CIVIL MISCELLANEOUS

Before D. S. Tewatia, J.

KUSHI RAM RAGHUNATH RAI—*Petitioner.*

versus

THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB, HARYANA, UNION TERRITORY OF CHANDIGARH AND HIMACHAL PRADESH—*Respondents.*

Civil Writ No. 4245 of 1973.

May 17, 1975.

Employees Provident Fund and Family Pension Act (19 of 1952)—*Sections* 1(3) (*a*) & (*b*), 4, 7-*A*, 16(2) *and* 17—*Numerous trades and establishments sought to be covered by the Act—Single Notification—Whether can be issued—Section* 1(3) (b)—*Whether suffers from the vice of excessive delegation—Notification under section* 4 *required to be placed before Parliament but not that under cection* 1(3) (b)—*Whether discriminatory—Question of applicability of the Act to a particular establishment—Determination thereof by the Provident Fund Commissioner—Whether amounts to his being a judge in his own cause—Section* 16(2) *granting exemption to a class of establishments—Whether discriminatory.*

Held, that a perusal of the provisions of section 1(3) (a) and (b) of the Employees Provident Fund and Family Pension Act, 1952 reveals that power is given to the Central Government to bring within the purview of the Act an Establishment or class of establishments employing the requisite number of employees as envisaged in section 1(3) (b) by issuing a notification. If the authority in question feels that more than one establishment or more than one class of establishments fulfil the requisite conditions for being covered by the provisions of the Act, then it can certainly cover them by issuing one notification—the use of the singular word 'establishment' or 'class' of such establishments include plural expressions of these words also. Hence numerous trades and establishments can be covered by the Act by issuing a single notification and it is not necessary to issue separate notifications for different establishments or class of establishments.

(Para 5)

Held, that the object and reasons leading to the passing of the Act and the various provisions thereof more particularly those of

sections 16 and 17 contain sufficient guidance for the authority which is empowered to issue notification under section 1(3) (b) of the Act. It is only when an establishment is employing a certain number of persons that the authority can bring that establishment or a class or classes of such establishments within the purview of the Act, the policy behind the same being that a concern or an establishment which is in a position to employ a requisite number of employees is financially in a position to extend the kind of benefit to its employees as envisaged in the Act and the scheme framed thereunder. Thus the Legislature has laid down sufficient guideline or criteria for invoking the power under section 1(3) (b) of the Act which, therefore, does not suffer from the vice of excessive delegation of Legislative power.

(Para 7)

Held, that a perusal of section 4 of the Act shows that since, as to which industry was or was not required to be covered by the Act and the scheme framed thereunder was originally decided upon by the Parliament, and that such of the industries as the Parliament thought fit to be so covered at that time, were included in Schedule 1 of the Act so when that schedule had to be enlarged by including therein additional units of the industries, then that has to be brought to the notice of the Parliament. But in the case of an establishment which is a factory serving the industry included in schedule 1 or any other establishments or class of establishments not being a factory but serving the industry or industries included in Schedule 1, Legislature left it to the judgment of the Central Government to decide whether they are to be covered or not by the provisions of the Act and their coverage as such was not considered important enough by the Legislature as to be kept informed about the same as and when it was done. Hence there is no discrimination in that while exercising power under section 4 of the Act the notification issued thereunder has to be placed before Parliament, the notification issued under section 1(3) (b) is not so required.

(Paras 8 and 9)

Held that the Provident Fund Commissioner is an authority envisaged by the Act to objectively decide as to whether on the given facts a particular establishment or concern is to be brought within the purview of the Act and the scheme thereunder. He himself is not a party as such to the issue that the statute calls upon him to decide and while deciding such issue, he himself does not act as a Judge in his own cause. To say that no one shall be a Judge in his own cause means that the judge must not have anything like personal interest in the cause he is to adjudicate upon and not that an Officer discharging his official functions himself should not start proceedings in a matter which under the law he is competent to adjudicate upon. Thus while determining the question of applicability

of the Act to a particular establishment under section 7-A, the Provident Fund Commissioner does not act as a Judge in his own cause.

(Paras 10 and 11)

Held, that it is not for the court to say as to what should be the law for it has to interpret it as it stands. Courts cannot declare a statute unconstitutional and void simply on the ground of unjust and oppressive provisions or because it is supposed to violate natural, social or political rights of the citizens unless it can be shown that such justice is prohibited or such rights are guaranteed or protected by the Constitution. Hence the provisions of sub-section (2) of section 16 of the Act which grant exemption to a class of establishments cannot be declared void on the ground that they discriminate against an individual establishment.

(Para 15)

Petition under Articles 226/227 *of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned orders dated* 14*th August*, 1973 *and* 20*th October*, 1973, *contained in Annexures 'C' and 'D', respectively, and declaring the various sections of the Employees' Provident Funds Act*, 1952, *as void*, ultra *vires and unconstitutional and directing the Central Government to make arrangements for the appointment of an independent Tribunal or authority for deciding cases between the Provident Fund authorities and the concerns, and establishments and further praying that Rs.* 5,000 *which the respondent No.* 2, *got deposited from the petitioner be ordered to be returned and also praying that during the pendency of the writ petition, the implementation of the orders of respondents No.* 1 *and* 2 *be stayed and respondent No.* 2 *be directed to return the amount of Rs.* 5,000, *received by him under duress.*

S. K. Aggarwal, Advocate, *for the Petitioners.*

Dewan Chetan Dass, Advocate, *for the Respondents.*

JUDGMENT

Tewatia, J.—(1) The firm Messrs Khushi Ram-Raghunath Rai, Kiryana Merchants, Fenton Ganj, Jullundur City (hereinafter referred to as the petitioner) is a partnership concern. It is alleged that its partners own three different and distinct establishments dealing in different and separate trades—one at Naya Ganj, Kanpur, the other at Raman Market, Jullundur Cantonment, and the third at Mandi Fenton Ganj, Jullundur City.

Jullundur City establishment deals in Kiryana goods, Jullundur Cantonment carries on the agency of the Lever Brothers; and the establishment at Kanpur is a commission agent's shop. It is further alleged that accounts of all the three establishments have separate sales tax registrations and their accounts are maintained and prepared separately and that the establishment at Jullundur does not exercise any control over the establishment at Kanpur; that in the year 1962-63 the petitioner's two establishments at Jullundur City and Cantonment employed 11 persons, while that in Kanpur only 7 and that had been the regular and general requirement of each establishment right from 1960 till the filing of the present petition; that it was, however, during July-August, 1962 that the combined strength rose to 20 employees, as a result of employment of 2 casual workers, namely, Das Mal and Yash Pal to cope with the rush of work. (Annexure 'A' to this petition is a copy of the ledger showing the payments made to the employees); that the Central Government by virtue of powers invested in it by clause (b) of sub-section (3) of section 1 of the Employees Provident Fund and Family Pension Act, 1952 issued notification No. GSR-346, which came into force on 30th April, 1962, making applicable the provisions of the Employees Provident Fund Act, 1952, which was later on amended and named as the Employees Provdient Fund and Family Pension Act, 1952 (hereinafter referred to as the Act) to every trading and commercial establishment engaged in the purchase, sale or storage of any goods including establishments of exporters, importers, advertisers, commission agents, brokers commodity or stock exchange; that the petitioner's establishment was sought to be brought within the provisions of the Act and the scheme envisaged therein by respondent No. 1, the Regional Provident Fund Commissioner, Punjab, Haryana, Union Territory of Chandigarh, and Himachal Pradesh, Chandigarh, *vide* its order dated 22nd February, 1968. This order was challenged by the petitioner through Civil Writ Petition No. 1558 of 1968, *inter-alia*, on the ground that the petitioner establishment had not been given any hearing or opportunity to prove that the establishment was not liable to be covered under the Act; that the said petition was withdrawn on an understanding being given on behalf of the respondent that the petitioner would be afforded due opportunity to contest its liability for coverage under the Act and that the matter would be decided afresh after due enquiry; and that the petitioner made representation in writing to respondent No. 1, copy whereof is annexure 'B' to the petition, in which a definite stand was taken

that even though the strength of the employees of the various establishments rose to 20 in August, 1962 that would not bring the establishment within the coverage of the Act, as that was not the regular and the general requirement of the establishment. It was categorically averred that the employment of two persons was as a result of rush of work and they were not the regular employees; that the aforesaid position and assertion of the petitioner remained unrebutted; that respondent No. 1 rejected the representation and the claim of the petitioner, *vide* order dated 14th August, 1973, copy annexure 'C' to the petition, without considering the effect of the Supreme Court judgment reported in the *Provident Fund Inspector, Guntur* v. *T. S. Hariharan* (1) and without giving a specific finding that employment of 20 persons during the short period of July and August was not on account of abnormal rush of work and that in fact they were employed in its normal course of business; that respondent No. 2, *vide* his letter dated 20th October, 1973, copy annexure 'D' to the petition, directed the petitioner to deposit all the contributions towards the Employees Provident Fund within seven days; that the petitioner's representative, who was sent for by respondent No. 2 on 5th November, 1973, was detained and deposit of an amount of Rs. 5,000 was insisted upon on the pain of criminal prosecution, without having earlier determined the amount as per provisions of section 7-A of the Act; and that per force the petitioner had to deposit Rs. 5,000 through a bank draft.

(2) This finally is said to have led to the filling of the present petition challenging therein the *vires* of the notification, as also some of the provisions of the Act, and the orders, annexures 'C' and 'D' passed by the respondents, *inter alia,* on the ground that the issuing of a single notification bringing under the cover of the provisions of the Act numerous trades and establishments was not envisaged by the provisions of section 1(3) (b) of the Act, as that provided for the issuance of a separate notification for every establishment sought to be covered, and thus the Central Government exceeded its power in issuing the aforesaid notification; that clause (b) of sub-section (3) of section 1 of the Act confers blanket powers on the Central Government and thus suffers from vice of excessive delegation of legislative power; that the provisions of section 1(3)(b)

(1) A.I.R. 1971 S.C. 1519.

of the Act are discriminatory and thus violative of the provisions of Article 14 of the Constitution inasmuch as while a notification under section 4 of the Act covering an industry has to be laid before the two Houses of Parliament, notification issued under section 1(3) (b) of the Act is not being envisaged to be so laid; that no criterion or guiding principle has been laid down as to on what basis and consideration the establishment will be brought under the Act by issuing a notification under section 1(3) (b) of the Act; that the provisions of section 14(1A) and 14 AA of the Act are liable to be struck down being hard, stringent and unconscionable and for the same reason, provisions of section 14(c) of the Act are liable to be struck down; that the provisions of section 16(2) of the Act are discriminatory, as it only gives exemption to a class of establishment; and does not envisage exemption of an individual establishment; that respondent No. 1 being himself a party has become Judge of his own cause and thus the provisions of section 7A of the Act involve violation of the principles of natural justice; that the order annexure 'D' passed by respondent No. 2 was passed without holding any enquiry as envisaged under section 7-A of the Act and was thus clearly illegal and void; that the orders annexures 'C' and 'D' are void illegal as they are based on no evidence; that the impugned orders are illegal and without jurisdiction even when it is held that the three establishments were one and the combined strength of workers employed therein could be taken into consideration for judging the liability of the petitioner under the Act, for out of the list of the workers contained in annexure 'A', four persons, namely, Roshan Lal, Faqir Chand, Radhe Sham and Bal Krishan were the partners of the petitioner-concern and thus they could not be treated as workers, nor Basanta Mal could be treated as a worker, as he was employed merely to do the Court work for which he was paid Rs. 180 per annum; and that the impugned orders were illegal and without jurisdiction further for the reason that the same were passed on the report of the Inspector, Provident Fund, who made it simply on the assumption that the Act would become applicable if the number of employees reached 20 in a month including casual employees for any reason.

(3) In the written statement filed by Shri B. R. Anand, Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh, it is admitted that the petitioner is a partnership firm of which Khushi Ram, Babu Ram, Raghu Nath and Banarsi Dass—all brothers — are partners in equal shares.

However, it is denied that the partners of the petitioner-firm own three different and distinct establishments. It is averred that it is one establishment having different branches—one at Jullundur Cantonment and the other at Kanpur; that the business carried on in the establishment at Jullundur City and the two branches is identical i.e. Kiryana and Commission agents; that Kanpur branch sends its profit and loss account to the head office which maintains profit and loss accounts centrally; that income-tax assessment of Kanpur establishment and Raman Mandi Branch and head office at Jullundur City is done at Jullundur and the income-tax is paid by the head office and is shown in the books of the head office at Jullundur City; that it was one establishment having two branches, is established from the letter-head of the petitioner, annexure R-1, and the aforesaid fact also stands admitted in the document, annexure R-2; that no evidence was led before him to prove that the three establishments had different sales-tax registrations; that annexure R-2, which is a copy of the statement concerning the year 1962-63, shows that besides seven employees on the pay-roll of its branch at Kanpur, it had in its other branches 13 employees in the month of July and as many as in the month of August and 14 in the month of September, 1962; that to the extent the contents of annexure 'A' differ from those of annexure R-2, the same are denied; and that annexures R-3 and R-4 clearly establish the strength of the employees in the petitioner's establishment—these documents came into being in February, 1968 and were signed by Khushi Ram, one of the partners of the petitioner; that according to these documents, the strength of the employees as on 31st August, 1962 was 21. This was when the name of Basanta Mal is excluded as his name is not borne on annexure R-3. Annexure R-3 represents the admission of the petitioner itself in regard to the strength of its employees, and it was not claimed that any of the employees mentioned therein was a casual worker, nor was it claimed in the representation dated 14th August, 1972, annexure 'B', that Das Mal was a casual worker as he left the employment in the month of September, 1962; that Roshan Lal, Faqir Chand, Radhe Sham and Bal Krishan were not partners of the petitioner at the relevant time, for they became partners for the first time with effect from 1st April, 1966, as made clear by letter dated 12th February, 1968, annexure R-5; and that at no stage it had been claimed that Ram Dayal Kahar, whose name appears in annexure 'A-1' at Serial No. 6 was a house servant—in fact

his name has been shown in the account books of the petitioner. The allegations in para 8 of the petition were denied and it was pleaded that for more than one month the strength of the employees in the establishment of the petitioner was more than 20 and they were engaged in connection with the regular course of business of the establishment; that the impugned order was passed in accordance with the material placed before respondent No. 1 and the findings were given on the points actually urged before him; that the petitioner despite being called upon *vide* annexure R-6 dated 21st November, 1973, to submit all the returns in accordance with law, did not submit the same and thus made it impossible for the respondent to determine the actual amount of the contribution; that in any case since the record was with the petitioner, it could calculate the amount and deposit the same ; and that the notification issued by the Central Government and the impugned orders passed in pursuance thereof were legal and constitutional and so are the provisions of the statute whose *vires* and the legality have been assailed in the petition.

(4) Before dealing with the contention advanced by the learned counsel for the petitioner regarding the application of the provisions of the Act and the scheme framed thereunder to the petitioner's concern, it would be desirable to first advert to the contentions advanced regarding the *vires* of the various provisions of the aforesaid Act.

(5) The first contention in this regard advanced by the learned counsel for the petitioner is that notification issued under the provisions of section 1(3)(b) of the Act is beyond the competence and jurisdiction of the Central Government inasmuch as the provisions in question authorized it to bring, at a time, only one establishment or a class of such establishments within the purview of the Act and the scheme framed thereunder, and to the extent the impugned notification No. G.S.R. 346 published in the Government of India Gazette dated 17th March, 1962 has brought in the net a host of establishments and classes of establishments, the same is beyond the power vested in the said authority, for only an establishment or a class of establishments can be covered by one notification and if more than one establishment or classes of such establishments were to be brought within the mischief of the Act, then as many notifications as were the establishments or classes of establishments that were intended to be covered had to be issued.

Section 1(3)(a) and (b) of the Act are in the following terms :

"1. (1) ** * * *

(2) * * * * *

(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette specify in this behalf."

The perusal of the aforesaid provisions of the Act would reveal that power is given to the Central Government to bring within the purview of the Act establishment or class of such establishments employing the requisite number of employees as envisaged in section 1(3) (b) by issuing a notification. Obviously, if the authority in question felt that more than one establishment or more than one class of such establishments fulfilled the requisite conditions for being covered by the provisions of the Act, then it could certainly cover them by issuing one notification—the use of singular word 'establishment' or 'class' of such establishments notwithstanding—for in the context in which these words are used, they also include, in my opinion, plural expression of the said word as well.

(6) The learned counsel then argued that the provisions of section 1 (3) (b) of the Act conferred unguided, arbitrary and blanket powers on the Central Government to bring any establishment or class of such establishments within the purview of the Act and thus the said provisions suffered from excessive delegation of legislative powers.

(7) Here again, in my opinion, the learned counsel is not on firm grounds. The object and reasons leading to the aforesaid enactment and the various provisions of the Act, more particularly those of sections 16 and 17, contain sufficient guidance to the authority which is empowered to issue the notification in question. It is

only when an establishment is employing a certain number of persons that the authority would think of bringing that establishment or a class or classes of such establishments within the purview of the Act—the policy behind the same being that a concern or an establishment which is in a position to employ the requisite number of employees is financially in a position to extend the kind of benefit to its employees as envisaged in the aforesaid Act and the scheme framed thereunder. So, it cannot be said that the legislature had failed to lay down any guide line or criteria for the invoking of the power contained in section 1 (3) (b) of the Act. (See *Mohmedalli and others* v. *Union of India and another* (2).

(8) The learned counsel for the petitioner next urged that an establishment or class of such establishments is discriminated against in that while exercising power under section 4 of the Act the notification issued thereunder has to be placed before the two Houses of Parliament, the notification issued under section 1 (3) (b) is not so required to be placed before the Parliament.

(9) The contention advanced by the learned counsel, in my opinion, is entirely misconceived.

Section 4 of the Act is in the following terms :

"4. (1) The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

(2) All notifications under sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued."

The perusal of the aforesaid provision would show that since as to which industry was or was not required to be covered by the Act and the scheme framed thereunder was originally decided upon by the Parliament, and that such of the industries as the Parliament thought fit to be so covered at that time, were included in the aforesaid Schedule, so when that Schedule had to be enlarged by including therein additional units of industries, then that had to be

(2) A.I.R. 1964 S.C. 980.

brought to the notice of the Parliament. But in the case of an establishment, which is a factory serving the industry included in Schedule I or any other establishment or class of establishments not being a factory but serving the industry or industries included in Schedule I, Legislature left it to the judgment of the Central Government to decide whether they are to be covered or not by the provisions of the Act and their coverage as such was not considered important enough by the Legislature as to be kept informed about the same as and when it was done.

(10) The provisions of section 7-A of the Act were subjected by the learned counsel to an attack on the ground of its authorising violations of principles of natural justice in that it empowered the Provident Fund Commissoner, who is an officer of the Department, to adjudicate and determine regarding the applicability of the Act to a particular establishment and thus act as a judge in his own cause.

(11) I am afraid there is no merit in the contention advanced by the learned counsel. The Provident Fund Commissioner is an authority envisaged by the statute to objectively decide as to whether on the given facts a particular establishment or concern is to be brought within the purview of the Act and the scheme thereunder. He himself is not a party as such to the issue that the statute calls upon him to decide. The matter is not *res integra*. An identical question was posed before Tuli, J. in a case reported as *M. S. Oberoi* v. *Union of India through Estate Officer, Chandigarh* (3) which he disposed of with the following observations :

> "..... the contention urged on behalf of the petitioner that the Estate Officer would be both the prosecutor and the judge which is hit by the ratio of the Supreme Court decision in *Gullappalli Nageswara Rao* v. *State of Andhra Pradesh* (4), is unconvincing and of no avail to the petitioner in the present case because the Estate Officer does not appear to me to be acting as a judge in his own cause when he is disposing of the proceedings initiated by the

(3) A.I.R. 1970 Pb. and Haryana 407.
(4) A.I.R. 1959 S.C. 1376.

show-cause notice under section 4 of the Act. To say that no one shall be a judge in his own cause means that the judge must not have anything like a personal interest in the cause he is to adjudicate upon and not that an officer discharging his official functions must not start proceedings in a matter which he is, under the law, competent to adjudicate upon. The petitioner's argument is obviously misconceived in the instant case and the decision of the Supreme Court does not seem to lend support to the petitioner's submission on the existing facts before me ....."

(12) Dua, J., too, had earlier in a judgment reported in *M. L. Joshi* v. *Director of Estates, Government of India, New Delhi and another* (5) expressed the same view. The following observations from this judgment are in point:

"The contention urged on behalf of the petitioner that the Estate Officer would be both the prosecutor and the Judge which is hit by the ratio of the Supreme Court decision in *Gullappalli Nageswara Rao* v. *State of Andhra Pradesh* (4) (*supra*) is unconvincing and of no avail to the petitioner in the present case because the Estate Officer does not appear to me to be acting as a Judge in his own cause when he is disposing of the proceedings initiated by the show-cause notice under section 4 of the Act.

To say that no one shall be a Judge in his own cause means that the Judge must not have anything like a personal interest in the cause he is to adjudicate upon and not that an officer discharging his official functions must not start proceedings in a matter which he is under the law, competent to adjudicate upon. The petitioner's argument is obviously misconceived in the instant case and the decision of the Supreme Court does not seem to lend support to the petitioner's submission on the existing facts before me."

(13) The relevant penalty provisions of the Act already noticed came under criticism at the hands of the learned counsel for the petitioner on the ground of their being unconscionable in that if a person, who is held liable under the statute for the default committed by an establishment in regard to the effecting of payment

(5) A.I.R. 1967 Delhi 86.

envisaged under the Act and the scheme thereunder, is unable to deposit the amount, then he would not in the jail for his life.

(14) The statute imposes a strict liability which has to be met by an establishment and in case it does not, then it does so at its cost, and the only defence against such a strict rule of liability that one can imagine even when not expressly mentioned is a *vis major*, i.e., an act of God as understood in legal parlance. Such being the policy of the Legislature, the Courts cannot strike down a statutory provision on the ground of the same being harsh or unconscionable.

(15) As to the attack on the provisions of sub-section (2) of section 16 of the Act, envisaging the exemption of a class of establishments having regard to its financial position or other circumstances from its operation, on the ground that it discriminates against an individual establishment from an industry or class of establishments, and which the learned counsel sought to reinforce additionally from the criteria of practicability in that while it is easier to look into the financial soundness of an individual establishment than that of a class of establishments, yet the provision envisages the exemption of a class of establishments and not an individual establishment on the grounds of its financial position and other circumstances, the answer is provided by their Lordships of the Supreme Court in *Ananda Behera and another* v. *State of Orissa and another* (6), wherein they have ruled that it is not for the Court to say what should be the law, for it has to interpret it as it finds. Their Lordships of the Supreme Court earlier too in *A. K. Gopalan* v. *State of Madras, etc.* (7), had expressed the same views, as will be clear from the following observations :

> "It is quite obvious that the Court cannot declare a statute unconstitutional and void simply on the ground of unjust and oppressive provisions or because it is supposed to violate natural, social or political rights of citizens unless it can be shown that such injustice is prohibited or such rights are guaranteed or protected by the Constitution."

(6) A.I.R. 1956 S.C. 17.
(7) A.I.R. 1950 S.C. 27.

So had ruled the Federal Court in a case reported in *matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act,* 1938 (8). The relevant observations are as under:—

> "It will seek to ascertain the meaning and intention of Parliament from the language of the statute itself; but with the motives of Parliament it has no concern. It is not for the Court to express, or indeed to entertain, any opinion on the expediency of a particular piece of legislation, if it is satisfied that it was within the competence of the Legislature which enacted it; nor, will it allow itself to be influenced by any considerations of policy, which lie wholly outside its sphere .....".

(16) Now coming to the primary twin contentions advanced on behalf of the petitioner: (1) that the petitioner's concerns are separate establishments and cannot be considered as branches of one establishment and thus the joint strength of the three separate establishments cannot be taken into consideration for satisfying as to the applicability of the relevant provisions of the Act, and (2) that two of the employees, namely, Das Mal and Yash Pal were mere casual workers employed to tide over a passing necessity and were not employed in the regular course of the business of the petitioner-firm, it must be observed that in the first instance it involves the determination of a question of fact and normally finding of the Provident Fund Commissioner in that regard cannot be assailed in this Court in its writ jurisdiction.

(17) Mr. S. K. Aggarwal, however, on the strength of *Mahipal Singh Shankarising Pawar and another* v. *Regional Provident Fund Commissioner, Mysore, Bangalore* (9) (having bearing upon the first contention) and the decision of the Supreme Court in *Re: Provident Fund Inspector* v. *T. S. Hariharan* (10) (relating to the second contention) urged that the learned Provident Fund Commismissioner, despite both the aforesaid decisions having been cited before him, took no account of them and did not approach the appreciation of the question involved from the stand point indicated in the two decisions.

(8) A.I.R. 1939 Federal Court 1.

(9) 1972 (11) Labour and Industrial cases (Vol. 5) 1202.

(10) A.I.R. 1971 S.C. 1519.

(18) It is no doubt true that in the representation, annexed to the petition as annexure 'B', made to the Provident Fund Commissioner, respondent No. 1, after the case had been remanded by this Court to him, the petitioner had taken up the stand that the petitioner concern was a partnership-firm and the two establishments, one at Kanpur and the other at Jullundur Cantt: were separate establishments each headed by one of the partners of the petitioner-firm in that these were not branches of the petitioner concern. It had also been mentioned in the said representation that two of the employees employed in the month of July and August were casual labourers engaged for shifting goods and thus they could not be counted, for seeing as to whether the petitioner concern employed such requisite number of employees in its regular course of business as to attract the relevant provisions of the Act and the scheme framed thereunder.

(19) It is clear from the perusal of the impugned order of the Provident Fund Commissioner, annexure 'D', that he treated the petitioner concern along with its establishments at Kanpur and Jullundur Cantt: as one unit treating them as branches of the main concern, but it gave no definite finding as regards the question as to whether both the employees mentioned in the representation were employed as casual labourers or not.

(20) As regards the question as to whether the three establishments in question are one concern is a question of fact and has been decided by the Provident Fund Commissioner. This finding can be upset only if it is shown that it is based on no evidence. As mentioned in the written statement filed on behalf of the Provident Fund Commissioner, he had enough material before him to come to that conclusion. The requisite material is furnished by the statements made by one of the partners of the petitioner concern which are annexures R. 3 and R. 4. The statements contained in those two documents tentamount to the admission of the petitioner. In those statements which pertained to the relevant year, it had been admitted that Kanpur and Jullundur establishments were the branches of the main concern located at Fenton Ganj, Jullundur City. This fact further stood corroborated from the address mentioned in the printed letter-pad of

the petitioner firm, annexure R-1. The above facts apart, it is clear from the assertion in the written statement which had not been denied, that all the three establishments filed joint return and were assessed at Jullundur and the head-office maintained the profit and loss account of all the three firms jointly. In view of the above, I am of the considered view that the Provident Fund Commissioner was right in treating the three establishments of the petitioner firm as one, other being branches of the main establishment.

(21) As regards the second contention that Das Mal and Yash Pal were employed as casual labourers, the stand taken on behalf of the respondent is that the petitioner-firm, in Annexure R-3, had itself mentioned the strength of the employees in regard to the year in question. Therein, it was not mentioned that out of the strength indicated, any worker was a casual worker or labourer. Although it is true that it was for the first time after the High Court had remanded the case for reconsideration to the Provident Fund Commissioner that the plea that Das Mal and Yash Pal were the casual labourers was taken, even then it required to be gone into and a definite finding was expected.

(22) Their Lordships in the judgment relied on by the petitioner have ruled that the workers employed to meet the passing necessity or an unforeseen emergency beyond the control of the employer cannot be taken into consideration while considering the strength of the employees engaged by the concern for carrying on regular business of the concern, but the duty is cast on the employer to establish the fact that the engagement of any worker was necessitated by such an unforeseen emergency or a passing necessity and that they were not employed in the regular course of business. No material had been adduced in this regard either before the Provident Fund Commissioner or in this Court. A bald assertion that a worker was employed as a casual labourer for shifting of goods is not sufficient to do the trick. In view of the above, I hold that the Provident Fund Commissioner, rightly extended to the petitioner concern the relevant provisions of the Provident Fund Act and the Scheme framed thereunder. The writ petition, therefore, is dismissed with costs.

B. S. G.