

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 19799 of 2005

M/s. Vijai Shree Ltd. & Anr.
Vs.
Regional P.F. Commissioner, (Jute) & Ors.

For the Petitioners : Mr. Partha Bhanja Chowdhury,
Mr. Satyendra Kumar Singh,
Mr. Ravi Kumar Dubey.

For the P.F. Authority : Ms. Aparna Banerjee.

Hearing concluded on : 11.02.2025

Judgment on : 25.02.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred challenging the order dated 16.08.2005, 12.09.2005 and 16.09.2005 being the orders of attachment passed by the respondents.
2. The petitioners' case is that it was declared a sick industrial Company within the meaning of Section 3(O) of the Sick Industrial Companies (Special Provisions) Act, 1985 in the year 1995 and a scheme for rehabilitation was sanctioned on 30th June, 2000.

- 3.** The petitioner Company was granted exemption from operation of the said Employees' Provident Fund & Miscellaneous Provisions Act, 1952 since 1st November, 1952. By an order dated 24th April, 2002, the said exemption was cancelled with effect from 31st March, 2002. The said order of cancellation was challenged before the Hon'ble High Court by the petitioner Company, which was registered as W.P. No.13759 (W) of 2002.
- 4.** The said writ application was dismissed by the Single Bench. An appeal was preferred before the Division Bench which was pleased to grant a stay of operation of the impugned notification dated 24.04.2002 cancelling the aforesaid exemption.
- 5.** It is further submitted that the petitioner company suddenly received a summon dated 16.08.2005 from the Employees' Provident Fund Organisation, Regional Office, directing the petitioner company to appear in person in a proceeding under Section 7A of the said Act of 1952 on 26th day of August, 2005.
- 6.** The claim by the authorities was default in payment by the petitioners for the period from June, 2005. The petitioners could not appear before the authority due to a major surgery of his wife but on the same day, a proceeding was drawn up wherein the respondent no.2 passed an order under Section

7Q of the said Act directing the petitioner company to pay a sum of Rs.8,66,967/-.

7. On 22nd September, 2005 the petitioner Company received an order dated 12/09/2005/16/9/05 from the respondent no.2 wherein the respondent no.2 had directed the Company to pay an amount of Rs.7,90,976/- under Section 7(Q) of the said Act. The respondent no.2 further threatened that if the said amount is not paid immediately then they would initiate recovery proceeding as prescribed under Section 8B to 8G of the said Act.
8. It appears that the petitioner has challenged the total proceeding by the authority concerned, in spite of there being serious laches on the part of the petitioner in appearing before the authority and in spite of being given sufficient opportunity to appear for the hearing.
9. **The main contention of the petitioner is that in a proceeding under Section 7A of the Act, an order under Section 7Q has been passed. It is submitted that no hearing was provided under Section 7Q and as such the order of the authority concerned is bad in law.**
10. Vide the order dated 26.08.2005, the Regional Provident Fund Commissioner (Judge), West Bengal, Sikkim, Andaman & Nicobar Islands passed the following order:-

“.....Today was fixed for hearing under Section 7A for the period 04/05 to 05/05 of the establishment M/s. Vijaishree Ltd. (Fort William

Jute Mill Div.), 47 & 48, R. N. R.C Ghat Road, Shibpore, Howrah, WB/77.

The establishment has submitted in a written submission dt.25.08.2005 seeking deferment of the Hearing dated by 3 to 4 weeks on the plea that the dealing officer cannot be present due to a major surgery of his wife.

Shri Nilanjan Gupta E.O representing the department had submitted report dated 24.08.2005 regarding dues and payments position for the period of enquiry and also interest U/S 7Q for the period 04/2005 to 05/2005 as under. The payments in Account No.1 have been taken from the Bank pay-in-slips and for A/c No.II, X, XXI & XXII from the original Bank Challan.....”

- 11. Affidavits filed by the parties are on record.**
- 12. The petitioner has relied upon the following judgments:-**
 - i) In *Allied Electricals & Switch Fuses & Ors. vs Assistant Provider Fund Commissioner, Employees’ Provident Fund Organisation, SRO, Durgapur & Ors.*, 2003 SCC OnLine Cal 40, decided on February 10, 2003, the Supreme Court held:-**

“3. The learned Counsel appearing for the petitioners contended before this Court that unless and until there is a default on the part of the petitioners, there cannot be any liability of payment of interest and/or damages. The petitioners' employees are voluntarily repeatedly requesting from 1996 for the purpose of covering them under the scheme. The authority concerned waived the contribution of the employees for a considerable period. The attachment has been made even without giving any opportunity of hearing and recovered the principal sum as far back as on 5.10.2001. Therefore, without any default, the petitioners will not be penalised for payment of interest and/or

damages at this belated stage under the notice dated 20.12.2002. In answer to this, the learned Counsel appearing for the Provident Fund Authority contended that as per para 38 of the Employees' Provident Fund Scheme, 1952 payment will be recovered within 15 days of every month meaning thereby if any payment is due and payable for the current month, the 15th of the following month will be the cut off date of recovery. In such case, if any amount is not paid within such period, the authority concerned will be entitled for recovery of interest. The authority is also entitled to recover the damages due to default. He has relied upon a Single Bench decision of this Court reported in 2001 (1) CHN 343 (Andrew Yule & Co. Ltd. v. Regional Provident Fund Commissioner) under which the question of payment under section 14B was discussed. However, the same stand on a different context. Each case has to be determined on the basis of the situation available before the Court. The learned Counsel appearing for the authority concerned very much relied upon different paragraphs of the Scheme, 1952, i.e. paras 30, 32, 32A and 38.”

- ii) In ***Mangilal vs State of M.P., (2004) 2 SCC 447,*** decided on January 5, 2004, the Supreme Court held:-

“10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial

character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664 : AIR 1981 SC 818] .) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are : notice of the case to be met, and opportunity to explain.”

13. Section 7A of the Employees’ Provident Fund Act is as follows:-

“7A. Determination of moneys due from employers.—

(1)The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes 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 shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

[(3A)Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4)Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an

irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.— Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

14. Section 7Q of the Employees’ Provident Fund Act is as follows:-

“7Q. Interest payable by the employer.—

The employer shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.”

15. In *Arcot Textile Mills Ltd. vs Reg. Provident Fund Commissioner & Ors.*, AIR 2014 SC 295, on 18 October, 2013, the Supreme Court held:-

“12. This court in *Maharashtra State Cooperative Bank Limited v. Assistant provident Fund Commissioner and others*, while interpreting the expression “any amount due from an employer” has opined as follows:-

“The expression “any amount due from an employer” appearing in sub- section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-

section (1) of Section 11 and Sections 7-A, 7-Q, 14-b and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages."

13. We have referred to the aforesaid decision only for the purpose of the levy of interest under Section 7Q is a part of the sum recoverable under Section 11 (2) of the Act, and it is an insegregable part of the total amount due from employer.

18. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. **An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable."**

- 16. Thus the hearing in this case under Section 7A of the EPFA also includes a hearing under Section 7Q of the Act. This is a composite hearing which concludes in a composite order.**

17. The orders challenged thus being in accordance with law requires no interference.
18. **The writ petition being WPA 19799 of 2005 is dismissed.**
19. All connected application, if any, stands disposed of.
20. Interim order, if any, stands vacated.
21. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)