

(1984) 09 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 3796 of 1984

Regional Provident Fund Commissioner, Karnataka

APPELLANT

Vs

Workmen represented by The General Secretary, Karnataka
Provident Fund Employees" Union and Another

RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 5,
5A, 5B
Industrial Disputes Act, 1947 — Section 10, 2
Provident Funds Act, 1925 — Section 5

Citation : AIR 1984 SC 1897 : (1984) 49 FLR 433 : (1984) LabIC 1682 : (1984)
2 LLJ 503 : (1984) 2 SCALE 422 : (1984) SCC 418 Supp : (1984) 1 SCC 418
Supp : (1985) 1 SCR 816 : (1985) 17 UJ 121

Hon'ble Judges : O. Chinnappa Reddy, J;E. S. Venkataramiah, J;A. N. Sen, J

Bench : Full Bench

Advocate : V.C. Mahajan, R.N. Foddar and N.S. das Behi, for the Appellant; A.K.
Goel, for the Respondent

Final Decision : Allowed

Judgement

Venkataramiah, J.—The question for consideration in this appeal by Special Leave is whether the Government of a State can be treated as the 'appropriate Government' u/s 2(a) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') in relation to any industrial dispute concerning the office of the Regional Provident Fund organisation established by the Central Government for that State under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Provident Funds Act').

2. The facts of the case are these : The Government of Karnataka made a reference u/s 10 of the Act referring a certain dispute between the Regional Provident Fund organisation established under the Provident Funds Act for the State of Karnataka and its employees to the Additional Industrial Tribunal, Bangalore and the said reference came to be registered as A.I.D. 3 of 1979 on

the file of the Tribunal. Before the Tribunal the Regional Provident Fund organisation raised among other pleas two preliminary objections to the reference viz. that the activity carried on by the management was not an industry and that the State Government was not the appropriate Government under the Act in relation to the dispute between it and its employees. The Tribunal took up for consideration the two issues arising out of the above two objections first and after hearing the management and the workmen negatived both the contentions of the management.

It held that the business carried on by the regional Provident Fund Organisation was an industry and that the State Government was the appropriate Government under the Act.

3. Aggrieved by the above findings of the Tribunal the management filed a writ petition under Article 226 of the Constitution before the High Court of Karnataka questioning the correctness of the said findings. Before the learned Single Judge who heard the writ petition the management did not, however, press its case as regards the finding that the Provident Fund organisation was an industry. The only contention urged by it was that the State Government being not the appropriate Government under the Act in so far as the dispute was concerned it could not refer the dispute u/s 10 of the Act. The learned Single Judge accepting the said contention of the management quashed the reference. Aggrieved by the decision of the learned Single Judge, the workmen filed an appeal before the Division Bench of the High Court. The Division Bench reversed the decision of the learned Single Judge and held that the State Government was the appropriate Government for purposes of the dispute in question. The management has filed this appeal after obtaining the leave of this Court under Article 136 of the Constitution against the judgment of the Division Bench.

4. u/s 10 the Act, where the appropriate Government is of opinion that any industrial dispute exists or apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule to the Act, to a Tribunal for adjudication. Section 2(a) of the Act defines the expression 'appropriate Government' as in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by the industries specified in Clause (i) of Section 2(a) of the Act, the Central Government and in relation to any other industrial dispute, the State Government. It may be stated here that the organisation under the Provident Funds Act was not one of the industries specified in Section 2(a)(i) of the Act when the reference was made in this case. The contention of the management is that the industry in question falls u/s 2(a)(i) of the Act as it is an industry carried on under the authority of the Central Government and hence the Central Government alone can act as the appropriate Government in relation to a dispute concerning it.

5. Entry 24 of the Concurrent List in the Seventh Schedule to the Constitution

specifically refers to the subject 'employees' provident funds'. The Central Government could have, if it intended to do so, started a provident funds scheme for the benefit of the workers in exercise of its executive power. Before any such action was taken the subject of legislation for instituting compulsorily contributory funds in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State Governments and of employers and workers took part. Ultimately it was decided that the Central Government should initiate appropriate legislation in Parliament for the said purpose. Accordingly an ordinance was issued in 1951 incorporating the decisions arrived at such meetings. Later on in 1952 the Provident Funds Act came to be passed replacing the ordinance. The Provident Funds Act contemplates the administration of the Scheme framed u/s 5 the Family Pension Scheme framed u/s 6A and the Employees' Deposit-linked Insurance Scheme u/s 6C(1) of that Act. The Provident Funds Act applies to the whole of India except the State of Jammu and Kashmir. u/s 5A of the Provident Funds Act the Central Board of Trustees (hereinafter called 'the Central Board') is constituted by the Central Government to administer, subject to the provisions of Section 6A and Section 6C, the fund vested in it in such manner as may be specified in the Scheme and to perform such other functions as it may be required to perform by or under the provisions of the Scheme, the Family Pension Scheme and the Insurance Scheme. u/s 5B of the Provident Funds Act the Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees which is for purpose of brevity referred to as the State Board in such manner as may be provided for in the Scheme. The crucial provision in Section 5B which, if we may say so with respect, has missed the attention of the Division Bench of the High Court is Sub-section (2) thereof. It says that a State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time. Under Paragraph 4 of the Scheme framed under the Provident Funds Act, it is provided that until such time as a State Board is constituted for a State the Central Government may set up a Regional Committee for the State which will function under the Central Board. There are three funds which are created by the Provident Funds Act. They are (i) The Fund i.e. the Provident Fund established under the Scheme, (ii) the Family Pension Fund established under the Family Pension Scheme and (iii) the Insurance Fund established under the Insurance Scheme. They are not confined to and particular State or Region. Each of them is a fund into which the amount collected under the respective Schemes is credited irrespective of the State or the Region where they are collected. Under Paragraph 54 of the Scheme all expenses relating to the administration of the fund including those incurred on Regional Committees have to be met from the Fund. For purposes of the administration of the Provident Funds Act, the appropriate Government in relation to an establishment belonging to or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry or in relation to an establishment having department or branches in more than one

State is the Central Government and in relation to any other establishment, the State Government u/s 2(a) of the Provident Funds Act. We are not concerned with this definition in this case as the question to be decided arises under the Act. The Provident Funds Act and the Scheme clearly show that the Central Government has the final voice in many matters including appointments to various offices referred to therein. It is not necessary to refer to them in detail here.

6. What has got to be determined in this case is whether the activity carried on under the Provident Funds Act is being carried on by or under the authority of the Central Government as provided in Section 2(a) of the Act or not in order to decide whether the Central Government is the appropriate authority under the Act or not. Section 2(a) of the Act came up for consideration by this Court in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, The Court observed in that case that there being nothing to the contrary, the word 'authority' in Section 2(a) of the Act must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to another to do an act. The words 'under the authority of' were construed by this Court in that case as meaning pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Applying this test, the Court held that a manufacturing industry carried on by a company registered under the authority of the Central Government even though the entire capital of the company had been contributed by the Central Government and under Articles of Association of the company the Central Government could exercise control over the affairs of the company. The Court, however, proceeded to observe that the question whether a corporation is an agent of the State would depend upon the facts of each case. It referred to the decision in *Graham v. Public Works Commissioner* [1901] 2 KB 781 and said that where a statute setting up a Corporation so provided, such a Corporation could be easily identified as the agent of the State and that it was possible for the Crown with the consent of Parliament to appoint or establish certain officials or bodies who were to be treated as agents of the Crown even though they had the power of contracting as principals. Merely because the officials of Government or certain bodies constituted by the Government for purposes of administration are given the garb of a statutory corporation they do not cease to be what they truly are.

7. At this stage it is appropriate to refer to certain observations made by Mathew, J. in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, on the true characteristics of public corporations established under a statute. The learned Judge observed at page 646 thus :

A public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged

with the duty of carrying out specified governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subjected to control by the executive, while the corporation remains juristically an independent entity not directly responsible to parliament. A public corporation is not generally a multi-purpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of public corporation are not civil servants. It is in fact, likely that in due course a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. In so far as public corporations fulfil public tasks on behalf government, they are public authorities and as such subject to control by government.

8. In the instant case, it is to be noted that the activity carried on by the Central Board or the State Boards under the Provident Funds Act is not similar to the activity carried on by any private trade or manufacturing business like the one involved in the case of the Heavy Engineering Corporation's case (*supra*). The activity is one traceable to Article 43 of the Constitution which requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural or industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It is a part of the programme of every welfare State which our country is. Institutions engaged in matters of such high public interest or performing such high public functions as observed by Mathew J. in Sukhdev Singh's case (*supra*) by virtue of their very nature performed governmental functions. They are truly the agents of the Government and they function under the authority of the Government as provided in the statute because the Central Government could have, for the purpose of introducing the scheme of compulsory contribution to the provident fund, set up an organisation or a department in absence of the corporate bodies envisaged in the Provident Funds Act. The Division Bench of the High Court was in error in observing that an examination of the organisation showed "that the activities of the Provident Fund" organisation are not governmental in character as they are essentially part of the activities of various industries to which the Provident Funds Act applies.' We have no doubt that the business of the Provident Funds organisation is governmental in character and does not pertain to industry to which the Provident Funds Act applies. The management and workmen of industries to which the Provident Funds Act applies contribute to the funds established under that Act. The business of the statutory bodies functioning under that Act is not the business of industries whose managements and workmen make contributions to the said funds. In addition to the above feature, the provisions of Section 5B(2) of the Provident Funds Act which reads: "A State Board shall exercise such powers and perform such duties as the Central

Government may assign to it from time to time" clearly envisage that the State Board is an agent of the Central Government. In the absence of the State Board, the Regional Committee constituted under Paragraph 4 of the Scheme is required to function under the control of the Central Board. The Regional Provident Fund Commissioner who is appointed by the Central Government is also under the control of the Central Board and the Central Government.

9. Having regard to the various provisions of the Provisions Funds Act and the nature of the business carried on by the Central Board, the State Board, the Regional Committee and the Regional Provident Fund Commissioner, we are of the view that the Division Bench of the High Court was not right in holding that the State Government was the appropriate Govt. u/s 2(a) of the Act in the matter of industrial disputes arising between the management and the workmen of the Regional Provident Fund organisation. It has to be mentioned here that even the learned counsel for the workmen fairly stated that the Central Government was appropriate Government under the Act in so far as the dispute in question is concerned He, however, submitted that the Central Government may now be directed to refer the dispute pending before the Tribunal at Bangalore to an Industrial Tribunal quickly as the case has been pending for nearly 5 years. We have no doubt that the Central Government will immediately consider the above question and take appropriate action.

10. In the result the order of the Division Bench of the High Court is set aside and the order of the learned Single Judge is restored. The reference made by the State Government is quashed. The appeal is accordingly allowed.

11. No costs.