
(1981) 05 DEL CK 0035

In the Delhi High Court

Case No : Letter Patent Appeal No. 60 and 61 of 1970

Wire Netting Stores Delhi and Another

APPELLANT

Vs

The Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 08-05-1981

Acts Referred:

Citation : (1981) 20 DLT 18 : (1981) 43 FLR 158 : (1984) 1 ILR Delhi 76 :
(1981) LabIC 1015 : (1982) 1 LLJ 7

Hon'ble Judges : S. Ranganathan, J;Prakash Narain, J

Bench : Division Bench

Advocate : R. Dayal, G.N. Aggarwal, A.B. Dayal and N.K. Jaggi, for the
Appellant;

Judgement

Prakash Narain, J.

(1) These two appeals are directed against the judgment of a learned Single Judge of this court who by a common judgment dismissed .the two petitions under Article 226 of the Constitution of India, filed by the Appellants.

(2) The appellants have been running a factory since 1947. They manufacture wire-netting rolls, wire-netting, wire gauze, wire cloth and "Jaali", from G. 1. wires. By an order dated February 23, 1965 (Annexure A-I), the Regional Provident Fund Commissioner New Delhi, the first respondent informed the appellants that on enquiries made by his department it has been revealed that their factory is an establishment to which the Employees' Provident Fund Act, 1952, (hereinafter referred to as the Act) and the Scheme framed there under (hereinafter referred to as the Scheme) was attracted with effect from January, 1965. A code number allotted to the appellants' establishment was communicated and they. were called upon to deposit the arrears of contribution from the date of coverage of the factory [establishment under the Act and the Scheme at the rates provided in paragraph 29 of the Scheme in respect of all employees who are required and are eligible to become members of the Fund in accordance with paragraph 26/80(3) of the said Scheme together with

administrative charges at the rate of 3 per cent for both employees" and employer"s contributions (2.4 per cent if the contributions were paid at the statutory rate of 8 per cent of the basic wages, dearness allowance, retaining allowance and cash value of food concession, if any), administrative charges .from October 1, 1964 at the rate of 0.37 .per cent of pay, into the E.P.F. Account No. I and Epf Account "No.II respectively maintained at all the branches of the State Bank of India in Delhi, on the prescribed challans within 15 days of the receipt of the said communication. The appellants were also called upon to submit the various, returns including monthly statements of contributions in Form 12 from the date of coverage and onwards supported by the triplicate copy of challan duly receipted by the bank within 25 days of the receipt of the said communication. It was. pointed out that the employees, employed by or through the contractors were also entitled to the benefits of the scheme with effect from November 30. 1963 and so, contributions in respect of such employees were payable from wages for the month of December. 1963 onwards. The appellants were warned: that default may render them liable to levy of damages for berated. payment. In as much. as .the appellants" factory/establishment was discovered as covered by the. Act and .the Scheme, only when this communication was. issued., the appellants were called upon.to deposit both the employer"s and employees" contributions prior to the period of discovery i.e. prior to January, 1965. Iv was clarified that the employees" share of contribution may be calculated on the basis of presumptive share. Prior to the issue of this order the factory /establishment of the appellants was inspected by a Provident Fund Inspector on or about February 3, 1965. The appellants contend that they had made their position clear that their factory/establishment was not covered by the Act. Another communication dated February 23/24 1965 was issued by the first respondent to the appellants to the effect that their factory / establishment had been treated as covered by the Act and the Scheme provisionally from January 1, 1965 but this has been done On the basis of the Inspector"s report consequent upon the inspection on Feb- ruary 3,.1965.In order to decide the question of coverage of the appellants" establishment, by this communication, they were called upon to call at the office of the first respondent along with certain records and documents. The appellants filed their objections to the applicability of the Act and the Scheme to their factory /establishment. Allegedly, there were further inspections of record and the establishment. More information was sought from the appellants from time to time "by the first respodent The appellants contention throughout was that their industry does not fall. within any of the industries specified in the. schedule to the Act. According to. the first respondent the appellants" factory/establishment was engaged in the manufacture of "electrical, mechanical or general engineering products". The process of asking for more record and . information, and the appellants" constantly contending that their factory (establishment did not fall within the ambit of the Act went on, for quite some time. The appellants even asked the first.respondent to refer the matter for clarification to the Central Government u/ s 19-A of the Act. Ultimately, by a communication dated October 31, 1966 the

first respondent Informed the appellants that in his view the factory/ establishment of the appellants had been rightly covered under the Act and the Scheme and that if the appellants had any doubt about it, they may make a representation to the Central Government, as provided by Section 19-A of the Act. By a communication dated January. 19, 1967 the first respondent informed the appellants that as they had neither made any representation u/s 19A of the Act nor shown any cogent reason why their factory] establishment be not treated as covered by the Act and the Scheme they are advised to comply with all the provisions. of the Act and the Scheme with effect from January 1, 1965 provisionally and deposit the provident fund dues and submit the various returns etc. On February 13, 1967 the appellants made a representation to the Central Government to look into the matter and clarify that their factory /establishment was not covered by the Act and the Scheme (Annexure B-2). Admittedly, no hearing was given by the Central Government to the appellants with regard to their contentions in the said application u/s 19A of the Act. Notice dated July 1, 1967 -under Section 7A of the Act was served on the appellants by the first respondent. By an order dated August 10, 1967 assessment orders were made in respect of the establishment of the appellants. This led to the first writ petition (Civil Writ No." 1236 of ^1967) being filed by the .appellants " challenging the order of assessment and their liability to be assessed on various grounds. After.repeated reminders the Central Government finally gave its decision on the application moved by the appellants u/s 19A of the Act on January 16, 1968, rejecting the contentions of the appellants. By the second writ petition (Civil Writ No. 121 of 1968) the appellants have challenged not only their liability to assessment but also the order of the Central Government holding that the appellants are covered by the Act and the Scheme. As noticed earlier, these petitions were disposed of by a common judgment from which the present appeals arise.

(3) The appellants contended that their activity was not covered by any of the items in Schedule I to the Act.,They also challenged the validity and virus of Section 7A and Section 19A of the Act.

(4) As before the learned Single Judge, so before us, it was contended that the product of the appellants" factory, is not a product which fell under any of the entries in Schedule I to the Act. It was urged that what was manufactured was not "electrical, mechanical or general engineering products", as contended by the first respondent because with the help of . wire machine what was manufactured was textile. Even then, according to the appellants, their factory/establishment was not covered by the Act or the Scheme because only manufacture of "textiles, (made wholly or in part of cotton or wool of jute or silk, whether natural or artificial)" are mentioned In Schedule I to the Act. The first question Therefore, that arises for determination is whether this contention has any force or is even tenable. The learned Single Judge negatived this contention on two grounds. First, he came to the conclusion that the product inquestion was not "textiles" at all but a product which could be regarded as a general engineering product.

Secondly, he came to the conclusion that the emphasis laid by the appellants on the word "product" was misplaced. Looking at the Scheme and intent of the Act and reading the. Schedule, the emphasis had to be placed on the word "industry". If the appellants were carrying on an industry resulting in the manufacture of products which may be described as "general engineering products", then their establishment/factory was covered by the Act. .

(5) The petitioners' contention was and still is that what they manufacture are textiles inasmuch as the product is obtained by weaving wire into various kinds of nets and jaalis" etc. The raw material comprising of the wire is not manufactured by the petitioner. It is imported or bought. The industrial process or the manufacturing process comprises of weaving. The end product is, Therefore, textile but not made wholly or in part of cotton or wool or jute or silk. It is also contended that the end product is not a general engineering product, if the nature of the product is the guiding factor. On the other hand, if it is the nature of the industry which is the guiding factor then. it is not a general engineering products industry but a weaving industry.

(6) We cannot agree with the learned counsel for the appellants that the end product is textile. In some of the more opulent western countries there have off and on been fashion designers .who have made textiles out of metal; but, as commonly understood even in trade, textile would denote a fabric made of cotton,silk, wool or synthetic fibre. No one would call a wire gauze as metallic cloth or textile. Furthermore, textiles are used for clothing or furnishing, generally speaking. These are not used in construction or completion of building"s. Therefore, we are in full agreement with the learned Single Judge that whether one takes a narrow view or a broader view of the term "textile", wire netting, wire gauze etc. cannot be regarded as textile by anyone.. Merely because the same are produced by a process of weaving strings of wire is irrelevant.

(7) We are also in agreement with the learned Single Judge that as commonly understood" by the common man as well as in the trade, wire netting, wire gauze etc., are general engineering products. We need not dilate at any great length on this aspect and fully endorse the view expressed by the learned Single Judge.

(8) We now come to the second point, viz., the view of Section 7A of the Act. This section "reads as under :

"7A.(Determination of moneys due from employers.

(1)The Central Provident Fund Commission, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act the Scheme or the Family Pension Scheme, as the case may be, and for this purpose may conduct such inquiry as he may deem necessary.

(2)The officer contacting the inquiry under sub-section

(1)shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters: (a) Enforcing the attendance of any person or examining him on oath; (b) requiring the discovery and production of documents; . " (c) receiving evidence on affidavit; (d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal code

(3)No order determining the amount due from any employer shall be made under sub-section (1), unless the employer is given a reasonable opportunity of representing his case.

(4)An order made under this section shall be final and shall not be questioned in any court of law.

"

(9) Mr. Rameshwar Dayal, appearing for the petitioner, contends that Section 7A is ultra virus Article 14 and Article 19(1)(f) and (g) of the constitution for the following reasons ...

(A)the exclusion of Judicial review of orders passed u/s 7A is unreasonable.,

(B)extraordinary remedy, like invoking the jurisdiction of this court under Article 226 of the Constitution in which only jurisdictional facts can be challenged. is not sufficient .safeguard and Section 7A would be invalid.

(C)There is no valid criterion that the hearing postulated by Section 7A would be an effective hearing, for the hearing may be given by a person untrained in law or intricacy of interpretation of Statutes. There is thus no proper Tribunal constituted and this makes the provisions of Section 7A unreasonable. Merely providing that the appropriate authority u/s 7A would be a "person who is drawing salary of Rs. 500 or more is not sufficient safeguard that matters in the nature of a lie would be appropriately decided.

(D)The above three contentions are on the assumption that in proceeding's u/s 7A the competent authority is authorised to decide the question of the Act and the Scheme being attracted in the case of a particular party.

(10) The learned Single Judge was not impressed by the contention that Section 7A is ultra virus any of the provisions of the Constitution. In the first instance he has commented that the petitioners were the least qualified to put forth this challenge. This observation was made in the context that from the correspondence beginning from the letter dated February 23, 1965 (Annexure A-1 to the writ petition) ending with Annexure A-17 dated August 10, 1967 it was apparent that the Commissioner repeatedly called upon the petitioners to furnish information and returns to enable him to decide after hearing the

petitioners, the question .whether the petitioner's factory is covered by the Act and the Scheme. The petitioners, however, adopted dilatory tactics and succeeding in not supplying the desired information to the Commissioner for a period of more than 21/2 years. The learned Judge then went on to notice the contention on behalf of the appellants, who were petitioners before him, that actual opportunity of hearing being afforded was not relevant inconsidering the virus of Section 7A which had to be determined on the wordings of the statute. On this aspect the learned Single Judge, after noticing a number of decisions, came to the conclusion that the Commissioner in initiating proceedings u/s 7A will have to .formulate a preliminary view of his own after hearing the employer whether the factory is covered "by the Act or not. It is only thereafter that the Commissioner can determine the amount due from the employer u/s 7A. Such assessment on the basis of a preliminary opinion about coverage made by the petitioner is not final and will ultimately have to be decided by the Civil Courts as well as the High Courts and the Supreme Court. The power u/s 7A is only to determine the amount due from the employer and not whether the employer is covered by the Act and the Scheme. He noticed that Section 7A does not expressly give power of tentatively examining whether a particular factory is covered by the Act to the Commissioner and so, does not require the Commissioner expressly to give a hearing to the employer before to make tentative assessment. Nevertheless the power to make tentative assessment is necessarily implied in the power of the Commissioner to determine the amount due from a particular employer. It follows, Therefore, that the hearing to be given to the employer before such preliminary assessment is also implied: It need not have been expressly given by the statute. The commissioner can make a tentative assessment only if he comes to a preliminary conclusion that the factory of the employer is covered by the Act and the Scheme and it must be implied in the provisions of Section 7A that at that stage a hearing is contemplated. The learned Judge distinguished the decision of the Supreme Court in State of Madhya Pradesh v. Baldev.Prasad, (1). That decision dealt with the provisions of Cp and Berar Goondas Act enabling the District Magistrate to decide whether a person was a goonda or not. The Supreme Court had held that the definition of the word "goonda" was aninclusive one and did not afford any guidance to the District . Magistrate. That is why the provisions of the Act were held to be unconstitutional. In the present case the learned Judge observed, exhaustive guideline were laid, down in Schedule I of the Act for being followed by the Commissioner in determining whether a particular industry is covered by the Act or not. Furthermore, the Commissioner's preliminary finding that the factory of an employer was covered by the Act was reviewable by the Central Government u/s 19-A of the Act. .Certain other decisions pertainnig to the validity, of the Government Premises (Eviction) Act, 1950 were noticed and it was mentioned that that Act was struck down because no hearing was contemplated prior to order "of eviction and the provision for an appeal to the Government was.not considered sufficient. He noticed that Section 7A of the Act on the other hand specially required the Commissioner to give a hearing to the

employer with power of review to the Central Government u/s 19-A of the Act and the preliminary decision regarding applicability of the Act being subject to judicial review by the Civil Courts and by the High Courts under Article 226 of the Constitution and by the Supreme Court Under Article 136 of the Constitution. It was then observed by the learned Judge that the power given to the Commissioner is for a beneficial purpose to enforce social security for employees contemplated by the Act. It did not interfere with the liberties of the employer in any other way for any other purpose. A sympathetic approach to such social legislation was essential.

(11) Mr. Rameshwar Dayal contends that merely because the appellants did not show cause despite opportunity given by the Commissioner is indeed not relevant because the virus of a statute has to be adjudged on settled rules of interpretation by examining the wordings of only the impugned provisions, that in a particular case opportunity was afforded is no answer to the possibility of the power being misused. There is force in this contention. We will, Therefore, proceed to examine the contentions of the learned counsel.

(12) Section 7-A of the Act has already been read. In terms the only power given is to determine the amount due from any employer under any of the provisions of the Act or the Scheme. In terms, there is no power conferred to determine whether the factory or the establishment of the employer is covered by the Act. The hearing postulated by sub-section (3) of Section 7-A is again relatable to determining the amount due from the employer. Finality under sub-section (4) of Section 7-A attaches to the amount so quantified. Therefore, it could be argued that the Commissioner has no power to determine whether the factory/establishment of an employer is or is not covered by the Act. The Commissioner has no power to determine the amount unless the factory/establishment of an employer is covered by the Act. If he proceeds to do so, it may be regarded as ultra virus his power. The question, Therefore, that arises is who is to determine this and how is to be determined. Section 19-A, inter alia, gives power the Central Government to remove this - difficulty by making an order which would clarify whether an establishment which is a factory is engaged in an industry specified in Schedule I. the point is whether this enabling provision is sufficient answer to the contention of the appellants, In our opinion, in construing taxing statutes or statutes analogous to taxing statutes there would be no need to make a provision providing for a Tribunal to determine whether a person falls or does not fall within the net of the taxation or analogous liability. to pay or deposit moneys as, by and large, provision is made in the statute-itself clearly stating who would come within the ambit of the statute. Such a provision has been made in the Act as well and that is to be found in Sections 3 and 5. Section 3 deals with those establishments where, immediately before the Act became applicable to an establishment, there was in existence a provident fund which is common to the employees employed in that establishment etc. and a notification is issued directing the provisions of the Act to be applicable to such establishment. Section 5 speaks of Central Government by notification in the

Official Gazette framing scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under the Act for employees or for any class of employees and specifying the establishments or class of establishments to which the said Scheme shall apply. The word, "industry" has been defined in Section 2(i) to mean any industry specified in Schedule I to the Act and such other industry as may be added to the schedule notification u/s 4. Therefore, the establishment or the factory of an industry mentioned in Schedule I automatically comes into the ambit of the Act in accordance with the Scheme that may be framed and the returns and the deposits etc. have to be made by such an establishment suo moto. It is only if someone who should have himself or itself come forward to be assessed is not assessed because he or it did not come forward to be assessed that notice is given for assessment on a preliminary view formulated by the Commissioner and provisional assessment, subject to any objection that may be raised regarding the applicability of the Act or the Scheme, is made u/s 7-A of the Act. Therefore, the contention that there should be first a Tribunal to determine whether the Act or the Scheme applies or not and then a competent authority should make the assessment cannot be accepted.

(13) It is contended by Mr. Rameshwar Dayal that in order to exercise the power conferred by Section 7-A and even to come to the conclusion tentatively that a party is covered by the Act and the Scheme some sort of hearing has to be given but there is no provision for such a hearing. We do not agree. The hearing contemplated by sub-section (3) of Section 7-A would be adequate to decide the jurisdictional fact of coverage provisionally for there is no doubt that computation of the amount due can only be made against an employer who is liable to pay contributions under the Act and the Scheme. On this Mr. Dayal urges that complicated questions of law can arise in proceedings u/s 7-A even at the stage of preliminary determination which would be in the nature of a lis and for this purpose a properly trained Tribunal or authority is necessary. The provisions, as made, are inadequate and amount to being unreasonable. Indeed, there is no provision made in this regard in the Act. He referred to Section 5-D of the Act. Reading sub-section (4) of Section 5-D learned counsel contends that the provision to the effect that no appointment to the posts of a Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner or any other post under the Central Board carrying a maximum monthly salary of not less than Rs. 500 shall be made except after consultation with the Union Public Service Commission. There is no safeguard for two reasons. First, in the modern day context the salary of Rs. 500 is a figure which could hardly be regarded as relevant. Secondly, under sub-section (7) of Section 5-D the method of recruitment, salary and allowances, discipline and other conditions of service of the other officers and employees of the Central Board shall be such as may be specified by the Central Board with the approval of the Central Government and the similar conditions of service may be specified by the Board with the approval of the State Government as far as the employees of the State Boards are concerned. But who is to provide for the salary and

allowances etc. of the officers mentioned in sub-section (4) of Section 5-D if those officers do not belong to the Indian Administrative Service or in the service of the Central Government or a State Government or the Central Board in a Class I or Class II post, is not specified. The provision of consultation with the Union Public Service Commission can be defeated by appointing persons to high posts of the various Commissioners by appointing them at a salary of less than Rs. 500. Theoretically it is possible that the Commissioner postulated by Section 7-A of the Act may be a person who is employed on a salary less than Rs. 500. In any case, the determinative factor should be the qualifications of the persons to be appointed to such high posts for which the legislature has made no provision,

(14) The crux of the problem is in whom should adjudicative power of the type mentioned in Section 7-A of the Act be vested. The answer would really depend upon the finding as to the nature of power exercised by the Commissioner u/s 7-A. In determining the amount payable the employer is really asked to part with money. This would undoubtedly affect his rights in relation to property. In arriving at this conclusion we may well take guidance from the observations of the Constitution Bench of the Supreme Court in *Sonapur Tea Co., Ltd. Vs. Must. Mazirunnessa*, . If this be the correct conclusion, the person who is appointed Commissioner to exercise power u/s 7-A should be a person with either a legal background or training or training in the nature contemplated for officers appointed under the taxing statutes, like officers of - the Indian Revenue Service. Any and every executive officer, as opposed to judicial officer or officer having judicial background, could hardly be expected to arrive even, at a preliminary conclusion regarding the applicability of the Act and the Scheme to a particular party on a consideration of various jurisdictional facts and correctly interpret the entries in Schedule I to the Act. Indeed, leaving Income Tax and Wealth-tax Officers out of the picture, who are generally officers of the Indian Revenue Service, specially trained for the job that they are supposed to do, other enactments similar to the Act we are considering have legislative provision made in this regard. As an example we may take another socially beneficial legislation, operating in somewhat similar field as the Act and the Scheme. That enactment is the Employees' State Insurance Act, 1948. Adjudication of disputes and claim under the said Act of 1948 is to be made by the Employees' Insurance Court u/s 74 of that Act. The person who can preside over that court has to be a judicial officer or a legal practitioner of at least five years' standing. All the jurisdictional facts given before such a court are by way of a *lis*. Legal practitioners are permitted by virtue of Section 79 to appear before such a court. Intricate questions of law can be referred for decision of the High Court by the Employees' Insurance Court by virtue of Section 81. An appeal from the decision of the Employees' Insurance Court lies to the High Court if it involves a substantial question of law. There is thus ample safeguard made by the Employees' State Insurance Act for proper adjudication and effective hearing. Similarly, quantification under the Industrial Disputes Act could be referred to Labour Courts or Tribunals which are manned by duly qualified persons, as provided by

the statute itself. The payment of Wages Act makes provision for an appeal to a judicial tribunal by virtue of Section 17. One could cite many other examples where such provisions -have been made, including the Working Journalists Act: It is paramount where any liability is to be fixed that the authority empowered to adjudicate must be an authority with qualifications relevant to the matter to be adjudicated upon. Unless such a protection is given by law to a person who is likely to be adversely affected by an adjudication, the right of hearing, as contemplated by sub-section (3) of Section 7-A would be an illusory safeguard. The mere fact that rules have been promulgated which provide for recruitment and conditions of service, of Commissioners, known as the Employees' Provident Fund Organisation (Commissioners) Recruitment Rules, 1966, and that in the said rules the posts of Central Provident Fund Commissioner, Regional Provident Fund Commissioner are shown as Class I posts carrying high scales of salary, is no answer to the above proposition. These rules do not give qualifications of the persons to be recruited, but it is urged that it can be assumed that properly qualified persons will be appointed as competent persons u/s 7-A. It may be so. but in construing the virus of the provision, what one has to keep in view is whether there is any legal sanctity to the rules relied upon. The rules, no doubt, bind the Organisation and the Central Government. The question is under what authority the same have been issued. Obviously, these rules have been framed by virtue of the provisions of sub-section (6) of Section 5-D of the Act and have statutory force. The regulations with regard to recruitment etc. of the employees of the Central Board and the State Boards have been framed by virtue of the provisions -of sub-section (7) of Section 5-D of the Act. These also have statutory, force. It could thus be contended that there is sufficient safeguard that properly trained officers would be appointed and inasmuch as clear-cut guidelines have been given, Therefore there is no force in the contention that unqualified persons would exercise power u/s 7-A of the Act. We are of the view that the parliament having vested the power and laid the duty on the Central Government to make appropriate rules and regulations to appoint officers to carry out the purposes of the Act and see how that power has been exercised, the challenge to Section 7-A on this count cannot be accepted. Indeed, the qualifications provided for Regional Provident Fund Commissioners (Grade IV) and Assistant Provident Fund Commissioners (.Grade 1) (Headquarters and Regional Offices), need hardly be added to and so, require no comment. The pay scales provided for still higher officers where no education and other qualifications are provided for itself ensure selection of proper persons, particularly as the Union Public Service Commission will have to be consulted in making these appointments. It cannot be expected that the Government would appoint persons to highly paid posts at whim. Therefore, we come to the conclusion that there are ample safeguards that proper persons would be appointed in proper manner to exercise the power u/s 7-A of the Act.

(15) It is then contended that an executive officer should not be allowed to exercise power which is really in the nature of judicial or quasi-judicial, power,

particularly as determination will have to be made affecting the rights of the parties.; In support of this contention reliance has been placed on Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, and Sadhu Ram Vs. The Custodian-general of Evacuee Property, . " In the case of Sri Jagannath Ramanuj Das the Supreme Court was concerned with dealing with the argument that the scheme postulated by certain provisions of the Orissa Hindu Religious Endowments Act had to be framed not by a civil court, or under its supervision . but by the Commissioner who is a more administrative or executive officer and, Therefore, those provisions were bad particularly because no provision for appeal to a court against his order could be found in the Act. It was observed that there seemed to have been some carelessness in drafting certain provisions of the Act which created this anomaly. The settling of a scheme in regard to a religious institution by an executive officer without the intervention of any judicial tribunal amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blended with his office and, therefore, Sections 38 and 39 which make provision for the Commissioner settling a scheme were invalid. In Sadhu Ram's case the question with which we are concerned did not really arise for determination"

(16) We may next refer to Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, . The question before the Constitution Bench was whether the provision in the Banking Companies' Act, 1949 making the Reserve Bank the sole judge to decide whether the affairs of a banking company were being so conducted as to be prejudicial to the interests of the depositors and the court has no option but to pass an order winding up the banking company when the application is made by the Reserve Bank was not ultra virus either Article 14 or Art. 19 of the Constitution. The court observed that the exclusion of courts is not lightly to be inferred nor lightly to be conceded though there may be something in granting adjudication to an expert body which is not a court or is not manned by officers having judicial background in the peculiar circumstances of a case. Emphasis was, however, still placed on intervention at some stage by a judicial body or a body adept or qualified to decide a lie judicially or quasi-judicially. There was undoubtedly a shift from earlier decisions in this case by upholding a law where decision of an expert body or a body other than a Judicial or quasi-judicial body was held not to invalidate the law. This aspect was explained in Corporation of Calcutta Vs. Calcutta Tramways Co. Ltd., . Commenting upon the Reserve Bank's case, Wanchoo, J. (as he then was) speaking for the Constitution Bench observed that the decision in that case must be confined to the very special circumstances of the trade of banking in which the Reserve Bank as an expert body was given power to adjudicate upon rights when normally this power can only be in judicial or quasi-judicial Tribunals. It was clearly held that the decision in the Reserve Bank's case cannot be extended as a matter of course to other cases where substantially similar provisions are made in other laws relating to exclusion of the jurisdiction of courts and making the decision of the authority concerned final and conclusive. Each case has to be considered on its

merits. On the facts and. circumstances of that case, where the provisions of the Calcutta Municipal Act. 1951 were being considered, it was" held that,

"THEparenthetical clause which makes the opinion of the Corporation conclusive and non-justiciable is in the nature of a procedural provision and we have to see whether in the circumstances of this case such a procedural provision is reasonable in the interest of the general public..... The vice in the provision is that it makes the opinion of the Corporation howsoever capricious or arbitrary it may be or howsoever unreasonable on the face of it may be conclusive and non-justiciable. The conferment of such a power on a municipal body which has the effect of imposing restrictions on carrying on trade etc. cannot in our opinion be said to be a reasonable restriction within-the meaning of Article 19(6)...We, Therefore, agree with the High Court that the conferment of such a power on the Corporation as it stands in the parenthetical clause in Section 437(l)(b) must be held to be an unreasonable restriction on the right to carry on trade etc."

Thus, the law is that wherever there is a provision by which the jurisdiction of the civil courts is barred, the provision has to be examined in the light of seeing whether it is a reasonable restriction in the context of Article 19(6) of the Constitution.

(17) In Jugal Kishore Bhadani Vs. Labour Commissioner and Others, , a question arose whether the unlimited power conferred on an appellate authority under the Bihar Shops" and Establishments Act, 1954 made it ultra virus Article 19(l)(g), 19(6) etc. of the Constitution. It was held, relying on Sri Jagannath Ramanuj Das case. (supra) that looking to the unlimited-power in the higher authority, to which really an appeal did not lie but which had power to examine the correctness of the order of discharge passed by one of the parties before it, namely the employer, and to pass a consequential order, it really became a Tribunal of the first instance. The order that it may pass was not subject to the test of any appellate authority or in a civil court, as its order was made final and binding both on the employer and the employee. This was regarded as a great lacuna in the Act and restrictions, imposed were held to be not reasonable.

(18) In the present case the point that arises for consideration is whether the enabling provisions of Section 19-A of the Act and the availability of the right to invoke Article 226 of the Constitution is sufficient safeguard. Admittedly, there is no appeal provided from an order u/s 7-A of the Act. The order passed by the Commissioner is made final and non-justiciable in.a civil court. There is no compulsion u/s 19-A on the Central Government to determine a lie. In any case, even. if ildoes; it will be a Tribunal of the first instance, assuming that it will be exercising, quasi-judicial power as is expected of a quasi-judicial Tribunal.In this view of the matter we are of the view that there is a serious lacuna in Section 7-A of .the Act. The order may be passed by a duly competent -and qualified person, but it is not subject to any review or revision judicially or quasi-judicially.The determination of the amount payable by the employer affects civil

rights, if not fundamental rights. 'A' provision should have been made for an appeal to a Tribunal judicial or quasi-judicial. The availability of constitutional remedy cannot supply this lacuna. In this regard we must respectfully disagree with the learned Single Judge. Section 7-A on this aspect has to be held to be unreasonable.

(19) There is yet another approach one may take. If all the material on which the Commissioner relies in making a determination u/s 7-A of the Act, for example the Inspector's report, is not made available to a party which is likely to be adversely affected by the determination there is no effective hearing. Power is, no doubt, given to the Commissioner under subsection (2) of Section 7-A to enforce attendance of persons examine them on oath, require the discovery and production of documents and to issue commissions to examine witnesses just as a civil court has and the proceedings before him are judicial proceedings within the meaning of Section 193 and 228 and Section 196 of the Indian Penal Code. Nevertheless, there is no safeguard provided or provision made to enable an employer to have the same facilities of summoning witnesses, requiring discovery and production of documents or getting commissions issued. It could be said that a party can approach the Commissioner to do so but the question is of a right. In any case, the party concerned has no right to ask for disclosure from the Commissioner or from a Commissioner's office, the hearing thus given could theoretically be an ineffective hearing, almost like an appeal from Caesar to Caesar. This would certainly make the provision unreasonable. "Indeed, it is urged, in the present case the Inspector's report was not given to the appellants despite request. They thus had no effective hearing. Although we have negated the contention that the process of manufacture resulted in production of textile yet it is a fact that despite request the question of the process of manufacture was not gone into nor was it inspected by the Commissioner. In this way the rules of natural justice also stand violated. It is urged that post-decisional hearing could be given, which is a concept which is now accepted (See *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*). The contention cannot be accepted. Post-decisional hearing is permitted in cases of grave urgency and not in other cases. Apart from the question of the applicability of the Act and the Scheme even the quantum may be determined u/s 7-A in proceedings like the ones contemplated by the Act without disclosing the criteria. This would be in clear violation of the rules of natural justice. The least that is required when rights are likely to be affected is that there is legislative provision for some procedural safeguards. Article 14 of the Constitution ensures that in state action this is only possible if there is provision for judicial or quasi-judicial review or at least initially of a judicial or quasi-judicial determination after effective hearing..

(20) Relying on *Anisminic Ltd. v. Foreign Compensation Commission* and *another*, 1969 (2) W.R. 163 it is urged that the rules of natural justice should be read into Section 7-A of the Act, as has been done by the learned Single Judge. The Commissioner is only required to fix the quantum of the amount payable. If the

party challenges the applicability of the Act, Section 19-A is adequate safeguard. Indeed, the contention is, Section 19-A can be invoked by either party. Reliance is placed on various cases. We may notice the same.

(21) In Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, , the employer had contested his liability and had invoked the provisions of Section 19-A of the Act calling upon the Central Government to decide whether the employer was covered. Without deciding that question a demand was made on the employer. It was contended in the writ petition that such a demand was premature and could not be made without the Central Government deciding the question u/s 19-A of the Act. A Bench of "the Bombay High Court negated the said contention and held that the opening words of Section 19-A made a distinction between a difficulty arising in giving effect to the provisions of the Act and to a particular doubt which arises in respect of any of the matters enumerated in clauses (i) to (iv) So far as the difficulty is concerned, it is of a general character and it must arise in giving effect to the provisions of the Act. So far as the expression "difficulty arising in the matter of giving effect to the provisions of the Act" is concerned, it is clear that the difficulty must be a difficulty experienced by the authorities who are charged with the administration of the provisions of the Act and the provident funds. That means that if the authorities experienced any. difficulty in the actual implementation of the provisions of the Act, they may . ask the Central Government to pass an order making appropriate provisions" or give appropriate directions. Therefore, it did not lie in the mouth of the employer to contend that a demand could not be raised against him till his application u/s 19-A of .. the Act was decided by the Central Government. This observation really applied to the general provisions and not to clauses (i) to (iv) of Section 19-A in which circumstances either party could move the Central Government.

(22) In Nageena Traders (Private) Ltd. and others v. Regional Provident Fund Commissioner and others, 1966 I L.L.J. 334, a Bench of the Andhra Pradesh High Court took the same view as the Bombay High Court but left it undecided as to whether in the facts and circumstances of that case the concerned. employer could move the Central.Government u/s 19-A of the Act.

(23) In Wadi Stone Marketing Company (Private) Ltd. Vs. Regional Provident Fund Commissioner and Another, , a Bench of the Mysore High Court held that if a person is aggrieved by the stand taken by the authorities or by an order or the direction of the Central Government, it is? open to it to challenge the legality or the correctness of the view. taken or the order made in a properly instituted suit. The finality contemplated by section 19-A is a finality as regards the departmental view.

(24) On a conspectus of the above pronouncements it is clear that in the absence of the provisions for appeal and a possible view that sub-section (4) of section 7-A bars the jurisdiction of the civil courts Section 7-A must be held to be vocative of Article 14 of the Constitution.

(25) The result is that the appeals are accepted and the demands raised against the appellants are quashed. In the circumstances of the case there will be no order as to costs.