

(1986) 11 MP CK 0016
In the Madhya Pradesh High Court
Case No : Misc Petition No. 2921 of 1984

Younus Mohammad

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 12-11-1986

Acts Referred:

Constitution of India, 1950 — Article 19, 4
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A,
7A, 7A(2), 7A(3)

Citation : (1987) ILR (MP) 533 : (1988) JLJ 99 : (1994) 3 LLJ 68 : (1987) 32
MPLJ 190 : (1987) MPLJ 190

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : Shaukat Ali, for the Appellant; V.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

S. Awasthy, J.

1 In this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Order No. PFC /3631/Rec/MP/ XVII / E.III / 90Q, dated 1.6.1983, passed by Regional Provident Fund Commissioner, Madhya Pradesh, Indore (Annexure-F) and order No. PFC / 3651 / MP / Rec / XVII/E.1 / 3780, dated 27.8.1984, passed by the said Commissioner (Annexure-L): as also section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"), has been alleged to be ultra vires of Articles 14 and 19(1) (f) and (g) of the Constitution of India.

The petitioner is the proprietor of M/s. Rosy Dyers and Dry Cleaners, Bhopal, with its head office at Itwara and branches at Ghoda Nakkas and Peergate, Bhopal. It is no longer in dispute that there are 18 regular employees of the petitioner in the aforesaid establishments collectively; and Hakeemud-din and Ahmad Quraishi, who are Darner and Dyer, respectively, are working on payment of consideration for the work executed by them.

On physical verification after inspection of the establishments, Shri M.N. Tarnhan, P.F.I. (Grade 1), Indore, gave his report dated 15.4.1981 (Annexure-R-I) stating that there were 25 employees working in the establishments of the petitioner. A proposal was made that the establishments of the petitioner be provisionally covered u/s 3 of the Act from April, 1981. The respondents, therefore, issued a letter dated 8.5.1981 (Annexure-R-II) to the petitioner intimating that his establishments are covered under the aforesaid Act. A code number was, accordingly, allotted to the petitioner. The respondents, on 27.7.1981, advised the petitioner vide Annexure-R-V for complying with the provisions of the Act. Thereafter, a show cause notice dated 12.10.1981 (Annexure-A) was served on the petitioner on the ground that the petitioner failed to comply with the provisions of the Act inspite of the notices (Annexures-A-II and R-V). It was alleged that the petitioner has committed default for the period commencing from May 1981 to July, 1981. Another show cause notice dated 3.12.1981 was served on the petitioner complaining of the breach in compliance of the provisions for the period from August 1981 to October 1981 (Annexures-3 or R-VI). The petitioner, thereafter, contested the applicability of the Act to his establishments, vide letter dated 7.12.1981 (Annexure-C). A request was made by him to supply the copy of the report, on the basis of which the proceedings were initiated against him covering the establishments under the Act. The respondents submitted their reply to the said letter vide Annexure-R-VII dated 21.12.1981.

The petitioner, thereafter, submitted a list of 16 persons, vide his letter dated 5.4.1982 (Annexure-D), stating that they were the only employees working in the three establishments of the petitioner, and, as such, the Act was not applicable to his establishments. The Provident Fund Inspector submitted his report dated 19.10.1982 (Annexure-R-III) on the basis of the records of the petitioner stating therein that there were 18 persons working in the establishments of the petitioner, one Rafoogar as well as Rangrez were also the employees of the petitioner's establishments. Thus, in all, there were 20 persons working in the said establishments. Hence, the Act was applicable. The petitioner was, therefore, called upon to produce his records of all the branches and also of the head office vide (letter dated 8.12.1982 (Annexure-R-IX). The petitioner replied to the said letter vide Annexure-D-I dated 30.12.1982.

The respondent No. 1, through the letter dated 1.1.1983 (Annexure-R-X), asked the petitioner to offer his comments regarding the persons shown as employees of the petitioner in the month of July, 1981. The petitioner submitted his reply on 1.2.1983 vide Annexure-E to the petition. On 1.6.1983, the decision of the respondent No. 1 was communicated to the petitioner regarding the order passed on 31.5.1983 (Annexure-F) on the basis of the proceedings dated 1.2.1983 (Annexure-R-XI).

On 24.6.1983, the respondent No. 1 served a show cause notice (Annexure-G) u/s 7 of the Act, complaining of non-compliance of the order passed by the said

respondent. The petitioner gave his reply on 6.8.1983 (Annexure-H). The petitioner requested, vide Annexure-I dated 23.8.1983 to review the order making the Act applicable to the establishments of the petitioner. The respondent No. 1, therefore, replied vide Annexure-R-XIV on 25.8.1983 and asked the petitioner to report compliance under the Act. The petitioner again submitted an application on 13.9.1983 for reviewing the order passed by the respondent No. 1 (Annexure-J) This was rejected vide Annexure-L, which is reply of the respondent No. 1 dated 27.8.1984.

The respondent No. 1 served a show cause notice dated 4.7.1984 (Annexure-K) for non-compliance of the order passed by him for the (period commencing from June 1983 to April 1984. Proceedings u/s 7A of the Act were taken on 4.9.1984 in connection with the show cause notice dated 4.7.1984 (Annexure-K). The copies of the proceedings are filed as Annexure-XVII with the return.

The submissions of the learned Counsel for the petitioner are that-

(i) Section 7A of the Act empowers the respondents to recover the amount from any employer under any of the provisions of the Act or Schemes framed thereunder. There is no power conferred on them to determine whether the factory or the establishment of the employer is covered thereunder. Thus, the respondent No. 1 has no power to determine whether the establishment/establishments of the petitioner was/were covered by the Act. Hence, it is submitted that the respondent No. 1 could not determine if the establishments of the petitioner were covered under the Act. Reliance was placed on *Wire Netting Stores v. The Regional Provident Funds Commissioner 1981 LIC 1016*. It is, therefore, submitted that the decision of the respondent No. 1 dated 1.5.1983 (Annexure-F) is liable to

(ii) the order passed u/s 7A of the Act has been made final and binding on the parties. There is no provision of judicial review of the order passed by the Provident Fund Commissioner. It is, therefore, unreasonable. u/s 19A of the Act, the Central Government is not empowered to determine the list . At the most, it would be the Tribunal of the first instance. Thus, there is no safeguard provided to the exercise of jurisdiction u/s 7A of the Act. In this connection, *Excel Wear v. Union of India 1978-II LLJ 527* has been relied on. It is further submitted that no guidelines have been provided for passing an order u/s 7A of the Act. There is no proper Tribunal constituted. Hence, the provision is unreasonable;

(iii) the respondent No. 1 has to determine the amount due from the employer after affording a reasonable opportunity to him. In the instant case, no amount has been determined; and yet "the pe- titioner is called upon to pay various amounts without specifying the amounts due;

(iv) Hakeemuddin Rafoogar and Ah-mad Quraishi Rangrez were wrongly held to be the employees of the petitioner. The said two persons do their own business. They are neither getting their wages nor salaries or labour charges by the petitioner. They are not their "employees" within the meaning of Section 2(f) of

the Act;

(v) proper hearing was not given to the petitioner before passing the final order; and

(vi) on a reference to be made by the respondent No. 1 to the Central Government u/s 19-A of the Act, the petitioner should have been heard. He was not noticed before passing the order by the Central Government u/s 19A of the Act. Thus, the order is vitiated;

Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is reproduced hereunder for the sake of convenience:-

"7-A Determination of moneys due from employers - (1) The Central Provident Fund Commissioner, or 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, or the Insurance Scheme, as the case may be, and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting 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, namely:-

- (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".

Thus, the terms "employer" and "employee" defined u/s 2(e) and 2(f) of the Act, read as under:-

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(e) "employer" means

(i) in relation to an establishment which is a factory, the owner or occupier of the

factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

(iii) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment."

Power u/s 7A of the Act appears to be very wide. Where a liability is disputed, determination of the liability is a condition precedent, for serving a demand on the employer. When the liability is disputed on the ground that the establishment is not covered under the Act, the Provident Fund Commissioner has to make an enquiry and determine if the Act is applicable to the establishment under the circumstances of that case. He may conduct such enquiry as may be deemed necessary. Under Sub-section (2) the powers of the officer conducting an enquiry are defined. Under Sub-section (3) a reasonable opportunity is to be given to the employer for his representation in that enquiry. The competent authority is not precluded u/s 7A of the Act from making its own estimates of the amount payable by an employer before issuing notice disputing the applicability of the Act. The employer can very well dispute the quantum of the amount demanded from him. Giving of the notice to the employer, amounts to giving him a reasonable opportunity to represent his case before passing of the final order. In our opinion, the notice issued to the petitioner, far from denying to the applicant the reasonable opportunity contemplated by subsection (3), gave him full opportunity of representing his case completely.

In the case of Radhakrishnan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, , this Court held that the question as to the applicability of the Act itself is not a condition precedent for the payment of compensation, should be decided by the Provident Fund Commissioner. The same view was taken in Gunvantrao Harivallabh Jani Vs. Regional Provident Fund Commissioner, Employees' Provident Fund, M.P., Indore, . This view was also taken by the High Court of Orissa in the case of Balasore Motor Association Vs. The Regional Provident Fund Commissioner, .

In Wire Netting Stores v. R.P.F. Commissioner (AIR 1970 Del. 143), Justice V.S. Deshpande correctly held Sections 7A and 19A of the Act to be intra vires of the Constitution. We agree with the reasoning given by him and prefer to follow the reasoning given in that decision. The constitutionality of the Act came to be

considered in *Mohmedalli and Others Vs. Union of India (UOI) and Another*, . If the test as applied in that decision is taken into consideration, there would be no manner of doubt in holding the provisions of Sections 7A and 19-A of the Act to be intra vires of the Constitution. The same view was taken by the Supreme Court in the case of *Organo Chemical Industries v. Union of India* (1979-II Lab LJ 416) while examining the constitutionality of Section 14B of the Act. This view also applies to the provisions of Sections 7A and 19-A of the Act.

We do not agree with the arguments advanced by the learned counsel for the petitioner, as cited above, and we hold that the provisions of Sections 7A and 19-A of the Act are intra vires.

We further hold that proper opportunity was given to the petitioner for proving if Hakeemuddin Rafoogar and Ahmad Quraishi Rangrez were the employees of the petitioner's establishments. Whatever material was furnished by the petitioner, the respondents acted on it and held on the said material that these two persons were also the employees of the petitioner's establishments. It is, therefore, wrong to submit that no reasonable opportunity was given to the petitioner before parsing the final order, the respondents were right, on the material furnished before them, in holding that there were 20 employees in the establishment of the petitioner. We do not find any error in the findings recorded by the respondents. The amount demanded from the petitioner was not being controverted by him. The petitioner should have stated as to what amount, according to him was due and paid. Mere denial of the liability would not amount to a denial regarding the quantum of amount demanded. The petitioner should have stated clearly as to what amount, according to him, was payable. Having failed to do so, he cannot, blame the assessment.

In view of the discussion aforesaid, we are of the view that this petition has no substance and is liable to be dismissed with costs. Hearing fee Rs. 200/-, if certified. The security deposit, after deduction, the amount payable to the respondents, shall be refunded to the petitioner.