. That apart, this is not a case which is required to be decided solely upon the plain language of the section or board principles. In this case there is material adduced which show that the workers had actually participated at the enquiry. The minutes of enquiry dated at the enquiry. The minutes of enquiry dated 30th October, 1991, show that a request was made on behalf of the general Secretary of the Worker's Union before the Enquiry Authority for giving an opportunity to put forth/substantiate what he know about the issues on the basis of which the question as to whether the establishment of the petitioners was covered by the Act or not was to be decided. An objection was raised on behalf of the petitioners that the Union has no locus standi. That objection was overruled by the Provident Fund Commissioner holding that the aggrieved parties to the proceedings have to be associated with the proceedings as any decision on the applicability of the dispute between the employer and the Department will have an overriding effect on the employees. The minutes further show that on that day the Secretary of the Union, who was present was permitted to associate ten committee members to represent the workers belonging to his Union. The minutes further show that the representatives of the Company sought adjournment for cross-examination of the Department as well as employees' representatives. In their application dated 16th March, 1992, the petitioners recorded that the Commissioner has also by his order dated 30th October, 1991, allowed the Workers' Union to participate in the said enquiry and led evidence and that the record of the proceedings shows that the representatives of the Union have given oral evidence in the said enquiry and those workers have also been cross-examined by the counsel appearing for the company. The minutes dated 22nd November, 1991, show that Edwin Noronha, Assistant Provident Fund Commissioner, deposed on behalf of the Department and similarly Broker, the General Secretary of the Workers' Union, has also been examined and they were cross-examined. There is ample material to show that the workers had indeed participated at the enquiry. Witnesses on their behalf were also examined and cross-examined. With such

effective participation, it is idle to contend that they merely had the status of witnesses and were not vitally interested in the dispute. That being the position, we are inclined to hold that the workers cannot now be deprived of an opportunity to assist the Court at the hearing of the petition. Mr. Kakodkar submitted that at the best the applicant may assist the counsel appearing for respondents, if so advised, and that in any event the applicant must rely upon the counsel for the respondents to carry the case of the respondents and they cannot be heard to say that the counsel for the respondents may not handle the case properly. Relying upon a decision of the Delhi High Court in *Lakshmi Restaurant, New Delhi v. Regional Provident Fund Commissioner, Delhi & Anr.* 1975 LIC 1186 (Delhi) , it was pointed out that the benefit of the scheme is, not like the grant of bonus or other benefit which can be conferred unilaterally on the workmen by the employer. The learned counsel also relied upon the decision in *The Film Federation of India Vs. Union of India*, . It was held in that case :-

"a legislative enactment is intended to give effect to some policy and implement it. Private litigants or persons who happen to be beneficiaries of such a policy enacted in the form of legislation can really have no say in a matter which is exclusively within the domain of the Governmental activity. It is primarily and wholly for the government to support its own legislation, though in case the Court own legislation, though in case the Court wants some assistance, the Court can permit a party to intervene but that is for the limited purpose of assistance to the Court for deciding the dispute before it. An anomalous situation may arise if a beneficiary is allowed to be joined as a party respondent in a case where if the petition is allowed, the State may be advised not to pursue the matter further, while the party respondent by virtue of being a respondent would have a right of appeal. Thus, an anomalous situation would be created where though the State does not desire to challenge the decision of the High Court, a party respondent would insist upon canvassing the validity of an enactment".

It is argued that in the instant case if the petition is to be allowed and the respondents are satisfied with that decision and do not carry any further appeal, the applicant, if allowed intervene, may, file an appeal to the Supreme Court and that would create an anomalous situation never contemplated by the Act. In our view, the exercise of powers u/s 7-A is discretionary. That discretion is required to be exercised in the light of the facts and circumstances of each particular case. In the facts and circumstances of the case, the workers cannot be said to be person totally unconnected with the dispute. They were indeed allowed to participate in the enquiry. Ultimately, they will be the persons either to gain benefit or to lose benefit under the various schemes depending upon the decision of the petition. Such interested persons are entitled to be heard in the matter to the extent they would be of assistance to the Court to arrive at a correct decision in the Court to arrive at a correct decision in the dispute. It was submitted by Mr. Kakodkar that the enquiry u/s 7-A of the Act was creature of stature and ipso factor, therefore, the workers cannot claim any right of being heard. It must

however be remembered in this connection that there is nothing in the Act expressly prohibiting workers from being heard in the dispute. Thus in our opinion, they would be entitled to be heard through as interveners and not as parties. Any order passed in the dispute after hearing the workers would be binding upon them whichever way the order results in deciding the dispute. In the sense, whether they would be entitled to file an appeal if the order in the petition should be against the respondents, is a question which need not be gone into at this stage. Suffice it to note that Mr. Rebello has stated on behalf of the applicant that the purpose of intervention is only to make submissions on questions of law at the hearing of the petition. It may incidentally be stated that in an earlier petition, being Writ Petition No. 27/86 in connection with the same employers, and the same applicant, this Court ad permitted the applicant to intervene in that petition and it was heard at the final hearing of the petition. That decision has indeed been adverse to them. That goes to show that merely allowing them to intervene would be rather in the interests of justice than to refuse them such permission.

11. In the result, the application is allowed. The petitioners are directed to join the applicant as intervener in the petition by amending the title. It is made clear that the applicant as intervener will be entitled to address the Court only on questions of law at the hearing of the petition. The applicant, however, to pay costs of this application to the petitioner. Amendment to be carried out within four weeks. The applicant shall waive service of the amended petition when being informed of the carrying out of the amendment and will not be required to be served afresh.

12. Application allowed.