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**(2009) 05 RAJ CK 0044**  
**In the Rajasthan High Court**

Vatan Press, 'Sudarma'

APPELLANT

Vs

The Regional Provident Fund Commissioner/Assistant  
Provident Fund Commissioner, Employees Provident Fund  
Organization

RESPONDENT

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**Date of Decision :** 08-05-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7I

**Citation :** (2009) 122 FLR 640 : (2009) 4 LLJ 276 : (2010) 1 RLW 297

**Hon'ble Judges :** R.S. Chauhan, J

**Bench :** Single Bench

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## Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dated 04.10.2004 passed by the Assistant Provident Fund Commissioner (Damages) ("the Commissioner", for short) whereby the learned Commissioner has directed that Rs. 14,32,032/- should be recovered from the petitioner for the period February, 1994 to October, 2001.

2. The brief facts of the case are that the petitioner establishment is covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act", for short). It was paying regular contribution from the date of its coverage under Code No. RJ-3350.

3. In March, 2004 the petitioner received a notice from the respondent for some delay in payment of contribution and regarding initiation of the proceedings u/s 14-B of the Act. The petitioner also received a notice dated 29th March, 2004 to appear before the respondent in the proceedings u/s 14-B of the Act. According to the notice, the hearing was fixed for 15.04.2004. On 15.04.2004, the petitioner submitted an application for issuing a fresh legible notice as notice of Section 14-B was illegible. The learned Commissioner adjourned the case for 13.05.2004.

4. Further, it is the petitioner's case that the proceeding was adjourned on

various dates and on each date the representative of the petitioner attended the proceedings. On 12.07.2004, the learned Commissioner informed the petitioner that after remittance of the copy, the case shall be heard. But, in the meantime, the case was taken up by the respondent without remittance of the statement of delayed payment of contribution. As such, no reply could be filed by the petitioner.

5. However, despite the appearance of the petitioner's representative, the order sheets of 04.08.2004 and 18.08.2004 show their absence. Thus, the order sheets have been drawn in a mechanical manner. Thereafter, clerk of the department prepared a statement of damages and produced it before the Commissioner for his signature. Subsequently, vide order dated 04.08.2004, the learned Commissioner has imposed a total damage of Rs. 14,32,032/- upon the petitioner. On receiving the order dated 04.10.2004, again a letter was written by the petitioner dated 17.10.2004 which was received by the respondent on 18.10.2004 praying that an opportunity of hearing may be granted to him after providing legible copy. Thereafter, the respondent had sent the legible copy to the petitioner along with the letter dated 08.11.2004 which was received by the petitioner on 16.11.2004. But after receiving the legible copy, no opportunity of hearing was given to the petitioner and the respondent started the recovery proceedings.

6. Therefore, on 04.03.2005, the petitioner sent a notice for demand of justice for not taking any action against him. According to the petitioner, the order dated 04.10.2004 is not only arbitrary, but is also against the principles of natural justice. Hence, this petition before this Court.

7. Mr. Achantya Kaushik, the learned Counsel for the respondent, has raised a preliminary objection that since the petitioner has an alternate remedy available u/s 7-I of the Act, therefore, this writ petition is not maintainable before this Court. According to the learned counsel, the writ petition has been filed by the petitioner only to escape from the liability of having to deposit Rs. 14,32,032/- prior to filing of the appeal. However, such a subterfuge cannot be employed by the petitioner to circumvent a statutory alternate remedy.

8. On the other hand, Mr. R.K. Kala, the learned counsel for the petitioner, has contended that since the petitioner was not given an opportunity of hearing, therefore, his rights under the principles of natural justice were violated. In case, the principles of natural justice are violated, the petitioner is entitled to invoke the writ jurisdiction without having to first exhaust the alternate remedy. In order to buttress this contention, the learned Counsel has relied upon the cases of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, and M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, . In rejoinder Mr. Achantay Kaushik has contended that a bare perusal of the impugned order would reveal that ten opportunities were granted to the petitioner to appear before the learned Commissioner. Since the

petitioner chose not to appear, now it cannot claim that an opportunity of hearing had not been given to it.

9. Therefore, his rights under the principles of natural justice, in fact, have not been violated. Hence, the judgments relied upon by the learned counsel for the petitioner are inapplicable to the present case.

10. Undoubtedly, in case the principles of natural justice are violated, the petitioner would be entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India as held by their Lordships in the above mentioned cases. However, both according to the order sheets which have been submitted before this Court, and according to the impugned order dated 04th October, 2004, the petitioner was granted ten opportunities of hearing namely, on 05.02.2004, 05.03.2004, 07.03.2004, 15.04.2004, 13.05.2004, 31.05.2004, 15.06.2004, 12.07.2004, 04.08.2004 & 18.08.2004. Thus, it was granted sufficient opportunities of hearing by the learned Commissioner to place its case before the learned Commissioner. However, the petitioner did not appear on the said dates. Since he chose not to appear and to argue his case or to bring his defence to the notice of the learned Commissioner, the petitioner cannot claim that his rights under the principles of natural justice have been violated. Neither a quasi-judicial body, nor a judicial body can go on endlessly waiting for a party to appear and to argue its case. Therefore, in these facts and circumstances the case, the contention of the learned Counsel for the petitioner that his rights under the principles of natural justice have been violated is absolutely baseless.

11. Mr. R.K. Kala has also contended that in fact, the order sheets have not been drawn properly as only stamps have been placed in the order sheets showing the non-appearance of the petitioner. However, in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , the Hon"ble Supreme Court has observed that, "the Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in the Court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence... The principle is well settled that statement of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence." Therefore, there is no reason for this Court to believe that the order sheets were drawn incorrectly by the learned Commissioner. A bare perusal of the order sheets also reveals that the petitioner did not avail the opportunities of hearing, when they were granted to it by the learned Commissioner. Thus, too, the learned counsel for the petitioner cannot claim that its rights under the principles of natural justice have been violated.

12. Since its rights under the principles of natural justice have not been violated, the petitioner cannot invoke the writ jurisdiction of this court. Since an alternate remedy has been provided under the Act, the petitioner should have availed the said alternate remedy.

13. According to Mr. R.K. Kala, in case, the petitioner were to avail the alternate remedy, he would be required to deposit an amount of Rs. 14,32032/-. But merely because the petitioner wishes to escape from the liability of having to deposit the said amount, a right to circumvent the statutory alternate remedy and the right to rush to this Court cannot be given to it. Since the petitioner is a running concern, therefore, it does not lie in the mouth of the petitioner to plead that it does not have sufficient fund for pursuing the alternative remedy. Insufficiency of fund is no ground for circumventing the alternative remedy. Afterall, the requirement of law is that the appellant has to deposit the said amount prior to filing of the appeal. Thus, the petitioner is duty bound to comply with the requirement of law. In this view of the matter, also, the petitioner cannot be permitted to invoke the writ jurisdiction of this Court. Thus, the preliminary objection raised by Mr. Achantya Kaushik is, hereby, accepted. Consequently, the writ petition is not maintainable on the ground of availability of an alternate remedy. Hence, it is, hereby, dismissed.

14. There shall be no order as to costs.