

(2006) 10 DEL CK 0102
In the Delhi High Court
Case No : W.P.C. No. 1068 of 1998

Modern Public School Education Society (Regd.) and Another	APPELLANT
Vs	
Presiding Officer, E.P.F. Appellate Tribunal and Others	RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 193, 195, 228
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
1(4), 14B, 7A(1), 7B(1)
Penal Code, 1860 (IPC) — Section 196

Citation : (2007) 2 LLJ 772

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : A.L. Kapur, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This writ petition raises a question whether Employees Provident Fund Appellate Tribunal has power to review

its own order or not.

2. The brief facts relevant for deciding the writ petition are that an appeal was preferred before EPF Appellate Tribunal by the petitioners against

the order of the Provident Fund Commissioner. Vide its order dated October 3, 1997 the EPF Appellate Tribunal allowed the appeal and passed

order, the operative portion of the same reads as under:

The petition is allowed in respect of the amount of Rs. 14,15,176/- only. The amount shall be refunded with 12% interest thereon to the petitioner.

The determination order of the Regional Provident Fund Commissioner, if any relating to the amount noted above is quashed.

3. After three days, the EPF Appellate Tribunal passed the following order:

Judgment typed by the Steno need thorough correction. Portion are left and there are a great lot of typing mistakes. Operation of the order is

stayed. Issue notice to the petitioner to show cause as to why the order dated October 3, 1997 be not reviewed and petition be dismissed

because in fact the Delhi Education Act has no Provident Fund Scheme regarding recognised unaided school.

4. The petitioner raised a preliminary objection stating that there were no typographical errors and the EPF Appellate Tribunal in fact wanted to

review its own order and reverse the same without any basis. It has no power to review its own order. Section 7L of the Employees' Provident

Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") which confers power on the Appellate Tribunal to correct mistakes, cannot

be used to review its own order by the EPF Appellate Tribunal.

5. The application raising preliminary objection was dismissed on November 21, 1997. Although the EPF Appellate Tribunal in its order dated

October 6, 1997 mentioned that certain typographical errors were required to be corrected, but it reviewed its own order and reversed the order

and passed an order on December 2, 1997, the operative part of the same reads as under:

The review is allowed. Order dated October 3, 1997 is recalled. The appeal is dismissed. Order dated November 21, 1997 shall also form part

of this order. The impugned order of R.P.F.C. is confirmed.

6. A comparison of the order dated December 2, 1997 and the initial order dated October 3, 1997 would show that both the orders are all

together different orders. The reasonings are different and the decisions are different. The EPF Appellate Tribunal reversed its earlier order and

passed a new order.

7. By this writ petition, the petitioner has challenged the power of EPF Appellate Tribunal to review its own order. The relevant provisions of EPF

and MP Act describing the various powers of Tribunal are:

7-I. Appeals to Tribunal.-(1) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central

Government or any authority, under the proviso to sub -section (3), or Sub-section (4) of Section 1, or Section 3, or Sub-section (1) of Section 7-

A, or Section 7-B (except an order rejecting an application for review referred to in Sub-section (5) thereof), or Section 7-C, or Section 14-B,

may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under Sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be

prescribed.

7-J. Procedure of Tribunals. -(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers

or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

(2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in Section 7-A and

any proceeding before the Tribunal shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228, and for the purpose

of Section 196, of the Indian Penal Code (45/1860) and the Tribunal shall be deemed to be a civil Court for all the purposes of Section 195 and

Chapter XXVI of the Code of Criminal Procedure, 1973 (2/1974).

7-L. Orders of Tribunal. -(1) A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it

thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with

such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order with a view to rectifying any mistake apparent from the record, amend

any order passed by it under Sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to

appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not

be made under this sub-section unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of

being heard.

(3) A Tribunal shall send a copy of every order passed under this Section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

8. 7-L (1) gives powers to the Tribunal to decide the appeals which are preferred before it, after hearing the parties. The Tribunal has power of

confirming, modifying or annulling the order appealed against or referring it back to the authority with necessary directions. 7-L (2) empowers

Tribunal to rectify any mistake apparent on the record, amend any order passed by it under Sub-section (1). Such a mistake may be brought to the

notice of the Tribunal by the parties to the appeal. The Tribunal cannot make such correction or amendment if the effect of the same is to enhance

the amount due from the employer or increase the liability of the employer, unless employer is heard. The Section provides that this power can be

exercised within a period of 5 years from the date of passing of the order. Such a long period has been provided to exercise this power because

the legislature thought that if there was any factual mistake or calculation mistake apparent in the order, the same could be corrected as and when

mistake came to notice within 5 years. This Section does not provide for review of the order. If the legislature intended that the order could be

reviewed by the appellate Tribunal, legislature would have provided for review of the order also. It is apparent that Section 7-L(2) does not vest

the power of reviewing its own order in the appellate Tribunal. The power is limited and can be exercised only to make corrections which are

apparent on the record. In the garb of this power, Tribunal cannot reverse or recall its own order, even if order is bad in law. In absence of an

express provision in the Act, Tribunal cannot recall or review its own orders.

9. In *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, , Supreme Court considered

the power of review of a quasi-judicial authority and held as under at pp. 276 & 277 of LLJ:

75. The question still remains whether the Tribunal had jurisdiction to recall its earlier award dated June 12, 1987. The High Court was of the view

that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier

award. The High Court has relied upon the judgments of this Court in *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya*,

Sitapur (U.P.) and Others, and Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, wherein this Court has clearly held that

the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to

get over this legal hurdle by relying upon the judgment of this Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others,

. In that case the Tribunal made an ex parte award. The respondents applied for setting aside the ex parte award on the ground that they were

prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex parte award on being

satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the CPC and accordingly set aside the ex parte award. That

order was upheld by the High Court and thereafter in appeal by this Court.

It was, Therefore, submitted before us, relying upon Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal (supra) that even in the absence of an

express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as

misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in Grindlays

Bank Ltd. v. Central Govt. Industrial Tribunal (supra) clearly highlighted this distinction when it observed:

Furthermore, different considerations arise on review. The expression " review" is used in the two distinct senses, namely (1) a procedural review

which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a

review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the

Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, held that no review lies on merits unless a statute specifically

provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected

ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

20. Applying these principles it is apparent that where a Court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do

so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority invested with power of review by express

provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority

having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which

goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered

by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon

the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing,, are some illustrative

cases in which the power of procedural review may be invoked. In such a case, the party seeking review or recall of the order does not have to

substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a

review. He has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiated the

proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter

was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases,

Therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be

recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of

procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial*

Tribunal (supra) it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it

followed that the matter must be reheard and decided again.

21. The facts of the instant case are quite different. The recall of the award or the Tribunal was sought not on the ground that in passing the award

the Tribunal had committed. any procedural illegality or mistake of the nature which Vitiates the proceeding itself and consequently the award, but

on the ground that some matter which ought to have been considered by the Tribunal were not only considered. Apparently, the recall or review

sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring

the power of review on the Tribunal either expressly or by necessary implication.

10. Supreme Court has categorically laid down that review of its own order by a quasi judicial Tribunal is permissible only where there is a

procedural mistake or procedural illegality i.e. a mistake of the nature which vitiated the proceedings itself and consequently the award. However,

Tribunal has no power to review its order on merits.

11. In the present case, the EPF Appellate Tribunal reviewed the order on merits and reversed its own order. While in earlier order, it allowed the

appeal but in reviewed order, it dismissed the appeal.

12. I consider that Tribunal had no power to review its own order on merits. If the Tribunal was wrong on principles of law or propriety, the

opposite party had a right available to challenge the order before this Court. But Tribunal after alleged Realizing that it has passed a wrong order,

had no power to review it and pass a so called right order.

13. In view of my above discussion, I, Therefore, allow the writ petition and set aside the order of the EPF Appellate Tribunal dated December 2,

1997 and the earlier order of the EPF Appellate Tribunal dated October 3, 1997 stands restored. However, since the Tribunal had reviewed its

own order and for that reason the respondent did not get the opportunity to challenge the order dated October 3, 1997, the respondent would be

at liberty to challenge the illegality, if any, of the order dated October 3, 1997 by way of a writ petition and such a writ petition shall not be

considered barred by delay and laches.