

(2014) 08 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition Nos. 11085/2013, 3859/2014, 3897/2014, 4891/2014, 4894/2014, 5040/2014, 5738/2014, 5781/2013, 7061/2013, 7274/2013, 7518/2012, 7523/2012, 9732/2013, 10803/2013, 11086/2013, 10751/2013 and CAW No. 1432/2014 in W.P. No. 1115/2012

The Regional Provident Fund Commissioner

APPELLANT

Vs

Malegaon Sah. Sakhar Karkhana Ltd.

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5A, 7A, 9(3)

Foreign Exchange Regulation Act, 1973 — Section 54

Citation : (2014) 143 FLR 1066 : (2014) LLR 1035

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : V.K. Wasnik, Advocate for the Appellant

Judgement

N.M. Jamdar, J.—The petitions are taken up together since in each of these petition the respondents have taken a preliminary objection that the petitions filed through the Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and the Union of India, as the case may be, are not competent as the Regional Provident Fund Commissioner and Assistant Regional Provident Fund Commissioner are quasi-judicial authorities exercising powers under Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. The preliminary objection raised is that the Regional Provident Fund Commissioner and the Assistant Regional Provident Fund Commissioner, in each of these matters, have passed orders against the respondents under Section 7A of the Act, which have been set aside by the Appellate Tribunal and, therefore, the Regional Provident Fund Commissioner and the Assistant Regional Provident Fund Commissioner being quasi judicial authorities cannot challenge the order of the Appellate Tribunal reversing their own orders. Reliance was placed on the decision of the learned Single Judge of this Court in the case of The Asstt.

Provident Fund Commissioner v. M/s. Nirmitee Holidays (p) Ltd., delivered in W.P. No. 615 of 2009, on 30 August 2010. In this petition, the learned Single Judge of this Court has taken a view that once the Commissioner was exercising quasi judicial functions while passing the order which has been set aside by the Appellate Authority, it would not be permissible for the Commissioner to challenge the order of the Appellate Authority. The learned Single Judge has placed reliance on the decision of the Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

2. The learned counsel appearing for the petitioners submitted that though the petitions has been filed in the name of Regional Provident Fund Commissioner, the Assistant Provident Fund Commissioner and Union of India, they have not been filed in their capacity as quasi judicial authorities but as a delegate of the Central Board constituted under section 5A of the Act. The learned counsel for the petitioner has sought oral permission to amend the petitions by adding Central Board as the petitioner. The learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another, , more particularly paragraph 15, which reads as under:

"15. From the Notification dated 22.9.1989, whereupon reliance has been placed by Mr. Bhan, it would appear that the officer authorized by the Central Government for the purpose of enforcing the provisions of the Act was specifically empowered to adjudicate upon the dispute. The said notification itself is a pointer to the fact that for the purpose of exercising the functions of the Central Government under one provision or the other, the officer concerned must be specifically empowered in that behalf. A general empowerment would, however, be permissible. Before the High Court, no notification was filed to show that the authority concerned was empowered to prefer an appeal on behalf of the Central Government. The Central Government was not even impleaded as a party to the appeal. First respondent did not file the appeal on behalf of or representing the Central Government. It was filed in its official capacity as the adjudicating authority and not as a delegate of the Central Government."

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 reasoning 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 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."

17. The Madras High court in Rama Arangannal opined: (AIR p. 81 para 4):

"4. On the question as to the maintainability of the appeal, it is seen that the Explanation to section 54 of the Foreign Exchange Regulation Act, 1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority. In this case, the appeal has been filed by the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because its order of adjudication has been set aside by the Appellate Board."

The Punjab and Haryana High Court in Lal Chand followed the said decision.

18. The High Court was, in our considered view, not correct to take a contrary view. Furthermore, the jurisdiction of the High Court could be exercised only when there existed a question of law and not a question of fact. The Board, as noticed hereinbefore, arrived at a finding of fact that there did not exist any material for holding that any violation of section 9(3) of the Act had taken place."

According to the learned counsel for the petitioner, it is not a absolute proposition of law that an adjudicating authority exercising quasi-judicial power can never pursue a challenge to an order setting aside his order. He submitted that the decisions of the Madras and Punjab and Haryana High Courts holding this position has not been approved by the Apex Court. He further submitted that there the Regional Provident Fund commissioner, Assistant Provident Fund commissioner and others are authorized by the Board and this fact was not placed before the learned Single Judge in the case of M/s. Nirmitee Holidays (supra). According to the learned counsel, therefore, it cannot be said that institution of the petitions are violative of any fundamental principle. He submitted that, if there is any difficulty in respect of delegation in such cases, it can be cured by the Central Board itself pursuing the litigation any further instead of it's delegate.

3. The learned counsel for the respondents contended that the fact that the Central Board has decided to continue the proceedings further, cannot be held to be established by the petitioner moving a unsigned or unaffirmed amendment. According to them, the Central Board must first file a proper application for bringing itself on record of the petition as the delegation in favour of the Commissioner is improper and void. They submitted that when an application is filed by the Board they will contest the same, as according to them, the very

institution of the petition is bad in law.

4. The learned counsel for the petitioner submitted that, an application would be moved for amending the petition for bringing on record the Central Board as the petitioner and consequential amendments. Once such an application is filed, it will be open to the respondents to contest the same on merits. In view of the fact that the aspect of delegation is under challenge, each of the applications for amendment will be filed by the Secretary or Co-ordinating Officer of the Central Board or any such person expressly authorized by specific order by the Central Board for affirming the applications. To enable the petitioners to do so, stand over to 2 September, 2014.