
(1984) 03 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.P. No. 528 of 1982

Nathulal Goverdhan

APPELLANT

Vs

Regional Provident Fund Commissioner, M.P., Indore and
another

RESPONDENT

Date of Decision : 27-03-1984

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(h)

Citation : (1984) JLJ 658 : (1984) MPLJ 340

Hon'ble Judges : P.D. Mulye, J;M.D. Bhatt, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; A.H. Khan, Govt. Advocate for State,
for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.

The petitioner, who is now an unemployed mill-hand, has filed this petition under Article 226 of the Constitution of India with a prayer that an appropriate writ be issued against the respondents to pay the amount of the Provident Fund to all the employees including the petitioner, of the mills taken over by the National Textile Corporation, who have not been paid their full dues on the ground that the employers have not paid certain contributions.

Facts giving rise to this petition may be stated, in brief, thus: The petitioner was employed with M/s. Kalyanmal Mills, Ltd., Indore, in its Weaving Department (Seal Khata) since 1939. In the year 1952 when the Employees' Provident Fund Scheme was applied to the said Mills, the petitioner was also covered under the said scheme and was given benefit of the same. The petitioner's Provident Fund Membership No. was MP-3612. His contributions were regularly deducted from November, 1952 upto the date of his retirement on 21-12-1980.

On his retirement from service the petitioner was entitled to payment of the full

amount of his provident fund by the Regional Provident Fund Commissioner, Indore. However, when the payment was made, the petitioner was not paid the full amount due to him. He was told that the employer has not deposited employee's contribution for 17 months and employer's contribution for 26 months during 1970-71 and 1972-73. The petitioner was, therefore, told that the amount would not be paid until it is realised by the Regional Provident Fund Commissioner from the employer. The undertaking of M/s. Kalyanmal Mills Ltd., was nationalised under the Sick Textile Undertakings (Nationalisation) Act, and its ownership was vested in the National Textile Corporation, with effect from 1-4-1974.

According to the petitioner there are several employees of Kalyanmal Mills and other nationalised textile mills in Indore who have not been paid their full amount of provident fund on the basis that certain amount towards contribution was due from the employers. The petitioner along with this petition has annexed a list of employees of M/s. Kalyanmal Mills, Indore and of M/s. Indore Malwa United Mills Ltd., which has also been taken over by the National Textile Corporation, who have been deprived of the full amount of the provident fund (Annexures A and B),

Further according to the petitioner though he has been knocking at the doors of the respondents for getting relief right from the time of his retirement, he has not been paid his dues as would be apparent from the copies of the correspondence filed by him along with this petition. Therefore, according to the petitioner the respondents cannot avoid payment of provident fund dues on the excuse that they have not been able to recover certain contributions from the employers. Further according to the petitioner the purpose, intent and scheme of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 shows that the amount to the employees towards provident fund cannot be made dependent on the payment of various contributions by the employers as it gives ample power to the respondents to realise the amount from the defaulting employers. Hence, according to the petitioner, the employees cannot be penalised for neglect or failure of the respondents in realising the contributions due from the employers with the result that withholding of payments by the respondents is illegal.

The respondent No. 2 The Central Provident Fund Commissioner, New Delhi, has not filed any returns nor anyone put appearance in this Court on his behalf.

The respondent No. 1 The Regional Provident Fund Commissioner, M.P., Indore in his return has admitted that there are several employees of Kalyanmal Mills and other National Textile Corporation Mills who have not been paid their full amount of provident fund as their employers have not deposited the due provident fund contribution in respect of those employees in spite of action taken by the respondent No. 1 as provided under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Schemes framed thereunder against the defaulting employer. It is further stated that the respondent No. 1

has been exploring all possibilities to get settlement of the cases. But as this is a self financing fund and unless the amounts payable are received from the employers the payment cannot be made to the ex-employees in respect of the arrear period i.e. the period during which the employer has not remitted the amount. Further according to this respondent the said Provident Funds Act has no-provision making it obligatory on the respondents to pay the provident fund money in cases where dues have not been paid by the employer.

Further according to this respondent No. 2 after these mills have been taken over by the Government of India vide Sick Textile Undertakings (Nationalisation) Act, 1974 some compensation was awarded by the Government of India to each such national textile mill for disposal of all the liabilities of the National Textile Corporation Mills for the pre-take-over period through the Commissioner of Payments appointed by the Government of India. Accordingly claims in respect of each National Textile Corporation Mill were filed by the respondents before the Assistant Commissioner, of Payments, Ahmedabad, but no money was received from the Commissioner of Payments. The reasons assigned for the non-payment of the amounts of claims have been shown to be that no surplus amount for the payments is available (Annexure R1). Further according to this respondent, respondent No. 1 had written to respondent No. 2 for making payment of at least employees' share out of special reserve fund out of sympathy and to take up the matter with the Government of India with a view to giving some relief to the petitioner and other persons. Thus, in short, according to this respondent it is not obligatory upon them to make the payment although they have not recovered the same from the employers.

In a way this petition which can be included in the category of public interest litigation, the scope of which has been elaborately considered by the Supreme Court in its judgment reported in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , has interest of so many poor people who have toiled hard for their wages, with a pinch in their stomach is involved because in many cases it is found that the employers are not keen to remit the amount to the Provident Fund Commissioner, deducted from the wages of these workers nor are they willing to remit their share also which they are so bound under the said Provident Fund Scheme. It is unfortunate that in this petition the respondent No. 2 the Central Provident Fund Commissioner, New Delhi, has not cared to file the returns or put in their appearance at the hearing of this petition especially when interest of thousands of workers is at stake because of the failure of their employers who have been utilising this money to which they are not at all entitled, for their personal interest.

The Employees' Provident Funds and Family Pension Fund Act, 1952 is a piece of Social Security enactment. Freedom from want and security against economic fear is one of the fundamental needs of our country. The Constitution guarantees to all people of India inter alia social and economic justice, but this has yet to be secured by peaceful social and legislative steps, as it has been aptly said that "it

is the function of an ideal welfare State to give to every citizen the opportunity of earning his living and freedom from fear especially of economic (sic) which can involve physical and even moral ruin." The provisions of our Constitution would reveal the objectives which the Union and the State Governments have to keep in view in the administration of the country and take the legislative steps desirable to lay the foundations of the social security against certain risks to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with his fellows. In a modern State it is of utmost importance to eradicate poverty, unemployment and disease. As a matter of fact, security of employment, security of income, and security against ill-health can only be assured through a system of social assistance schemes.

The object of this Act appears to be to make some provision for the future of the industrial worker after he retires or for his dependants in case of his early death. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India the ideal has not been achieved in real practice though there is also similar Act known as the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948. These legislations have been made to make adequate provision for the future of labour to inculcate in them a habit of thrift so that on retirement when the workers grow old and are unable to undertake any such work, they can maintain themselves with their compulsory savings to which also is added the share of the employer and that the worker is able to get a substantial amount with interest at the time of his retirement or his dependents in case of his early death and that is how the said Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as also the Employees Provident Fund Scheme, 1952 have made adequate provisions and the Regional Provident Fund Commissioner has been given adequate powers to see that the provisions thereof are properly complied with and that the share of the worker deducted from his wages as also the share contributed by the employers of the employees is credited to the Regional Provident Fund Commissioner so that on retirement the worker or in case of his untimely death while working, his dependents, are immediately benefited. Power has also been given to recover damages from defaulting employers apart from prosecuting them for failure to comply with the provisions of the Act and Scheme which has been considered by the Supreme Court in its decision reported in *Grammo Chemical Industries v. Union of India* AIR 1979 SC 1803, wherein it has been observed as follows:

This social security measure is a human homage the State pays to Articles 39 and 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power

from the funds regularly flowing into the statutory till.

The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and salversation of the workers' share. "Damages" have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers may be on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual.

The Supreme Court in this judgment has, in brief, set out the scheme which is principally and mainly for the welfare of workers who are employed in factories and other establishments and a heavy responsibility is cast on the Regional Provident Fund Commissioner to see that the provisions of the said Act and the Scheme are properly and effectively followed and complied with by the employer.

Section 2(h) of the Employees' Provident Funds Act, 1952 defines "Fund" which means--the provident fund established under a Scheme. Section 2(j) defines "member" which means a member of the Fund and section 2(1) defines "Scheme" which means the Employees' Provident Fund Scheme framed u/s 5 of the said Act, according to which the Employees' Provident Fund Scheme, 1952 was framed.

Clause 38 of the said Scheme relates to mode of payment of contributions which is as follows :

38. Mode of payment of contributions.--(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee and in respect of which provident fund contributions are payable, as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of contributions and administrative charge :

Provided that if payment is made by a cheque on an outstation bank, the actual bank collection charges in respect of both the contributions and the administrative charges shall be included in the amount for which the cheque is drawn in respect of the administrative charge:

Provided further that where there is no branch of the Reserve Bank or the State Bank of India at the station where the factory or other establishment is situated,

the employer shall pay to the Fund the amount mentioned above by means of Reserve Bank of India Governmental Drafts at par separately on account of contributions and administrative charge.

(2) The employer shall forward to the Commissioner, within twenty five days of the close of the month, a monthly consolidated statement, in such form as the Commissioner may specify showing recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee :

Provided that an employer shall send a "NIL" return, if no such recoveries have been made from the employees :

Provided that in the case of any such employee who has become a member of the Family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid Form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

(3) Notwithstanding anything contained in sub-paragraph (2), in respect of such establishments as are notified by the Commissioner to be annually posted establishments, the employer shall forward to the Commissioner within twenty five days of the close of each month, a monthly abstract in such form as the Commissioner may specify, showing, inter alia, the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month. The employer shall also send to the Commissioner, within one month of the close of the period of currency, a Consolidated Annual Contribution Statement in Form 6-A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and Consolidated Annual Contribution Statement for production at the time of inspection by an Inspector.

Clause 48 provides that--

The Commissioner shall deposit the Bank drafts or cheques received from the employers in the Reserve Bank or the State Bank of India in the Current Account of the Fund.

Clause 50 provides that --

The aggregate amount received as the employer's and the employees' contributions to the Fund shall be credited to an account to be called the "Provident Fund Account;" Clause 53 of the said Scheme relates to disposal of the Fund. Clause 59 deals with Members' Accounts.

Clause 72 of the Scheme deals with Payment of Provident Fund, which is as follows :

72. Payment of Provident Fund. --(1) When the amount standing to the credit of a member, or the balance thereof after any deduction under Paragraph 69 becomes payable, it shall be the duty of the Commissioner to make prompt payment as provided in the scheme. In case there is no nominee in accordance with this Scheme or there is no person entitled to receive such amount under sub-paragraph (ii) of paragraph 70 the Commissioner may, if the amount to the credit of the Fund does not exceed Rs. 10,000 and if satisfied after inquiry about the title of the claimant pay such amount to the claimant.

(2) If any portion of the amount which has become payable, is in dispute or doubt, the Commissioner shall make prompt payment of that portion of the amount in regard to which there is no dispute or doubt, the balance being adjusted as soon as may be possible.

(3) If the person to whom any amount is to be paid under this Scheme is a minor for whose estate a guardian under the Guardians and Wards Act, 1890 (8 of 1890), has been appointed, the payment shall be made to such guardian. Where no guardian under the Guardians and Wards Act, 1890 (8 of 1890) has been appointed, the payment shall be made to the guardian, if any, appointed under sub-paragraph (4-A) of Paragraph 61. Where no guardian under the Guardians and Wards Act, 1890 (8 of 1890), or under sub-paragraph (4A) of Paragraph 61 has been appointed, the payment shall be made to the natural guardian and in the absence of a natural guardian, to such person as the Commissioner, where the amount does not exceed Rs. 10,000 or the Chairman of the Central Board, if the amount exceeds Rs. 10,000 considers to be the proper person representing the minor and the receipt of such person for the amount paid shall be a sufficient discharge thereof.

(3-A) If the person to whom any amount is to be paid under this scheme is a lunatic for whose estate a manager under the Indian Lunacy Act, 1912 (4 of 1912), has been appointed, the payment shall be made to such manager. If no such manager has been appointed the payment shall be made to the natural guardian of the lunatic and in the absence of any such natural guardian, such person as the Commissioner where the amount does not exceed Rs. 10,000 or the Chairman of the Central Board, if the amount exceeds Rs. 10,000 considers to be the proper person representing the lunatic and the receipt of such person for the amount paid shall be a sufficient discharge thereof.

(4) If it is brought to the notice of the Commissioner that a posthumous child is to be born to the deceased member he shall retain the amount which will be due to the child in the event of its being born alive and distribute the balance. If subsequently no child is born or the child is still born, the amount retained shall be distributed in accordance with the provisions of Paragraph 70.

(5) Any person who desires to claim payment under this paragraph shall send a written application for the purpose to the Commissioner through the employer. If such person is unable to send the application through the employer for any

reason whatsoever, he may submit it to the Commissioner and the Commissioner may forward such application to the employer. The employer shall forward or, as the case may be, return to the Commissioner every application received by him under this paragraph within fifteen days of the receipt of the application by him. The Commissioner may, at the option of the person to whom payment is to be made make the payment: (i) by postal money order at the cost of the payee, or (ii) by a crossed cheque sent through post, or (iii) by deposit in the payee's postal savings bank account, if any, or (iv) through the employer :

Provided that where the provident fund money is remitted by postal money order, the balance, if any, remaining after such remittance shall be credited to the Forfeiture Account and in the case of a claim for the said balance the amount shall be paid by debiting the Forfeiture Account.

(6) Any amount - becoming due to a member as a result of: (i) supplementary contribution from the employer in respect of leave wages/arrears of pay, instalment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either ceased to be employed or died, but no claim has been preferred within a period of three years from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and it is not claimed again within a period of three years from the date it becomes payable, shall be transferred to an account to be called the "Unclaimed Deposits Account":

Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the "Unclaimed Deposits Account".

Clause 73 of the Scheme, which deals with Annual statement of member's account, is also reproduced below:

73. Annual statement of member's account--(1) As soon as possible after the close of each period of currency of contribution card the Commissioner shall send to each member through the employer of the factory or other establishment in which he was last employed, a statement of his account in the Fund showing the opening balance at the beginning of the period, amount contributed during the year, the total amount of interest credited at the end of the period or debited in the period and the closing balance at the end of the period.

(2) Members should satisfy themselves as to the correctness of the annual statement and any error should be brought to the notice of the Commissioner within six months of the receipt of the statement.

The Learned Counsel for the petitioner Shri V.S. Kokje, therefore, contended that the respondents cannot avoid payment of provident fund dues on the excuse that they have not been able to recover certain contributions from the employers. He, further, submitted that the purpose, intent and the scheme shows that the amount to be paid to the employees towards provident fund cannot be made

dependent on the payment of various contributions by the employers and, therefore, the employees cannot be penalised for neglect or failure of the respondents in realising the contributions due from the respondents. He, therefore, submitted that as the payment to the employee has to be made from the Fund, on retirement he is entitled to the payment of the entire amount including his contribution as also the contribution of the employer, as in the present case, irrespective of the fact whether the employer has actually credited the said amount to the Fund, because the import of the Scheme would indicate that once the employer has deducted the employee's contribution from his wages, as the employer is also equally bound to contribute his share, so far as the employee is concerned, that amount is deemed to have been credited to his account in the Fund irrespective of the fact whether the employer has actually remitted that amount to the Fund or not because such payment has to be made to the employee from the Fund in which there is always bound to be a large collection and consequently the respondent on that pretext cannot refuse to make the payment due to the employee on his retirement though of course he did not dispute this fact that out of the provident fund if the employee has taken an advance by way of loan for house building or for his illness, etc. the same of course shall have to be deducted from the amount which he may claim after retirement. He also submitted that in fact before approaching this Court he called upon the respondents to pay his dues several times and if they had any difficulty it was for them to approach the Board constituted under the said Act or the Central Government to solve this problem which virtually concerns a large number of such employees (please see *Shipping Corporation of India Ltd. and Another Vs. Nissar Export Corporation*, .

On the other hand Shri A.H. Khan Learned Counsel for respondent No. 1 contended that as M/s. Kalyanmal Mills Ltd., Indore has been taken over under the Sick Textile Undertakings (Nationalisation) Act, 1974 the respondent No. 1 is not liable to pay the amount of the provident fund to the petitioner as the liability for the period prior to 1-4-1974 when the said mill was taken over by the National Textile Corporation, has been put on the owner thereof. He, therefore, submitted that if the employers have not paid and credited to the fund the amount deducted from the wages of the employee as also the amount of contribution payable by the employers, the respondent cannot be compelled to make payment to the petitioner as claimed by him though in the present case it is not in dispute that the employer has not deposited employee's contribution for 17 months and employer's contribution for 26 months during 1970-71 and 1972-73. However, he also submitted that the respondent No. 1 is prepared to pay the amount of employee's contribution for 17 months which though deducted from his wages has not been credited by the employer to the fund. He, therefore, submitted that as the employee's contribution for 17 months and employer's contribution for 26 months does not stand credited to the credit of the petitioner, they are not legally bound to pay the same to the petitioner and that it is for the Government of India to find out a solution and funds to pay the

employees in distress as according to him the special reserve fund cannot be utilised for making payments in these cases.

After hearing the Learned Counsel and after considering the provisions of the said Provident Funds Act and the Scheme framed thereunder as also the purpose and object thereof, we are of opinion that the stand taken by the respondents is devoid of any substance because the employee for no fault of his cannot be allowed to suffer in this manner as he is entitled to the payment of the entire amount for the period for which he has put up his claim in this petition. Obviously the petitioner had become a member of the Scheme in the hope that on retirement he would get all his dues as amount from his wages was regularly deducted by the employer and he could have no reason to imagine that the employer might not have remitted his contribution so deducted as also the share of the employer to the said fund because that is one of the allurements to the employee that on retirement in addition to his own contribution he will get much more by way of contribution of the share of his employer also because in such a case he would not get any pension from the employer but has to depend solely on his provident fund on which his livelihood in future would depend.

That apart, there is nothing on record to indicate that the respondent had ever complied with clause 73 of the said Scheme which relates to Annual Statement of Member's Account referred to above. Besides the respondents have not placed any material on record that for failure of the employer to comply with the provisions of the said Act and/or the Scheme the respondents prosecuted the employer or took any action u/s 14B of the said Act to impose damages on the defaulting employer. Thus, as a result of the aforesaid discussion we are of opinion that the respondent is bound to pay the amount of petitioner's contribution for 17 months as also the share of the employer for 26 months which he was bound to pay and credit to the said Fund irrespective of the fact that actually the employer did not credit the said amount to the fund because in such a situation it is deemed to have been credited to the account of the employee in the said Fund.

The petition is, therefore, allowed with costs. The respondents are directed to pay the amount from the existing Fund to the petitioner for the aforesaid period referred to above within three months from today as in the case of a social and economic legislation of this type which affects thousands of labourers of this type the respondents cannot shirk their responsibility to evade payment on the basis of the stand taken by them as it is for the respondents to remove the difficulty, if any, to meet the situation like this in accordance with the provisions of the said Act. Counsel's fee Rs. 200. The amount of security deposit of Rs. 150 be refunded to the petitioner on due verification.