
(2012) 12 MP CK 0076

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 6635 of 2011 and 3263 of 2012

Regional Commissioner, Employees Provident Fund

APPELLANT

Vs

Maheshwari Nursing Home and Another

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14B, 19, 2(aa), 2(f)

Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2013) ILR (MP) 316 : (2013) 3 MPHT 268 : (2013) 1 MPHT 529 : (2013) 1 MPLJ 127 : (2013) 2 SCT 522

Hon'ble Judges : J.K. Maheshwari, J;G.D. Saxena, J

Bench : Division Bench

Advocate : S.L. Gupta, for the Appellant; D.K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.—This order shall govern disposal of W.P. No. 6635/11 & W.P. No. 3263/12. In both these petitions, by filing I.A. No. 99-and I.A. No. 7182/12 by the respondent, the preliminary issue is raised regarding maintainability of the petition filed by the Regional Provident Fund Commissioner and Employees Provident Fund Organization through its Assistant Commissioner. Issue of maintainability, which is common and required to be answered first, therefore, the question of maintainability is being decided. Both the writ petitions have been filed by the Regional Provident Fund Commissioner and Employees Provident Fund Organization through its Assistant Commissioner invoking the jurisdiction under Article 227 of the Constitution of India for issuance, of the writ and directions to quash the order Annexure-P/1 passed by the Provident Fund Appellate Tribunal in Case Nos. ATA 382(8)/2006 and ATA 30(8)/2006 vide orders dated 14-7-2011 and 8-2-2012. Petitioners being dissatisfied with the orders of the appellate Tribunal, therefore, preferred both these petitions.

2. The facts with respect to W.P. No. 6635/11 in brief are that the respondent No.

1 is running a private nursing home in the name of "Maheshwari Nursing Home" through its proprietor Dr. Virendra Maheshwari. The said hospital has been covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity "the Act 1952") w.e.f. 7-1-2000 with Code No. MP-15057. Subsequently, an inspection was carried out on 7-7-2004 wherein it was alleged that 23 employees were engaged in the respondent-institution w.e.f. 1-5-1993 and the provisions of the Act of 1952 were not complied with in the matter of depositing the employers contribution. After conducting the enquiry u/s 7A of the Act, 1952, vide order dated 6-10-2004 an amount of Rs. 12,37,048/- for the period in between 1-5-1993 to 7-1-2000 has been directed to be deposited as EPF contribution.

3. It is not in dispute that the said due amount of Rs. 12,37,048/- was deposited prior to passing the order through challans dated 14-8-2004, 13-9-2004 and 15-9-2004. Thereafter, the Assistant Commissioner of Provident Fund has issued a show-cause notice why the damages as provided u/s 14-B of the Act, 1952 should not be recovered. Reply to the said notice was submitted by the respondent on 11-5-2011, however, without due consideration to the points raised in the reply, final order was passed on 27-3-2006 imposing the damages and interest as per section 14-B and 7-Q of the Act, 1952 directing recovery of Rs. 15,45,922/-. Against the said order, an appeal was preferred before the appellate tribunal, which was decided by the order impugned on 14-7-2011 and the matter was remanded back to the petitioner to reassess the liabilities inclusive interest at the rate of 22%. Being aggrieved by the said order, this petition has been preferred in the name of Regional Commissioner, Employees Provident Fund through its Assistant Commissioner by filing an affidavit of the Assistant Provident Fund Commissioner. Any authorization by the Employees Provident Fund Organisation either in favour of the Regional Provident Fund Commissioner or in favour of the Assistant Provident Fund Commissioner is neither pleaded nor filed showing any power to challenge aforesaid two orders dated 14-7-2011 and 8-2-2012 passed by the Employees Provident Fund Appellate Tribunal, New Delhi.

4. The facts in brief with respect to W.P. No. 3263/12 are that the respondent No. 1-M/s. Modern Gas Agency has been engaged in LPG distributorship of Indian Oil Corporation. It is stated that the establishment of the respondent was inspected by the Enforcement Officer on 4-1-2000, wherein 07 regular, 12 contract workers and one part time accountant were found working. On the basis of the inspection report, a covering letter was issued on 30-5-2000 to respondent informing therein that respondent is covered under E.P.F. Act, 1952 w.e.f. 4-1-2000 and by allotment of Code M.P.-15101 directions were issued for compliance of the provisions of the Act. Indicating non-compliance, a show cause notice was issued on 14-1-2005 initiating an action against the respondent u/s 7-A of the Act, 1952. After receiving reply, without due consideration of the material so produced by the respondent, final order was passed on 17-11-2005 imposing liability of Rs. 2,79,190/- for the period from January, 2000 to March, 2003. On

filing an appeal u/s 77-I of the Act, it was upheld vide order dated 11-7-2011. The respondent has assailed the said order by filing W.P. No. 7495/11, the same was disposed of on 17-11-2011 and the matter was remanded back to the appellate Tribunal to decide it on merits. Thereafter, a counter reply was filed by the respondent indicating that the delivery charges paid to the delivery boys engaged for distribution of LPG Cylinders would not fall within the purview of wages and the delivery boys would not fall within the purview of employees of the establishment. Tribunal vide order dated 8-2-2012 held that delivery boys who are getting commission/ charges would not fall within the purview of employees of the gas agency and will not be covered u/s 2(f) of the Act, 1952. Being aggrieved by the order passed the appellate Tribunal, the Employees Provident Fund Organization through its Assistant Commissioner has filed the present petition under Article 227 of the Constitution of India.

5. Learned counsel Shri D.K. Agarwal appearing on behalf of the respondent No. 1 in both the writ petitions, has raised a preliminary objection that the petition filed by the Regional Commissioner Provident Fund or Assistant Provident Fund Commissioner in the name of Employees Provident Fund Organization through its Assistant Provident Fund Commissioner is not maintainable. It is contented that the Assistant Provident Fund Commissioner being quasi-judicial authority passed the orders and decided the dispute against the respondents and those orders were challenged before the Employees Provident Fund Appellate Tribunal. Learned Tribunal after setting aside the order dated 27-3-2006 passed by the said authority remanded the matter back in view of the finding recorded by the Tribunal. In the matter of Modern Gas Agency, the order dated 17-11-2005, communicated on 2-12-2005 by the Assistant Provident Fund Commissioner has been quashed by the Appellate Tribunal. However, for the orders passed by the Tribunal the authority lower in rank and status to the Appellate Tribunal cannot be permitted to challenge the said order. It is further stated that there is nothing on record to show that "Employees Provident Fund Organization", being Trust, has specifically delegated or authorised the Assistant Provident Fund Commissioner to prefer any writ petition or appeal on behalf of the Regional Provident Fund Commissioner or on behalf of the Employees Provident Fund Organization. In such circumstances, the challenge so made by the petitioner, is without having any authority of law, therefore, petitions filed by the petitioner are not maintainable. In support of such contention, reliance has been placed on the judgments of various Courts are as under:--

(i) Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another, (ii) Assistant Provident Fund Commissioner vs. West Coast Petroleum Agency, 2012 LLR 427 (Ker.), (iii) Assistant Provident Fund Commissioner vs. Nirmitee Holidays (P) Ltd., 2011 LLR 28 (Bom.), (iv) Regional Provident Fund Commissioner vs. Prabha Beverages Private Limited and another, 2009(120) FLR 442 (Mad.) ; and (v) Union of India Vs. K. M. Shankarappa,

6. Per Contra, learned counsel Shri S.L. Gupta appearing on behalf of the

petitioner has urged that on filing of the writ petitions in various cases before this Court, the orders passed by the Appellate Tribunal have been set aside. In such circumstances, the point of maintainability so raised is not germane. It is further urged that while exercising the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, this Court is having ample power to set aside the orders passed by the tribunal arbitrarily and illegally without considering the provisions of law. Learned counsel has made his submissions assailing the orders passed by the Appellate Tribunal and also supported the case on merits. The counsel has also argued that the Assistant Provident Fund Commissioner has general power to challenge any order passed by any superior authority.

7. In the facts of the case, the preliminary objection so raised by the respondent relating to maintainability of the petition is being considered and decided first.

8. After hearing learned counsel appearing on behalf of the parties at length on the point of maintainability of the petitions and to adjudicate the aforesaid issue, the judgments so relied upon are required to be noticed. In the judgment of Mohtesham Mohd. Ismail (*supra*), the question posed for determination before the Hon''ble Apex Court is as under:--

9. Before embarking upon the rival contentions raised on behalf of the parties, let us have a look at the relevant provisions of the Act.

10. Section 3 of the Act provides for classes of officers of Enforcement. Section 4 of the Act empowers the Central Government to appoint such persons, as it thinks fit, to be officers of Enforcement and for the said purpose confer power thereupon. Sub-section (3) of section 4 reads as under:--

4. (3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

11. Section 5 providing for delegation of the powers in relation to functions of the Director or other officers of Enforcement, reads as under:--

5. Entrustment of functions of Director or other officer of Enforcement.-- The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of Customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be specified in the order.

12. Section 9 provides for restrictions on payments; Clauses (c) and (d) of sub-section (1) whereof read as under:--

9. Restrictions on payments.--(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section

which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall-

* * *

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;

(d) Make any payment to, or for the credit of any person by order or on behalf of any person resident outside India;

* * *

13. Section 52 of the Act provides for an appeal to the Board. Section 53 thereof provides for the powers of the adjudicating officers and the Board to summon witnesses, etc. Section 54 which provides for an appeal to the High Court, reads as under:

54. Appeal to High Court:-- An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52:

Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Explanation--In this section and in section 55, "High Court" means-

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents ordinarily resides or carries on business or personally works for gain.

14. The Act imposes restrictions on transactions of money from one country to the another. The Central Government for the purpose of enforcing the provisions of the Act is empowered to appoint officers. From a bare perusal of section 5 of the Act, it would be evident that notifications are required to be issued by the Central Government delegating specific functions under the Act.

16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorised. Only when an officer is so specifically authorised, he can act on behalf of the Central Government and not otherwise.

Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

9. The Apex Court in the case of Union of India Vs. K. M. Shankarappa, in Para 7 held as under:--

7. We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned. To permit the executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the executive. Under our Constitution the position is reverse. The executive has to obey judicial orders. Thus, section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.

10. The aforesaid judgment of Hon"ble Apex Court has been relied upon by the Kerala High Court in Assistant Provident Fund Commissioner vs. West Coast Petroleum Agency, 2012 LLR 427, Kerala High Court has further relied upon various other judgments and held as under:--

12. The principle that emerges from the decisions referred to above is that an adjudicating authority which exercises quasi-judicial powers and discharges quasi judicial functions cannot in the absence of any specific conferment of power, challenge an order passed by the Appellate Authority. It is evident from the provisions contained in section 7A of the Act that before passing an order

thereunder, the officer conducting the enquiry has to issue notice to the parties against whom the proceedings are initiated and afford them an opportunity of being heard. The officer holding the enquiry is also vested with the powers of a Civil Court. An enquiry u/s 7A of the Act is also deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code. Such being the situation, applying the principles laid down in the decisions referred to above, it has to be necessarily held that the Assistant Provident Fund Commissioner, who passed Ext. PI order, is not competent to maintain this Writ Petition.

In view of above, holding that the preliminary objection is sustainable, the writ petition was found not maintainable by Kerala High Court.

11. The similar issue regarding maintainability of the writ petition has also come up for consideration before the Bombay High Court in the case of Assistant Provident Fund Commissioner vs. Nirmitee Holidays (P) Ltd., 2011 LLR 28, the Court held as under:--

4. Bare perusal of the provisions of the Act and particularly section 7A and section 7-I of the Act discloses that while discharging jurisdiction u/s 7-A of the Act, the Petitioner was discharging quasi-judicial functions and the said order was challenged by the Respondent in an appeal filed u/s 7-I of the Act and the Appellate Authority by discharging quasi-judicial functions has allowed the appeal preferred by the Respondent. Once it is clear that the Petitioner was exercising quasi-judicial functions while passing the order which has been set aside by the Appellate Authority, in my considered opinion, it would not be permissible for the Petitioner to challenge the order passed by the Appellate Authority reversing his order. Permitting such an exercise would be subversive of judicial discipline. It is well settled that an authority while discharging quasi-judicial functions cannot challenge the order passed by the Appellate Authority, reversing his/her order. In my considered opinion, the ratio laid down in the case of Village Panchayat of Velim and in the case of Village Panchayat of Sancoale, (supra), relied upon by the learned counsel for the respondent would be squarely applicable. I do not find any merit in the submission of Mr. Singh, learned Counsel appearing for the petitioner that the petition is maintainable hence the Petitioner himself is not benefited by challenging the order passed by the Appellate Authority and he has filed the present petition only to protect the interest of the employees of the respondent. In my opinion, this issue does not arise in the present petition. An authority exercising judicial or quasi-judicial functions; is not even supposed to defend its own order when challenged before higher forum. In this connection, it would be appropriate to refer to the judgment of the Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, in which the Apex Court has held that the Tribunals are not suppose to defend his own orders unless allegations are made against them. It is therefore well-settled that the Tribunal discharging quasi-judicial functions is not supposed to defend its action even when its order are challenged before the higher forum, as has been held in the

case of Syed Yakoob (supra).

5. In view of the above, I find that the present petition is not maintainable. Accordingly, the petition stands dismissed.

12. The identical issue earlier came up before the Madras High Court in the case of Regional Provident Fund Commissioner Vs. Prabha Beverages Private Ltd. and The Presiding Officer, Employees Provident Funds Appellate Tribunal, wherein Para 6 the Court has observed as under:--

6. In more or less similar circumstances, under the Cinematograph Act, the Supreme Court vide its decision in Union of India vs. K.M. Shankarappa, held in para 7, which is as follows:--

7.....The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.

(Emphasis added)

13. In the context of the above referred judgments, it is apparent that when an adjudicating authority exercises quasi-judicial powers and discharges judicial functions and its order had been set aside by the Appellate Authority, ordinarily in absence of having specific power to adjudicating authority to challenge the order of Appellate Authority they cannot be permitted to challenge further. It is to be observed that when an officer is so specifically authorised, he can act on behalf of the Central Government or the Board or the Corporation or the Organization or the other authorities. It has further been clarified that if a person has been appointed for the purpose of discharging the functions in terms of the provisions of the Act, the same would not itself automatically entitle the said officer to discharge all or any of the functions of the Central Government, Board, Corporation or Organization. It has also been observed that a quasi-judicial authority cannot prefer any appeal being aggrieved by or dissatisfied with the judgment of the Appellate Tribunal whereby and whereunder its judgment has been set aside. An adjudicating authority, although may be an officer of the Central Government or Board or Corporation or Organisation should act as an impartial person. In absence of any power conferred upon him in this behalf by the Central Government or by the Organization or by the Board such authority could not prefer any appeal or writ petition against the order passed by the Tribunal.

14. In the foregoing judgment in Mohtesham Mohd. Ismail (supra) the provisions of Foreign Exchange Regulation Act, 1973 has been considered. However, to adjudicate the point of the maintainability, so raised by the respondent, the relevant provisions of the EPF Act, 1952 are required to be seen, to examine the

issue of maintainability. Section 2(aa) of the Act, 1952 defines the authorised officer. Its definition is reproduced as under:--

2(aa) "authorised officer" means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette,

Section 5-A of the Act deals with the Central Board, which is reproduced as under:--

5-A. Central Board--(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following [persons as members], namely:--

Section 5-C of the Act deals with the power of Board of Trustees which is body corporate, is reproduced as under:--

5-C. Board of Trustees to be body corporate:-- Every Board of Trustees constituted u/s 5-A or section 5-B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

Section 5-E of the Act deals with the delegation of the power, which is reproduced as under:--

5-E. Delegation:-- The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its Officers and a State Board may delegate to its Chairman or to any of its officers], subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the scheme [the (Pension) Scheme and the Insurance Scheme].

The issue of determination of the money dues from employer has been specified u/s 7-A of the Act, which is reproduced as under:--

7-A. Determination of moneys due from employers:-- (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order--

Section 7-I deals with the appeals to the Tribunal, which is reproduced as under:--

7-I. Appeals to Tribunal:-- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to subsection (3), or sub-section (4) of section 1, or

section 3, or sub-section (1) of section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

Section 7-K of the Act deals with the right of appellant to take assistance of legal practitioners, which is reproduced as under:--

7-K. Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers:-- (1) A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or any other authority under this Act may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before a Tribunal.

Section 7-L of the Act indicates regarding orders of the Tribunal. Section 7-L(4) reads as under:--

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

Section 19 of the Act further specifies delegation of the general powers, which is reproduced as under:--

19. Delegation of powers:-- The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act the Scheme [the (Pension) Scheme or the Insurance Scheme] shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also-

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

15. On reading of the aforesaid provisions, it is apparent that the Commissioner of the Provident Fund up to the rank of Regional Provident Fund Commissioner or such other officer may be authorised by the Central Government shall be called as "Authorised Officer". The said "Authorised Officer" may have power to carryout the functions under this Act subject to such conditions and limitations, which has been delegated to him by the Central Board. The determination of the money due from the employer and the issue of payment of interest, damages

can be decided by the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner by its orders. Against such orders, appeal would lie u/s 7-I of the Act, by the aggrieved person. As per sub-section (2) of section 7-K of the Act, it is apparent that Central Government or State Government, as the case may be, under the Act may authorize one or more legal practitioners or any of its presenting officer to present an appeal before the Tribunal. But as per section 7-L(4) of the Act, the order passed by the Tribunal finally disposing of an appeal shall not be questioned in any Court of law. In such circumstances, up to filing an appeal before the appellate Tribunal, the authority for presentation of the appeal can be conferred to any of the officers of the Central Government or the State Government as the case may be. However, if the order passed by the Appellate Tribunal is required to be challenged before this Court, by or on behalf of the Employees Provident Fund Organization, the authorization for presenting officer as well as the legal practitioners must be by way of a notification to present a writ petition before this Court. In the present case, learned counsel appearing on behalf of the respondent is unable to show any notification authorizing the Assistant Commissioner, Provident Fund, Gwalior to present this writ petition. In absence of any notification issued by the Central Government authorizing the Assistant Provident Fund Commissioner to present the writ petition, the Assistant Provident Fund Commissioner cannot be permitted to challenge the order of Appellate Authority by filing writ petitions in view of the judgment of the Hon''ble Apex Court in Mohtesham Mohd. Ismail (supra).

16. It is to be further observed that Kerala High Court in the case of West Coast Petroleum Agency (supra) has dealt with the issue of maintainability in the light of the judgment of the Hon''ble Apex Court. The same view has been taken by Bombay High Court in the case of Nirmitttee Holidays (P) Ltd. (supra). The Madras High Court in the case of Prabha Beverages Private Limited (supra) has also taken the same view. Thus, in view of the foregoing discussion, this Court respectfully agree with the view taken by the Kerala High Court, Bombay High Court and Madras High Court in the aforesaid cases and we are of the considered view that before this Court the Assistant Provident Fund Commissioner being adjudicating authority cannot be permitted to challenge the order of the Appellate Authority on its own without having any authorization by the Central Government or the State Government as the case may be by issuing the notification.

17. In the light of aforesaid finding, the judgment of the Constitutional Bench of the Hon''ble Apex Court reported in the case of The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, in Paras 8 & 9 will also govern the situation which is reproduced as under:--

8. We think that the learned Judicial Commissioner was clearly in error in holding that no manifest injustice resulted from the order of the respondent conveyed in

his letter dated March 24, 1955. By that order the respondent virtually refused to carry out the directions which a superior tribunal had given to him in exercise of its appellate powers in respect of an order of assessment made by him. Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of Courts. If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior tribunal, yet held that no manifest injustice resulted from such refusal.

9. It must be remembered that the order of the Tribunal dated April 22, 1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of income tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that in the circumstances of this case it was open to him to say that the order of the Tribunal was wrong and, therefore, there was no injustice in disregarding that order. As we have said earlier such a view is destructive of one of the basic principles of the administration of justice.

(Emphasis supplied)

18. Similarly, the Hon''ble Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, has observed that the Tribunal are not supposed to defend its own orders unless the allegations are made against them. It is therefore, well settled that the officers or Tribunal discharging quasi-judicial functions are not supposed to support their own orders even when orders are challenged before the higher forum.

19. In view of the foregoing discussion, in the considered opinion of this Court, the preliminary objection raised by the respondent regarding maintainability of the petitions filed by the Regional Provident Fund Commissioner, or Provident Fund Organisation through the Assistant Provident Fund Commissioner appears to be just and proper, therefore, upheld. Accordingly, the petition stands dismissed as not maintainable. It is to be further observed here that in view of the foregoing, petitions itself are not found maintainable, therefore, the merits of the case are not required to be dealt with by this Court. Accordingly, both the petitions stand dismissed as not maintainable and LA. No. 7185/2012 and LA. No. 7187/2012 filed by the respondent for the dismissal of the petition are hereby allowed. In the facts and circumstances of the case, parties are directed to bear their own costs.