
(1990) 11 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 2338 of 1985

Rashtriya Mill Mazdoor Sangh and Others

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 18A, 3(39), 5
Sick Textile Undertakings (Taking Over of Management) Act, 1972 — Section 5(2)

Citation : (1991) 2 BomCR 677 : (1994) 3 LLJ 929

Hon'ble Judges : M.L. Dudhat, J

Bench : Single Bench

Advocate : N.D. Buch and H.D. Buch, for the Appellant; Meena Doshi, instructed by , Bhaishankar Kanga and Girdharilal, for R-2, Yashodhan V. Divekar and V.M. Mahajan for R-5, for the Respondent

Final Decision : Allowed

Judgement

M.L. Dudhat, J.—The present writ petition has been filed against the Respondents for their refusal to pay the amount of provident fund dues to the employees of National Textile Corporation for a period prior to the Nationalisation. Petitioner No. 1 is the trade union and is also representative and approved union under the Bombay Industrial Relations Act, 1946 for the employees of the Cotton Textile Industrial in the local area of Greater Bombay including the employees of Respondent No. 2. Petitioners No. 2 to 4 who are the members of petitioner No. 1 union, were the employees of Respondent No. 2, who retired from their service.

2. Few facts which are necessary to decide this writ petition are as under:

In the year 1965 the group of India United Mills 1 to 5 came under the management of the Authorised Controller appointed u/s 18A of the Industries (Development and Regulations) Act, 1951, hereinafter referred to as "the Act of 1951" for the sake of brevity. The said Authorised Controllers managed the Mills till the year 1971. In the year 1971 the Mills were handed over to the Maharashtra State Textile Corporation Ltd. Respondent No. 5 herein and the said

management continued till the year 1974 when the Sick Textile Undertakings (Taking Over of Management) Act, 1972 was replaced by the Sick Textile Undertakings (Nationalisation) Ordinance, 1974 and thereafter by the Sick Textile Undertakings (Nationalisation) Act, 1974, hereinafter referred to as "the Act of 1974" for the sake of brevity. By virtue of the said Act of 1974 on 1.4.1974 the aforesaid Mills being sick textile undertakings and the ownership in relation to the said textile undertaking stood transferred and was vested absolutely in the Central Government and thereafter vested in the 2nd Respondent i.e. the National Textile Corporation.

3. It appears that though the employees of the said Mills paid their provident fund contributions from their wages, the same were not handed over by the employer to the Provident Fund Commissioner by the Authorised Controller appointed by the Central Government under the Act of 1951. It is contended by on behalf of the petitioners that an amount of Rs. 1.90 crores being due and payable under the said provident fund contributions was not paid over to the 1st Respondent by the Authorised Controllers for the period between 1965 and 1972 when the Authorised Controllers under the Act of 1951 were in the management of the Mills. As a result of this non-payment of the provident fund dues, the workers leaving the Mills on account of retirement, death, resignation etc. they were deprived of an amount of approximately Rs. 1,000/- to Rs. 1,500/- each/ The petitioners, therefore, approached the 1st Respondent. However, the 1st Respondent was unable to settle the dues under the provident fund of the outgoing workmen. It was contended by the petitioners that though it was incumbent upon the Authorised Controllers to make the payment of the provident fund dues to the 1st Respondent, still they failed to do so. The petitioners further contended that on such failure, the 1st Respondent was bound to recover the said amount due under the provident fund by resorting to certain recovery procedures as mentioned in the Employees' Provident Fund Act of 1952, but the 1st Respondent failed and neglected to do so.

4. According to the petitioners the employees who retired during the following periods were not paid their provident fund dues for the period of 1965 to 1972:-

Those who retired from 1972 to 1976.

Those who retired from April 1977 to December 1978.

Those who retired from December 1981 onwards.

According to the petitioners, under the law the employees who retired within the aforesaid periods were entitled to get the amount due to them from the period 1965 to 1972 from the Respondents, more particularly from Respondents Nos. 1 and 2, while it was contended on behalf of Respondent No. 2 that in fact the aforesaid amount of the provident fund remained unpaid because of the dereliction, of duty on the part of Respondent No. 1 and, therefore, the said amount should be recovered from Respondent No. 1

5. Respondent No. 1 contended that in fact they did best to settle the issue amicably between the concerned employees and Respondent No. 2 and the Government and taking into consideration their efforts to recover the said amount from Respondent No. 2, it cannot be said that there was a failure on the part of Respondent No. 1 to discharge their duty in recovering the said amount of provident fund.

6. Respondent No. 5 adopted the contention of the present petitioners and contended that in view of the provisions of the Act of 1974, it is the liability of Respondent No. 2 to pay the amount due to the respective employees.

Tuesday, November 20, 1990

7. Before proceeding to fix the liability, it is necessary to clarify the factual aspect. It is an admitted position that the employees paid their dues towards the provident fund from the year 1965 to 1972. However, the employer failed to pay the same along with their contribution to Respondent No. 1 with the result that those employees who retired from 1972 to 1976, from 1977 to December 1978 and those who retired from 1981 onwards were not paid the provident fund due to them for the period from 1965 to 1972. With this admitted factual aspect, I will like to go through the relevant provisions of the Act of 1974 read with the Act of 1951.

8. From the year 1965 to 1971 the Controller under the Act of 1951 appointed by the Central Government had taken over the management. From 1971 to 1974 Respondent No. 5 was in the management. After the nationalisation on the appointed day i.e. from 1st of April, 1974 Respondent No. 2 acquired right, title and interest in the ownership of Respondent No. 4. The question to be decided in this writ petition is as to whether anyone of the Respondent or the Respondents are liable to pay the aforesaid provident fund dues. Under the Employees provident Funds and Miscellaneous Provisions Act, 1952 it is the primary liability of the employer to pay the provident fund due from the employees as well as the employer to Respondent No. 1. However, since in the present case from the year 1965 onwards the Controller on behalf of the Central Government u/s 18-A of the Act of 1951 and subsequently Respondent No. 5 was in charge and since thereafter in the year 1974 the said Mills were taken over under the Act of 1974, the question of fixing the liability towards the payment of the arrears of provident fund due to the employees can be decided only after going through the relevant provisions of the Act of 1951, the Act of 1974 and the Act of 1952.

9. Under the Act of 1974, when the said Act is made applicable to say and sick unit, all the right, title and interest of the sick textile undertaking stands transferred absolutely in the Central Government and thereafter gets vested in the National Textile Corporation - Respondent No. 2 as per the provisions of Section 5 of the Act of 1974. Section 4 of the Act of 1974 deals with the general effect of vesting and Sub-sections 1 and 2 of the said Section 4 which are relevant from the point of view of the present writ petition, are as under:-

"4.(1) The sick textile undertaking referred to in Section 5 shall be deemed to include all assets, rights, lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in Sub-section (2) of Section 5.

(2) All property as aforesaid which have vested in the Central Government under Sub-section (1) of Section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn".

10. After going through the aforesaid provisions, it is clear that after the appointed day, the ownership of the properties of the sick textile undertaking absolutely vests in the Central Government u/s 3(1) of the said Act free from all incumbrances except the liabilities and obligations mentioned in Sub-section (2) of Section 5. As per Sub-section (2) of Section 3 the property vested in the Central Government immediately gets transferred and vested in Respondent No. 2 absolutely without any incumbrances and the only exception carved out is Sub-section (2) of Section 5 of the Act of 1974.

11. Section 5 of the Act of 1974 is an important section for deciding the present controversy and the said section deals with the liability of the owner in respect of certain liabilities for the period prior to the appointed day. Section 5 is as under:-

"5. (1) Every liability, other than the liability specified in Sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

(2) Any liability arising in respect of-

(a) loans advanced by the Central Government, or a State Government, or both, to a sick textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government;

(b) amounts advanced to a sick textile undertaking (after the management of such undertaking had been taken over by the Central Government), by the National Textile Corporation or by a State Textile Corporation, or by both,

together with interest due thereon.

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government, shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that,-

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in Sub-section (2), in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any court, tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter, not referred to in Sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation;

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

Explanation : In this section, "State Textile Corporation" means a corporation, formed and registered under the Companies Act 1956, in a State, which is in charge of the management of a sick textile undertaking either as a person authorised under the Industries (Development and Regulation) Act, 1951, or as the Custodian under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 and includes the West Bengal State Textile Corporation Limited which has advanced amounts to sick textile undertakings in the State".

12. Under the aforesaid Section 5, Sub-section (1) makes it clear that every liability of the owner of the sick undertaking in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation excepting the liability mentioned under Sub-section (2) of Section 5 of the Act of 1974. Sub-section (2) of Section 5 of the Act of 1974 mentions three categories which are to be the liabilities of the Central Government to be discharged by Respondent No. 2. The third category mentioned under Sub-section (2) of Section 5 i.e. (c) refers to the liability in respect of any period prior to the appointed day as regards wages, salaries and other dues of the employees of the sick textile undertaking, in respect of any period after the management of

such undertaking had been taken over by the Central Government. As I have already pointed out earlier, since the year 1965 to 1971 the management of Respondent No. 4 was already taken over by the Central Government and the Controller appointed by the Central Government u/s 18-A was in charge of the affairs. What we have to see in as to whether the provident fund amount due as mentioned aforesaid comes within the ambit of the words used in Clause (c) of Sub-section (2) of Section 5 "wages, salaries and other dues of employees of the sick textile undertaking". Since the petitioners were the workers in the textile undertakings, the Bombay Industrial Relations Act, 1946 is applicable for regulating the relationship of the employer and the employees.

13. Section 3, Sub-section (39) of the Bombay Industrial Relations Act 1946 defines "wages" as under:

"3. In this Act unless there is anything repugnant in the subject or context, -

(39) "wages" means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes-

(i) any bonus, allowances (including dearness allowances), toward or additional representation:

(ii) the value of any house accommodation, light, water, medical attendance or other amenity or service;

(iii) any contribution by the employer to any pension or provident fund;

(iv) any travelling allowance or the value of any travelling concession;

(v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment.

(vi) gratuity payable, if any,-

After going through the aforesaid Sub-section (39) of Section 3 of the Bombay Industrial Relations Act, 1946, more particularly Clause (iii), it is clear that any contribution by the employer to any pension or provident fund comes within the ambit of "wages" under the Bombay Industrial Relations Act, 1946. This being the position, the claim for the provident fund due in respect of the period from 1965 to 1974 comes within the ambit of Section 5, Sub-section (2)(c) of the Act of 1974. If the said amount which is claimed by the petitioners comes within the ambit of Section 5(2)(c) of the Act of 1974, then u/s 5(2) on the appointed day i.e. from 1st April 1974 the said amount is the liability of the Central Government and shall be discharged for and on behalf of the Government by Respondent No. 2 as and when the same becomes due and payable. This position is also clarified by Sub-section (3) of Section 5 which makes it clear that no liability excepting the liability specified under Sub-section (2) of Section 5, in relation to the sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation.

14. As against the aforesaid clear provision u/s 5, it was strongly contended on behalf of Respondent No. 2 by the learned Counsel Smt. Meena Doshi that Respondent No. 2 was not liable for the payment of the liabilities towards the provident fund in respect of the period prior to the appointed day. According to her Section 5(2)(c) supports her contention that the wages due to the petitioners or the provident fund due to the petitioners prior to the appointed day i.e. 1st April, 1974 are not recoverable from Respondent No. 2. Clause (c) of Sub-section (3) of Section 5 is as under:-

"5.(3)(c) No liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation".

15. As per my discussion on Sections 3, 4 and 5 of the Act of 1974 made earlier, it is clear that it is the liability of the Central Government to pay the wages, salaries and other dues of the employees of the sick textile undertaking in respect of any period after the management of such undertaking had been taken over by the Central Government and the same is to be discharged for and on behalf of the Central Government by the 2nd Respondent as and when such payment becomes due and payable. This is also reiterated as mentioned above in Sub-section (3) of Section 5. The argument on behalf of the 2nd Respondent that the recovery of the amount due under any provisions of any other law including the Provident Funds Act of 1952 cannot be enforceable in view of Section 5, Sub-section (3)(c) of the Act of 1974, if accepted, will lead to absurdity. This has been added at the end after making the intention of the Legislature clear in the earlier part of Section 5 that wages, salaries and other dues of the employees of the sick textile undertaking in respect of any period after the management of the said textile under-taking had been taken over by the Central Government, shall be the liability of the Central Government, and shall be discharged for and on behalf of the Central Government by the 2nd Respondent. The said Clause (c) of Sub-section (3) of Section 5 is applicable in respect of the liability or contravention of any provision of law for the time being in force which does not come within the ambit of Sub-section (2) of Section 5 of the Act of 1974. Since in the present case the provident fund amount due to the employees for the period from 1965 to 1974 comes within the ambit of Sub-section (2) of Section 5 of the Act of 1974, Clause (c) of Sub-section (3) of Section 5 is not at all applicable in the present case.

16. Section 14(1) and Section 14(4) of the Act of 1974 also clarify the intention of the Legislature as to how all the liabilities of the employees immediately before the appointed day were taken over by the 2nd Respondent and their rights and privileges are protected. Section 15 of the Act of 1974 refers to the provident fund and other dues of the employees. Section 15 is as under:-

"15.(1) Where the owner of a sick textile undertaking has established a provident fund, superannuation, welfare or other fund for the benefit of the persons

employed in such sick textile undertaking the monies relatable to the employees, whose services have become transferred by or under this Act to the National Textile Corporation shall, out of the monies standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and shall vest in, the National Textile Corporation.

(2) The monies which stand transferred, under Sub-section (1), to the National Textile Corporation shall be dealt with by that Corporation in such manner as may be prescribed".

17. It was argued on behalf of Respondent No. 2 that Section 15 refers to the scheme established by the undertaking in respect of provident fund while in the present case the Provident Funds Act 1952 is applicable, wherein it is the sole responsibility and liability of Respondent No. 1 to pay the provident fund of the employees. It is true that Section 15 refers to the provident fund established by the undertaking for its employees and does not refer to the provident fund under the Act of 1952 but after going through the aforesaid provision, it is clear that the intention of the Legislature is to transfer the liability in respect of the provident fund and other funds and the benefit thereof to the 2nd Respondent who was supposed to discharge the said duty after the appointed day in place of the sick textile undertaking. From the aforesaid discussion, it is clear that the petitioners are entitled to receive the amount of provident fund for the period from 1965 to 1972 from Respondent No. 2 as and when the same becomes due.

18. Though Respondent No. 2 denies any liability to pay the provident fund dues due towards the petitioners-employees prior to 1st April, 1974, at some point of time Respondent No. 2 in fact made the payment of the provident fund even for the period from 1965 to 1972 in respect of the employees who retired during the following period:-

(1) To employees who retired between the period from July 1976 to March 1977 (8 months)

(2) To employees who retired between the period from January 1979 to December 1981 (3 years).

It was strongly argued on behalf of Respondent No. 2 that the aforesaid payment was made by the 2nd Respondent as the 2nd Respondent referred, for its opinion, the issue of payment of the provident fund arrears for the period prior to 1.4.1974, to the Law Ministry and further in order to facilitate the settlement, the 2nd Respondent agreed to make the payment, in case of outgoing members and in case of death claims, of the amounts of provident fund dues for a period prior to 1.4.1974, on the condition that in the event the Ministry of Law gives the opinion that the amount due for the period prior to 1.4.1974 is not due from the 2nd Respondent then adjustment for the payment will be made by the 1st Respondent. It was further contended on behalf of Respondent No. 2 that since the opinion given by the Law Ministry was that Respondent No. 2, is not liable to pay the aforesaid amount, from the year 1982 onwards, Respondent No. 2

refused to make the payment to the petitioners towards their provident fund in respect of the period from 1965 to 1972. However, since I have already expressed my opinion that under the provisions of the Act of 1974, the petitioners are entitled to get their payments from Respondent No. 2, question as to why, on some occasions. Respondent No. 2 made payments towards the provident fund in respect of a period prior to 1.4.1974 and did not make payment towards the provident fund in respect of the same period on other occasions, is, according to me, inconsequential from the point of view of deciding this case on law point.

19. The aforesaid decision of mine is also supported by the ratio of the case decided by the Supreme Court in *Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Another*, . In the case before the Supreme Court the employees demanded the payment of bonus due under the Payment or Bonus Act, 1965 in respect of the period when the Controller u/s 18A of the Act of 1951 was incharge of the Mills. In that case also the said Mills were nationalised on the appointed day i.e. 1st day of April 1974 and the ownership and title of the property of the Mills vested in the National Textile Corporation as in the present case. It was contended on behalf of the employees that in view of the Act of 1974, the petitioners-employees are entitled to get bonus from the National Textile Corporation. The Supreme Court observed:-

"The appointed day has been specified as the 1st day of April, 1974. The expression "wages, salaries and other dues of the employees" would without a doubt include statutory bonus payable under the Bonus Act. The liability arose for the period after the management of the undertaking had been taken over by the Central Government by appointing an authorised controller u/s 18-A. Therefore, the liability to pay the bonus if awarded would be of the National Textile Corporation. The contention of the National Textile Corporation that it is not liable to pay bonus must be rejected".

The aforesaid observations and the conclusion of the Supreme Court clearly supports the view which I have already taken about the liability of the 2nd Respondent in payment of provident fund dues for a period prior to 1.4.1974.

20. It was strongly argued on behalf of the petitioners by the learned Counsel Smt. Buch and on behalf of Respondent No. 5 by Shri Divekar and also by Smt. Meena Doshi on behalf of Respondent No. 2 that the petitioners are also entitled to get the payments due towards their provident fund from Respondent No. 1. It was contended on behalf of the present petitioners that as per Section 5 read with Clauses 38, 72 and 73 of the scheme mentioned in Schedule I of the Act of 1952, it is the strict statutory duty of the 1st Respondent to make the payment of the provident fund to the employees as and when the same becomes due towards the employees. Section 5 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is as under:-

"5. Employees' Provident Fund Scheme:-

1. The Central Government may, by Notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as "may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(1A) The Fund shall vest in, and be administered by, the Central Board constituted u/s 5-A.

(1B) Subject to the provisions of this Act, a Scheme framed under Sub-section (1) may provide for all or any of the matters specified in Schedule II.

(2) A Scheme framed under Sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme".

Under the aforesaid provision, the Central Government has formed a scheme "Employees' Provident Fund Scheme, 1952".

21. Clauses 38, 72 and 73 of the aforesaid scheme are material from the point of view of the present discussion. Under Clause 38 of the said scheme it is incumbent upon the employer before paying the employees his wages to deduct the employees contribution towards P.F. from his wages together with his own contribution towards P.F. as well as administrative charges of such percentage and pay the same within fifteen days of every month to the provident fund account, by bank draft or charges on account of contribution and administrative charges. Thereafter it is incumbent upon the employer to forward to the Commissioner of Provident Fund within twenty five days a monthly consolidated statement of such payment in such form as prescribed by the Commissioner showing the recovery from the wages of each employee and the amount contributed by the employer in respect of each such employee.

22. Clause 72(1) of the said scheme is as under:

"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 this 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".

As per the said Clause when the amount standing to the credit of the member becomes payable, it shall be the duty of the Provident Fund Commissioner to make prompt payment as provided under the scheme and under Clause 73 of the said scheme and again it is the duty of the Provident Fund Commissioner to send

to each member through the employer of the factory or establishment a statement of the account of the employee showing therein his balance etc.

23. After going through the aforesaid clauses, it was strongly argued on behalf of the petitioners. Respondent No. 2 and Respondent No. 5 that in fact it was and is the duty of the 1st Respondent to pay the provident fund of the employee when he retires from his services. According to them in the present case from the year 1965 till the year 1982 Respondent No. 1 virtually took no action against Respondent No. 2, due to which ultimately the petitioners were required to suffer. Had Respondent No. 1 taken prompt action in the present case, the subsequent series of complications would not have arisen and it is because of dereliction of duty on the part of Respondent No. 1, Respondent No. 1 is liable to pay the aforesaid amount due to the petitioners-employees.

24. In order to support their contention, the petitioners, as well as Respondents Nos.2 and 5 relied on the decision of the Madhya Pradesh High Court in the case of Nathulal v. Regional Provident Fund Commissioner, Indore and Anr. 1984 L.I.C. 1438. In the said case the petitioner, on his retirement, filed writ petition against the Regional Provident Fund Commissioner, Indore, for recovery of his provident fund amount which he, as an employee, had deposited with the employer for seventeen months and the employer's contribution for twenty six months for the period 1970-71 and 1972-73. The Regional Provident Fund Commissioner failed to pay the aforesaid amount as the same was not realised by the Regional Provident Fund Commissioner from the employer. Under these circumstances the petitioner therein filed writ 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. It was contended on behalf of the petitioner therein that the purpose and the intent of the scheme shows that the amount to be paid to the employees towards the provident fund cannot be made dependent upon the payment of various contributions made 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. Therefore, it was contended that when the employee retires, he is entitled to the payment of the entire amount including his contribution as also the contribution of the employer irrespective of the fact whether the employer has actually credited the said amount to the fund, as the import of the scheme would indicate that once the employer has deducted the employees' 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, the reason being the payment of provident fund 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. The High Court of Madhya Pradesh, after hearing both the sides,

came to the conclusion that the employee who contributes his part of provident fund cannot be allowed to suffer for a breach of obligation on the part of the employer as well as the Regional Provident Fund Commissioner. 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 his retirement in addition to his own contribution he will get much more by way of contribution of the share of his employer. On the basis of the aforesaid reasoning, the Madhya Pradesh High Court allowed the said writ petition with costs and directed the Respondents to pay the fund amount to the Petitioner.

25. Relying on the aforesaid decision, it was contended on behalf of the petitioners and also on behalf of Respondent Nos. 2 and 5 that since in the present case the petitioners have put their dues towards the provident fund, under the scheme it is incumbent upon Respondent No. 1 to pay to the petitioners the amount of provident fund due for the period 1965 to 1974 even if the employer failed to credit the same to the provident fund account. There is great substance in the aforesaid argument, because provident fund is a social legislation which acts as a security measure to the employees at the time of retirement when he needs the money most. I have referred to the aforesaid important provisions in the Act of 1952 and under the scheme of the said Act. If under the said Act an employer fails to discharge his obligation, then Respondent No. 1 u/s 14-B has power to recover the amount due towards the provident fund and also the amount of damages equal to the amount due. Apart from the aforesaid recovery and damages Respondent No. 1 has also got power under the Act to start prosecution against the employer for recovery of the amount due towards provident fund. Further there is a provision under the Act of 1952 that the amount due towards provident fund can be recovered as arrears of land revenue.

26. However, the question to be decided before me is as to whether Respondent No. 1 is entitled to pay all the provident fund dues to the employee as and when the same becomes due to him irrespective of the fact as to whether the said amount is credited to the provident fund account by the employer.

27. Clause 72 of the scheme is important as the same deals with the payment of provident fund. As per the said Clause 72 it refers to the amount standing to the credit of the member or the balance thereof....Taking into consideration the aforesaid phraseography used in the said clause, it appears that the intention of the legislature is that Respondent No. 1 should pay the amount standing to the credit of the member in the provident fund account. That means as per the said clause the liability of Respondent No. 1 to pay the amount towards the provident fund of the employee is to the extent of the amount credited in the account of the provident fund. In the present case admittedly neither Respondent No. 2 nor

the Controller appointed u/s 18A of the Act of 1951 credited the amount of provident fund due from the employer to the provident fund account of each employee. This being the position, in the strict interpretation of Clause 72 of the scheme of the Act of 1952, it is the liability of Respondent No. 1 to pay the amount standing due to the credit of the member and if the employer fails to pay his contribution towards the provident fund, then in that event on the strict interpretation of Clause 72 there is no liability of Respondent No. 1 to pay the amount which the employer in a given case has failed to pay. According to me this particular aspect was not taken into consideration by the decision given by the Madhya Pradesh High Court. Further in the said case decided by the Madhya Pradesh High Court, more particularly para 20 of the said Judgment, the Court also observed that there was no evidence before the Court to show as to what steps Respondent No. 1 took for recovery of the dues under the Provident Fund Act and the Scheme. In the present case Shri Mehta, learned Counsel on behalf of Respondent No. 1 and 3, stated that in fact both the Controller appointed under the Act of 1951 and the 2nd Respondent with whom the property was vested on 1st April, 1974 were either individually under the control of the Central Government or the statutory bodies as the case may be. According to Shri Mehta, in view of this position, instead of taking any recovery proceedings directly, Respondent No. 1 tried to settle the issue amicably and in fact took certain steps also for the recovery of the said amount, but the said steps did not prove to be effective because of the procedural delay. Though Shri Mehta made the aforesaid submission, still unfortunately Respondent No. 1 has not filed any affidavit in the present case to support his contentions. However, at the time of the argument Shri Mehta has submitted few documents to show that from 1970 onwards few steps were taken in this behalf for the recovery of the provident fund amount due. I am not happy with the explanation given by Shri Mehta on behalf of Respondent No. 1. However, the fact remains that the said amount was due from the year 1965 to 1971 from the Controller appointed u/s 18-A of the Act of 1951 who was under the control of the Central Government and for subsequent period of one year there was a dispute as to whether Respondent No. 2 or Respondent No. 4 should pay the said amount. Even in the petition filed by the present petitioners and the reply given by Respondent No. 2 reference is made about the opinion of the legal department and the Solicitor General. It may be due to these conflicting opinions Respondent No. 1's attitude might have become lukewarm in recovering the amount due from employer and, therefore, under these circumstances, it cannot be said that there was dereliction of duty on the part of Respondent No. 1 in recovering the said amount of provident fund due from the Controller or Respondent No. 2.

28. There is one more distinguishing feature between the present case and the case decided by the Madhya Pradesh High Court. In the present case, prior to the appointed day i.e. 1st April 1974 the Controller u/s 18-A was controlling the affairs of the Mills which was not so in the case decided by the Madhya Pradesh High Court. Because of the peculiar exigencies of the case decided by the

Madhya Pradesh High Court, it was not possible to recover the amount due from the Kalyamal Mills Ltd. In the present case because of the interpretation and because of the provisions, more particularly of Section 5, Sub-section (2) of the Act of 1974, the petitioners are entitled to recover the said amount from Respondent No. 2

29. Further, as pointed out earlier, in the case decided by Madhya Pradesh High Court, the Court also referred to the failure on the part of the Regional Provident Fund Commissioner to recover the said, amount and, therefore, the said case can be easily distinguished from the present case.

30. In view of my aforesaid findings, Respondent No. 1 is not liable to pay the provident fund amount due to the petitioners-employees as claimed by the petitioners.

31. Hence, the writ petition is allowed. Rule is made absolute with costs.

32. I further direct Respondent No. 2 to furnish record to Respondent No. 1 for enabling them to ascertain the amount due to each employee who were not paid the amount of provident fund due to them for the period 1965 to 1972. Respondent No. 1 to prepare the aforesaid statement and finalise the same on or before 31st January, 1991. After the finalisation of the said account, as mentioned aforesaid, Respondent No. 2 is directed to pay the amount due as ascertained by Respondent No. 1 in the provident fund account within one month thereof. In the event Respondent No. 2 deposits the aforesaid amount in the provident fund account, Respondent No. 1 is directed to pay the aforesaid amount to the respective employees or their claimant as expeditiously as possible.