

(2018) 03 OHC CK 0012
In the Orissa High Court
Case No : W.P.(C) No.12171 of 2005

Ms. Lotus Chemicals Pvt. Ltd.	Vs	APPELLANT
Asst. Provident Fund Commissioner .Compl. Rourkela		RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions of the Act, 1952 — Section 3A, 7A, 7I, 7Q, 14B
Code of Criminal Procedure 1973 — Section 30, 32
Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 7
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 03 OHC CK 0012

Hon'ble Judges : SUJIT NARAYAN PRASAD

Bench : Single Bench

Advocate : Laxmidhar Pangari, B. Jena, S.R. Pani, R.R. Sahoo, P.K. Parhi, D. Rath

Final Decision : Dismissed

Judgement

S. N. Prasad, J.Â

1. This writ petition is under Article 226 and 227 of the Constitution of India for quashing the order dated 31.05.2004 passed by the Asst. Provident

Fund Commissioner (C), Rourkela under Annexure-5 and the order dated 24.05.2005 passed by the E.P.F. Tribunal under Annexure-10 and stay the

further proceeding of the Certificate Case No.10 of 2005 dated 07.04.2005 during pendency of the writ petition.

2. Brief facts of the case of the petitioner is that the petitioner- establishment is a manufacturer ofÂ SodiumÂ Sulphate (Yellow) and Sodium

Dichromate (Hydrous & Anhydrous) since last 13 years from the date of filing of the writ petition and is having a permanent E.P.F. Code No.

OR/7009. The joint squad consisting of the Enforcement Officer, SRO, Rourkela

(EPFO) and the Insurance Inspector, ESIC, Rourkela conducted a joint inspection of the petitioner-establishment on 07.03.2003 and on physical verification it was allegedly found that 19 workers engaged for the work of the establishment have been allegedly evaded from payment of EPF dues from 03/1994 and as a result they were not getting the EPF benefits since their date of eligibility, hence a proceeding under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions of the Act, 1952 was initiated in which the authorized representative of the petitioner appeared and submitted records including balance-sheet for the year 2000-01 and 2001-02 to establish that there has been no evasion of employees and no EPF dues whatsoever has been evaded. The authorized officer has passed the order under Sub-section 3A of Section 7A of the EPF and M.P. Act, 1952 imposing EPF dues of Rs. 4,50,808/- assessed for the period from 03/1994 to 04/2004 along with interest under Section 7Q of the Act amounting to Rs. 1,83,568/- for the period from 07/1997 to 04/2004. According to the petitioner, the order passed by the EPF authority under Section 7A is without any basis and even though it was closed due to illegal stoppage of work/strike by the worker since 16.03.2001 and even on the date of inspection i.e. on 07.03.2003 but without appreciating this aspect of the matter, the order has been passed under Section 7A of the EPF and MP Act, 1952. It is the further case of the petitioner that he has preferred appeal against the order passed by the EPF authority under Section 7A being ATA No.397/(10)/2005 but the same has been dismissed on the ground of limitation and as such according to the petitioner he has been deprived from a valuable right by its non-consideration by the appellate tribunal, hence this writ petition.

3. Learned counsel for the petitioner while assailing the order passed by the appellate authority has relied upon the judgment rendered by the Honâ??ble Allahabad High Court in Civil Misc. Writ Petition No.66766 of 2005 decided on 07.07.2006 on the issue of dismissal of appeal by the Tribunal and to substantiate the argument that even after dismissal of the writ petition, the High Court under Article 226 of the Constitution of India has got wide power to exercise it in consideration of the issue on merit.

4. The opposite parties have appeared and filed counter affidavit inter alia therein it has been stated that there is no infirmity in the order passed by the

competent authority in exercise of power conferred under Section 7A of the Act, 1952 which has been passed after providing ample opportunity of

hearing to the petitioner-establishment, however the petitioner-establishment has appeared intermittently and not produced the entire record as

required, as such the authority having no option but to decide the issue on merit by adopting the principle of best assessment basing upon the available

records considering the fact that the Act 1952 is the beneficial legislation and also considering the fact that the petitioner-establishment is trying to

delay the matter by not appearing or not producing the documents. He submits that even the petitioner-establishment has not followed the statutory

right to prefer an appeal before the appellate tribunal as conferred under Section 7-I of the Act, 1952 since it has been filed after delay of 260 days,

hence the Tribunal has rightly rejected the appeal by giving the reason beyond the period of 120 days limitation as provided under the statute cannot be

relaxed, hence according to him there is no infirmity in the order passed by the appellate tribunal. He further submits that when the petitioner has

defaulted in making payment even in spite of order under Section 7A as well as 7Q of the Act, 1952, then a certificate proceeding has been initiated to

make recovery so that it can be paid in favour of concerned workers. On the basis of such submission, it has been submitted that this Court may not

interfere with the order passed by the authorities.

5. Heard the learned counsel for the parties and on appreciation of the rival submission, it is evident that the petitioner-establishment is registered under

the provision of EPF & MP Act, 1952 after having granted EPF Code No. OR/7009, as such the petitioner is liable to comply in respect of all eligible

employees as per the provision of the Act, since the date of eligibility. The petitioner-establishment since was not carrying the provision as stipulated

under the Act by not depositing the contributions under the EPF, hence a inspection was conducted by the joint squad by visiting the establishment on

7.3.2003 and on physical verification it was found that a good number of workers engaged for the work of the establishment, were not getting the

benefit of EPF, since their date of eligibility and as such the Squad has submitted a report and on its receipt, the petitioner-establishment was called

upon to show cause for violation of statutory rules vide letter dated 21.05.2003, whereby and where under the petitioner- establishment was directed

to submit its reply within 7 days of receipt of the same. The notice issued upon the petitioner-establishment was received on 26.05.2003 but no reply

was submitted within the given time, as such the action under Section 7A of the Act, 1952 was initiated vide decision taken by the authority on

6.6.2003 for determination of dues in respect of the reportedly evaded employees wherein the employer was afforded opportunity to represent the

case on 27.06.2003, the date fixed for hearing by the then Asst. Provident Fund Commissioner, the case was adjourned on 28.07.2003 and thereafter

to 19.08.2003, due to non-appearance of anybody, accordingly the summon under Section 30 C.P.C. was issued to enforce the attendance of the

employer/any authorized representative in the proceeding. The case was listed for hearing on 26.08.2003 and was rescheduled to 09.10.2003 and on

09.10.2003, none appeared nor any communication has been received by the petitioner-establishment, hence summon under Section 30 C.P.C. was

issued to enforce the attendance of employer/establishment on 07.11.2003, however on the said date a time petition was received from the Manager

of the establishment seeking 15 days time, thereafter the matter was adjourned on 28.11.2003 by issuing summon under Section 32 C.P.C. to enforce

the attendance and in pursuance of the summon issued under Section 32 C.P.C. and in pursuance to the same, even then none appeared nor any

written submission was received, hence the fine amounting to Rs.2,000/-was imposed, the attachment order was issued to the Bank and show cause

for warrant of arrest under Section 32 of the C.P.C. was also issued, the matter was adjourned to 23.12.2003, on the said date one Sri Deepak

Mohanty, authorized representative appeared and submitted that he would produce all records on the next date, he has also requested for a copy of

the names allegedly evaded employees so that he could check up his records. The said prayer has been acceded to and the hearing was adjourned to

13.01.2004, on that date Sri Deepak Mohanty had appeared and submitted the Balance sheet for 2000-2001 & 2001-2002. The establishment was

advised to produce Balance sheet for 2002-2003 but he had not come up with any other records for which he sought for one final opportunity.

Accordingly, the next date was fixed on 13.02.2004, on that date none appeared nor any written communication was received.

It is also evident from the order passed under Section 7A that an undertaking was given by the establishment, if anybody will not appear and unable to

produce all records on the next date, Provident Fund Officer can decide the case *exparte* and put his signature. Accordingly, the EPF authority in

absence of available documents which was not appropriate for assessment has ordered the establishment to produce all record or else the case shall

be decided *exparte* with all consequence lying upon the establishments. Accordingly, the case was adjourned to 26.03.2004, on that date Sri Deepak

Mohanty had appeared and submitted a written brief that report regarding evaded employees found is totally false and fraudulent. He has submitted

that the establishment had not deposited requisite due, due to heavy financial crisis and about why returns not deposited, it was answered by the

establishment that there was no staff during the strike period and documents could not be collected. The authority had directed the establishment to

submit Balance Sheet for 2002-03 as well as proof of closures if any, which Mr. Mohanty agreed and has submitted the balance sheet for 2002-03 on

22.04.2004 but closure proof has not been submitted.

6. The members of the Squad team has appeared on 10.05.2004 but none appeared for the establishment. The team has submitted that he has

submitted a correct report and the authority after considering the fact that none was there had posted the case *exparte* and considering the scope,

spirit and purpose of the EPF and MP Act, 1952 and relying upon the judgment rendered by the Patna High Court in the case of Meghdoot Cinema

vrs. RPF Commissioner (1988) 57 FIR (SOC) 7:1987, wherein it has been held that if an establishment failed to avail of the opportunity afforded under

Section 7A, the authority concerned could take a decision on the basis of available material, accordingly, the Asst. Provident Fund Commissioner

applying his mind has assessed the quantum for the period from 03/1994 to 04/2004 directing the establishment to deposit a sum of Rs.4,50,808/- and

also the interest @ 12% per annum under the provision of Section 7Q. The petitioner has assailed the said order under Section 7-I but the same was

rejected on account of delay of 260 days. Learned counsel for the petitioner has assailed the order passed under Section 7A as well as 7I on the

ground that he has not been provided opportunity of hearing, as such prayed to exercise the power conferred to this Court under Article 226 of the

Constitution of India.

7. This Court after considering the prayer and going across the material available

on record, is of the view that a man cannot be remediless and it has to be adjudicated on merit where in the instant case, the petitioner after loosing from the authority under Section 7A of the Act, 1952 has approached to the appellate authority in exercise of power has passed order under Section 7I but the same has been dismissed on the ground of limitation and as such both the orders have been challenged, hence this Court has decided to hear the matter on merit for its adjudication and detail hearing was done in which the learned counsel for the parties have argued their cases at length and on appreciation of their argument, this Court thinks it appropriate to decide the case by critically examining the order passed under Section 7A vis-à-vis 7I of the Act, 1952.

8. This Court thinks it proper to see the legality and propriety of the order passed under Section 7I which has been dismissed by the appellate authority under the ground of limitation. It is not in dispute that if a statute provides the provision of appeal it has to be adhered to. It is also not in dispute that the EPF and MP Act, 1952 which is a Central legislation having been provided under Section 7I to assail the order passed under Section 7A, 14B. The procedure for filing of appeal has been provided under the provision of Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, wherein it has been provided under Regulation 7(2) that the appeal may be filed within 60 days from the date of issuance of notification/order, provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring appeal within the prescribed period, may extend the said period by a further period of 60 days, meaning thereby the appeal is to be filed before the appellate Tribunal within a maximum period of 120 days subject to its condonation and beyond that it cannot be extended. It is settled that if any legislation has been provided, it has to be followed in its strict sense and if there is specific time period framed in the legislation to entertain an appeal, the authorities concerned are not supposed to extend that period by assuming the power conferred under the Limitation Act, 1963. Here in the instant case, the maximum period of filing an appeal is 60 days, subject to its condonation for a further period of 60 days, hence the condonation is only to be done for maximum period of 60 days, which suggests that the provision of Limitation Act, 1963 will not be applicable.

9. It is settled position of law that the court of law or the Tribunal is supposed to follow the statutory provision and it cannot be interpreted, if there is no ambiguity and it is settled that the things is to be done as per the statutory provision, hence applying the said principle, it is the considered view of this Court that the Tribunal has not committed any error in passing the order under Section 7-I by rejecting it, since appeal was preferred after delay of 260 days, hence the Tribunal is having no power to condone the said delay period, in view of the provision of Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 as discussed herein above. This Court is of the further view that the petitioner has assailed the order passed under Section 7A and the certificate proceeding, as such in exercise of power conferred under Article 226 of the Constitution of India, it will be in the ends of justice to enter into the merit of claim of the petitioner to look into the legality and propriety of the order passed under Section 7A of the Act, 1952 otherwise the petitioner will be deprived from the adjudication of the issue which he has raised in this writ petition, hence this Court has thought it proper to go into the legality and propriety of the order passed under Section 7A of the Act, 1952, which is also one of the prayer in the instant writ petition.

10. It is admitted fact as would be evident from the order passed under Section 7A that the petitioner-establishment has been subjected to a proceeding under Section 7A of the Act, 1952 for making default of deposit of statutory deduction in the EPF account of the workmen for the period from 03/1994 to 04/2004. The petitioner-establishment has been noticed, asked to file response to the show cause with a direction to come out with the documents to rebut the report submitted by the Joint Squad regarding applicability of the Act and non-deposit of the statutory amount in the EPF Account of the concerned workmen but the petitioner-establishment has not produced the entire documents and also was not diligent in pursuing his case before the authority in spite of the repeated adjournments having been granted by the authority, not only that the summons were issued under Section 30 and 32 of the C.P.C. for securing their presence and for calling upon the relevant documents but the entire documents as required by the authority has not been submitted on the plea that the strike is going on.

11. It is the settled position of law that if anything come against any aggrieved

parties on the basis of the fact finding report and if the notice is being issued upon him, it is upon him to deny the allegation on the basis of the relevant documents but here the petitioner has not followed the said position of law by not producing the relevant documents to satisfy that the provision of EPF Act has not been flouted rather the petitioner has tried to evade in producing the relevant documents and as such the authority has come to conclusion that the petitioner-establishment has flouted the statutory provision which ultimately affects the spirit of the statute, for the purpose for which has been enacted by the Parliament which is by way of beneficial legislation and for that purpose the authority has been empowered to conduct an enquiry and to take penal action for compliance of the provision as contained therein although subject to the opportunity of hearing to them.

12. Learned counsel for the petitioner has submitted that he has not been provided with adequate and sufficient opportunity, as such the order passed under Section 7A is not sustainable but on the basis of the material available and the order passed under Section 7A, the contention of the learned counsel for the petitioner is absolutely contrary, since so many adjournments have been granted, documents has been called upon but it is the petitioner-establishment who has not diligently pursued the matter by not producing the relevant documents, hence whatever the documents was available with the E.P.F. authority basing upon the enquiry report the order has been passed inflicting liability upon the petitioner holding therein that in defaulted in making statutory deposit in the EPF Account of the concerned worker, hence passed the order.

13. According to the considered view of this Court since the EPF is the beneficial legislation and has been incorporated for the purpose of benefit of the poor class of people and from the order, it appears that the statutory deduction has not been made since the month of March, 1994 till April, 2004 which has come on the basis of the report submitted by the Squad team, as such the provision has seriously been flouted by the petitioner-establishment, hence the authority in exercise of power under Section 7A has passed the order on 31.05.2004.

14. It is settled that the issuance of writ of certiorari can be exercised only if there is error apparent on the face of record or if the order is without jurisdiction then only the High Court sitting under Article 226 of the Constitution

of India is supposed to interfere, but after going through the material available on record, this Court finds that there is no error apparent on the face of record and the order is also within the jurisdiction which was passed under Section 7A of the Act, 1952. Reference in this regard may be made to the judgment rendered by Honâ??ble Supreme Court by its Full Bench in the case of Syed Yakoob Vrs. K. S. Radhakrishnan and others reported in AIR 1964 SC 477 wherein at paragraph-7 their Lordships have been pleased to hold as follows:-

â??7.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the

ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.â??

I have also perused the judgment rendered by the Honâ??ble Apex Court in the case of Swaran Singh and another vrs. State of Punjab and others reported in (1976) 2 SCC 868, their Lordships discussing the power of writ court under Article 226 for issuance of writ of Certiorari has been pleased to hold at para-12 and 13, that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals.

A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from Appellate jurisdiction. The writ jurisdiction can extend only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evident which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law, a pure error of fact, however grave, cannot be corrected by a writ. In another judgment rendered by the Honâ??ble Apex Court in the case of Heinz India Private Limited and another vrs. State of Uttar Pradesh and others reported in (2012) 5 SCC 443, their Lordships has been pleased to hold at para-66 and 67, which is being quoted herein below:-

â??66. That the Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant â??the feel of the expertâ? by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a

reasonable on evidence and whether such findings are consistent with the laws of the land.

67. In *Dharangadhra Chemical Works Ltd. vrs. State of Saurashtra* reported in AIR 1957 SC 264, this Court held that decision of a tribunal on a

question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is

shown to be totally unsupported by any evidence.

15. Accordingly and considering the limited scope conferred to this Court under Article 226 in the matter of issuance of writ of certiorari, it is the

considered view of this Court that the order passed by the authority under Section 7A, needs no interference. In view thereof, the order

passed by the authority under Section 7A is declined to be interfered with. In consequence of this finding, this Court

also declines to interfere with the certificate proceeding. In the entirety facts and circumstances, the writ fails and is dismissed.