
P.S. Bajwa

Before Rajesh Bindal, J.

M/S MAHINDRA AND MAHINDRA LTD.—Petitioner

versus

**THE EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL AND ANOTHER—Respondents**

CWP No. 17157 of 2010

24th July, 2012

(A) Constitution of India, 1950 - Art. 226 - writ jurisdiction - Contract Labour (Regulation and Abolition) Act 1970 - Employees Provident Fund Appellate Tribunal - Procedure for hearing - Merger of Petitioner - Company and Punjab Tractors Limited in 2009 - 22 employees of Punjab Tractors Limited, and 5 others including contractor shot dead by terrorists in March, 1991. Procedure followed by Employees Provident Fund Appellate Tribunal impugned - Three

(2) AIR 1970 SC 1150

different orders giving three different dates in the same case - Order dismissing case in default only initialled and bore no signature or designation of person signing it - Manner in which proceedings conducted by the Employees Provident Fund Appellate Tribunal not appreciated - No proper records maintained by the Tribunal - Case lying without date of hearing for over 2 years - Explanation given to Court by Respondent - Commissioner in reply contrary to material available on record of the Tribunal - Impugned orders of Tribunal set aside.

Held. That the manner in which the proceedings have been conducted by the Tribunal cannot be appreciated. Firstly, as already referred to above, there was no track of dates of hearing in the appeal when it was filed on 28.4.2006. It was directed to be listed on 24.7.2006, on which date it was adjourned to 23.10.2006. For 23.10.2006, two orders are available on record. In both the orders, different next date of hearing was fixed. In one it was 24.1.2007 whereas in the other it is 7.2.2007. Still there are two other orders available on record on 7.12.2006 and 21.2.2007, which were not the dates of hearing fixed in either of the aforesaid two orders. The case was not taken up on either of two dates fixed i.e. 24.1.2007 or 7.2.2007, rather it was taken up on a date fixed in the order dated 7.12.2006 which was 30.5.2007. Notice of hearing of this date was sent to APFC Chandigarh on 23.2.2007 for 30.5.2007. The case was adjourned to 31.7.2007. Thereafter, the next order on record is dated 21.9.2007 adjourning the case to 14.12.2007.

(Para 17)

Further held, that after the aforesaid order dated 21.9.2007 fixing the date of hearing as 14.12.2007, there is no order on file showing that the date of hearing in the appeal be fixed at Chandigarh on 19.5.2010. As to under what authority a notice was directed to be issued to the parties for the date of hearing as 19.5.2010 at Camp office Chandigarh is not available on record. In the absence thereof, even no notice could be issued. Even prior thereto for a period of more than two years the case was lying without any date of hearing. The reason therefor as was explained in the court was that no presiding officer had been appointed.

(Para 18)

Further held, that still further there is nothing on record to show that the aforesaid notice dated 3.4.2010 was ever served on the petitioner. The mode through which the aforesaid notice was sent is also not available on record. Though it is claimed that the appeal was taken up for hearing on 19.5.2010 at Chandigarh but there is no order available for that date on record. In case some proceedings had taken place on that date, order sheet should have been prepared. The order passed on 31.5.2010 vide which the appeal was dismissed does not show anywhere that it was heard at Chandigarh on 19.5.2010 and the order was reserved. The date in any order, than the date of hearing could possibly be in case where after hearing the counsels or the parties the orders are reserved. Though the stand taken by the respondent Commissioner in its reply is that on 19.5.2010 the matter was reserved for order for 31.5.2010 but the same is contrary to the material available on record before the Tribunal, as referred to above.

(Para 19)

(B) Constitution of India, 1950 - Art. 226 - Directions issued to Employees Provident Fund Tribunal regarding manner in which proceedings to be conducted - Tribunal discharging important quasi judicial function - Orders to be passed in presence of Counsel or the Parties - Methods of service of notice to the parties proposed.

Held, That before parting with the order, this court would like to comment on the manner in which the proceedings have been conducted. As has already been noticed above, the case was not being taken up date-wise i.e. on a date fixed for hearing. There are two different orders passed on one date fixing two different dates of hearing. The Tribunal is discharging important quasi judicial function. The cases cannot be dealt with in the manner in which the same has been dealt with in the present case. In some of the zimni orders even it has not been mentioned as to who had signed that order. Neither the name of the person who had signed it nor his designation has been mentioned. In future it is directed that in all interim or final orders whatever are passed in an appeal or other proceedings by the Tribunal, the officer who signs those orders, his name and designation shall be clearly mentioned.

(Para 25)

Further held, that in courts all proceedings take place in writing. As the file shows in the present case after 21.9.2007 when the case was adjourned to 14.12.2007, only a notice is available on record fixing the date of hearing as 19.5.2010 at Chandigarh. There is no order to take up the file on any date and directing for fixing next date of hearing and issuance of notice to the parties. In the absence thereof, under what authority a notice was issued to the parties is not available on record. The Principal seat of the Tribunal is at Delhi. As was informed, some times, it holds Circuit Bench at different places. Whichever cases are to be fixed at Circuit Bench, there has to be specific order in the file fixing the case in a particular bench. The aforesaid order should either be passed in the presence of the counsels or the parties when it listed at the Principal Bench or it should be ensured that the notice has, in fact, been served upon both the parties. Whatever the appeal is taken up for hearing there has to be an interim order on record passed on that date showing the proceedings. One of the method to ensure service of notice on the parties could be through the concerned Regional office of Employees' Provident Fund Organisation, as the establishment normally pertains to that area. We are living in the era of technology. For the means of communication, the same should be utilised. Wherever the establishments are having fax or email I.D. efforts should be made to sent a copy of the notice through that mode as well. In case it is successful, this can be adopted as the method of service of notice in future. In addition thereto, the counsel who filed the appeal should also be informed. The same can also be by way of emails. At the time of filing of the appeal, it should be a requirement that the party, and the counsel who has filed the appeal should provide their complete address, telephone number, fax number and email address so as to enable the Tribunal to communicate with them.

(Para 26)

P. K. Mutneja, Advocate, *for the petitioner*:

Sanjay Tangri, Advocate, for respondent no. 2.

Reeta Kohli, Advocate, *for the applicant*.

RAJESH BINDAL, J.

(1) The petitioner has approached this court impugning the order dated 8.11.1996 (Annexure P-20), passed by the Regional Provident Fund Commissioner-I, Chandigarh (for short, 'the Commissioner'), under Section

7-A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short, 'the EPF Act'); order dated 31.5.2010 (Annexure P-22) passed by the Employees Provident Fund Appellate Tribunal, New Delhi (for short, 'the Tribunal') dismissing the appeal against the aforesaid order; order dated 18.8.2010 (Annexure P-24) dismissing the application filed by the petitioner before the Tribunal for setting aside of ex-parte order dated 31.5.2010; and notice of demand dated 15.9.2010 (Annexure P-25), issued by the Recovery officer.

(2) Learned counsel for the petitioner submitted that the petitioner is a company in which another company namely Punjab Tractors Limited (for short, 'the PTL') was amalgamated on 16.2.2009. The PTL was covered under the provisions of the EPF Act from the very beginning. It had been making regular contributions under the EPF Act. In addition to the employees employed directly, the establishment had also engaged certain contractors which were duly registered under the Contract Labour (Regulation & Abolition) Act, 1970 (for short, the 1970 Act'). The contractors were managing the records of the employees engaged by them and were complying with the provisions of the EPF Act independently. In March 1991, in an unfortunate tragedy 22 employees of the PTL and 5 other persons were shot dead by terrorists after hijacking a staff bus. The then contractor was also shot dead in that incident. On this count, the payment of contribution in respect of the employees employed by the contractors was apparently delayed.

(3) The Provident Fund Commissioner asked for the details of the contractors engaged by the petitioner, number of employees through the contractors and the details of payments made to them since 1980 onwards. The notice was issued on 18.4.1995. Despite submissions of details and showing its inability to produce, some of the records being very old, without considering the submissions made by the petitioner, the Commissioner vide order dated 8.11.1996 assessed dues to the tune of ₹ 22,27,919/- in respect of 131 employees for the period from 1980 to March 1995. The aforesaid demand was challenged before this court by filing Civil Writ Petition No. 19472 of 1996. During the pendency of the aforesaid writ petition, the Appellate Tribunal was constituted to hear appeals against the order of Commissioner with effect from 1.7.1997. The writ petition was disposed of by this court with liberty to the petitioner to challenge the order passed

by the Commissioner by filing appeal. The appeal was filed. As an interim measure, the Tribunal stayed the impugned order subject to furnishing of bank guarantee. The appeal remained pending before the Tribunal at Delhi. As there was no presiding officer from 2007 onwards it was not taken up for hearing and no date of hearing as such was fixed. All of a sudden it was directed to be heard at Circuit Bench at Chandigarh on 19.5.2010 for which no notice was received by the petitioner. Only an order dated 31.5.2010 was received dismissing the appeal on merits in the absence of the counsel for the petitioner. Immediately thereafter the file was inspected and application for setting aside the ex-parte order was filed. The same was also dismissed vide order dated 18.8.2010.

(4) The submission of learned counsel for the petitioner is that the petitioner in the present case has been condemned unheard. The Tribunal which was non-functional due to non appointment of a presiding officer had all of a sudden fixed the hearing of the appeal at Chandigarh for which no intimation was given to the petitioner as a result of which none could represent the petitioner at the time of hearing which resulted in ex-parte dismissal of the appeal. The Tribunal before proceeding further with the appeal did not enquire that service of the notice had been effected on the petitioner or not. When it was pointed out by filing application for setting aside of ex-parte order, the prayer was required to be considered but still the Tribunal failed to do that and dismissed the application. The prayer is for setting aside of both the orders and affording the petitioner an opportunity of being heard in the appeal.

(5) On the other hand, learned counsel for respondent no. 2 submitted that after the appeal was filed by the petitioner and it was fixed for hearing at Chandigarh. Due notice of hearing was given to the petitioner by the Tribunal. It must have been served. In fact, the petitioner should have kept the track of the case. The case was fixed at Chandigarh for the convenience of the petitioner as the establishment belong to this area. It is an after thought to state that the petitioner did not receive the notice rather it is a case where petitioner failed to appear when the appeal was taken up for hearing. No case for interference can possibly be made out.

(6) Heard learned counsel for the parties and perused the paper book as well as the record of the Tribunal which had been summoned.

(7) For the purpose of the decision of the present writ petition this court is not required to go into the merits of the controversy as it is only the procedure followed by the Tribunal while deciding the appeal which is required to be gone into. Against the order dated 8.11.1996 passed by the Commissioner under Section 7-A of the EPF Act, the petitioner initially filed Civil Writ Petition No. 19472 of 1996 which was disposed of on 17.2.2006 by passing the following order:-

“The learned counsel for the parties are agreed that the petitioner must first approach the Employees Provident Fund Appellate Tribunal at Delhi under Civil Writ Petition No. 17157 of 2010 (4) Section 7 (d) of the Employees Provident Fund and Misc. Act, 1952. A direction is accordingly issued in the above terms.

In the meanwhile the interim order granted on 19.12.1996 shall be enure for a period of three months from today. Three months time is also granted to the petitioner to file the appeal. The respondents also undertake not to take any plea with regard to the limitation at the time of the entertainment of the appeal.”

(8) In terms thereof, the petitioner without losing any time filed appeal before the Tribunal on 28.4.2006 which was directed to be listed on 24.7.2006 on which date it was adjourned to 23.10.2006. On 23.10.2006, there are two orders on file. One of the order states that counsel for the appellant was heard on merits and as the counsel for the respondent is sick, the matter was adjourned to 24.1.2007. Whereas in the another order, the application for interim stay filed by the petitioner was allowed subject to bank guarantee already furnished subject to its revalidation till the disposal of the appeal. Notice was directed to be issued to the respondent for 7.2.2007. The aforesaid two orders passed on 23.10.2006 are extracted below”-

“23-10-2006

“Present Shri J. K. Chowdhary, counsel for the appellant.
Shri Rajiv Ranjan Rajesh, Proxy counsel for the respondent.

“The learned counsel for the appellant has been heard on merits. Since the learned counsel for the respondent is sick, the matter is adjourned for hearing on 24.1.2007.”

“23-10-2006

Present Shri P.D. Maheshwari, Advocate, for the appellant.

The learned counsel for the appellant submitted that pursuant to the directions issued by the Hon'ble High Court of Punjab & Haryana, a Bank Guarantee equal to the amount determined under Section 7-A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 have been furnished in favour of the respondent. The said Bank Guarantee is valid up to February, 2007. He has also filed an application under Section 7-O of the Act for waiver of 75% pre-deposit. That application is allowed subject to the bank guarantee already furnished with the respondent. The impugned orders of the respondent is stayed till the validity of the bank guarantee. In case the bank guarantee is further revalidated to till the disposal of the appeal, the stay shall continue till then.

Notice be issued to the respondent for 7-2-2007.”

(9) In both the aforesaid orders different next date of hearing was fixed. In one order it was 7.2.2007, whereas in second order 24.1.2007. It is quite strange to note the manner in which the proceedings were conducted by the Tribunal. There is another order passed on 7.12.2006, which was not the date fixed in either of the two aforesaid orders when fresh notice was directed to be issued to the respondent for 30.5.2007. The same is extracted below:-

“Fresh notice be issued to the respondent returnable by 30-5-2007 before Registrar. After completing the service and pleadings the matter may be placed before the Tribunal for further orders.”

(10) There is another noting signed on the file on 21.2.2007, which was not the date of hearing in either of the three orders, referred to above, vide which the appeal was dismissed in default. The text thereof is extracted below:-

1. Appeal is dismissed in default.
2. File consign to records.
3. Issue copy of order to both the parties.

Sd/- 21.2.2007.

(11) It is not evident as to who had signed the above order. Neither the name nor designation of the person concerned has been mentioned as it has only been initialed. Another document on file is a notice issued to Assistant Provident Fund Commissioner, Chandigarh, dated 23.2.2007 informing the next date of hearing as 30.5.2007. It is apparently in terms of order dated 7.12.2006 on file which has already been referred to above. On 30.5.2007, the case was adjourned to 31.7.2007. Even from this order it is not apparent who had signed the same.

(12) At page 96 of the record, a notice is available which was issued on 30.11.2006 for 7.2.2007 to Regional Provident Fund Commissioner, Chandigarh.

(13) There is no order passed on 31.7.2007 available on file. The next order is dated 21.9.2007 wherein marking presence of the counsel for the petitioner, it has been noted that the appellant has filed a copy of the bank guarantee and the case was adjourned to 14.12.2007 for filing reply. This order has apparently been signed by the same person who had signed order on 21.2.2007 but still it is without disclosing his identity or designation. Thereafter, there is no order available on record either for adjourning the case for any date of hearing or for fixing the date at Camp office Chandigarh on 19.5.2010. However, there is a notice dated 3.4.2010 available on record at page 97 showing that the hearing of the appeal has been fixed on 19.5.2010 at Chandigarh. The notice was sent to APFC Chandigarh and appellant/ counsel for the appellant/ Punjab Tractors Limited.

(14) There is nothing on record to show as to the manner in which the aforesaid notice was dispatched and also whether the same was served upon the parties concerned or not. There is no proceedings on record on 19.5.2010 when the case is stated to be heard at Camp office, Chandigarh. It is mentioned by the Tribunal in the impugned order dated 31.5.2010 that copy of the order be sent to the parties which was sent to the petitioner vide communication dated 1.6.2010. The order does not show the date of hearing.

(15) After the receipt of the aforesaid order, the petitioner filed an application on 7.7.2010 for setting aside of the ex-parte order dated 31.5.2010 specifically stating that the notice dated 3.4.2010 fixing the next date of hearing as 19.5.2010 at Chandigarh was not served upon the

petitioner as a result of which none could represent the petitioner at the time of hearing. It was also mentioned in the application that there is no proof of service of notice available on record. There is no order sheet for 19.5.2010. After issuing notice to the respondent, the aforesaid application was also dismissed vide order dated 18.8.2010 by passing the following order:-

“Heard the arguments of the advocates on the application filed by the appellant for setting aside the ex parte order dated 31.5.2010 on the ground that no notice was served upon the appellant.

2. The record reveals that the matter was listed for final hearing on 19.5.2010 and due notice was served to the parties. However, the appellant failed to appear (sic appear) and place his case and the matter was reserved for order for 31.5.2010. The order dated 31.5.2010 was passed on merits of the case. Since, the appellant failed to avail the opportunity provided to him for placing his case he at this stage is not allowed to say that the order is ex-parte.”

(16) A perusal of the aforesaid order shows that without there being any material on record, it was noticed by the Tribunal that notice for fixing date of hearing as 19.5.2010 was served upon the parties. As the petitioner failed to avail of the opportunity of hearing, the appeal was rightly dismissed.

(17) The manner in which the proceedings have been conducted by the Tribunal cannot be appreciated. Firstly, as already referred to above, there was no track of dates of hearing in the appeal when it was filed on 28.4.2006. It was directed to be listed on 24.7.2006, on which date it was adjourned to 23.10.2006. For 23.10.2006, two orders are available on record. In both the orders, different next date of hearing was fixed. In one it was 24.1.2007 whereas in the other it is 7.2.2007. Still there are two other orders available on record on 7.12.2006 and 21.2.2007, which were not the dates of hearing fixed in either of the aforesaid two orders. The case was not taken up on either of two dates fixed i.e. 24.1.2007 or 7.2.2007, rather it was taken up on a date fixed in the order dated 7.12.2006 which was 30.5.2007. Notice of hearing of this date was sent to APFC Chandigarh

on 23.2.2007 for 30.5.2007. The case was adjourned to 31.7.2007. Thereafter, the next order on record is dated 21.9.2007 adjourning the case to 14.12.2007.

(18) After the aforesaid order dated 21.9.2007 fixing the date of hearing as 14.12.2007, there is no order on file showing that the date of hearing in the appeal be fixed at Chandigarh on 19.5.2010. As to under what authority a notice was directed to be issued to the parties for the date of hearing as 19.5.2010 at Camp office Chandigarh is not available on record. In the absence thereof, even no notice could be issued. Even prior thereto for a period of more than two years the case was lying without any date of hearing. The reason therefor as was explained in the court was that no presiding officer had been appointed.

(19) Still further there is nothing on record to show that the aforesaid notice dated 3.4.2010 was ever served on the petitioner. The mode through which the aforesaid notice was sent is also not available on record. Though it is claimed that the appeal was taken up for hearing on 19.5.2010 at Chandigarh but there is no order available for that date on record. In case some proceedings had taken place on that date, order sheet should have been prepared. The order passed on 31.5.2010 vide which the appeal was dismissed does not show anywhere that it was heard at Chandigarh on 19.5.2010 and the order was reserved. The date in any order, than the date of hearing could possibly be in case where after hearing the counsels or the parties the orders are reserved. Though the stand taken by the respondent-Commissioner in its reply is that on 19.5.2010 the matter was reserved for order for 31.5.2010 but the same is contrary to the material available on record before the Tribunal, as referred to above.

(20) The fact noticed by the Tribunal in the order dated 18.8.2010 that notice was served upon the parties is without any basis. There being nothing on record in support thereof.

(21) In view of the aforesaid factual matrix, the only option remains with this court is to set aside the orders dated 31.5.2010 and 18.8.2010, passed by the Tribunal dismissing the appeal filed by the petitioner and also the application for setting aside the ex-parte order.

(22) Ordered accordingly.

(23) The parties through their counsels are now directed to appear before the Tribunal at Delhi on 3.9.2012 for further hearing.

(24) As the matter has been remitted back to the Tribunal for consideration on merits, in my opinion, no further order is required to be passed in the application filed by the Workers' Union. The same is disposed of as such.

(25) Before parting with the order, this court would like to comment on the manner in which the proceedings have been conducted. As has already been noticed above, the case was not being taken up date-wise i.e. on a date fixed for hearing. There are two different orders passed on one date fixing two different dates of hearing. The Tribunal is discharging important quasi judicial function. The cases cannot be dealt with in the manner in which the same has been dealt with in the present case. In some of the zimni orders even it has not been mentioned as to who had signed that order. Neither the name of the person who had signed it nor his designation has been mentioned. In future it is directed that in all interim or final orders whatever are passed in an appeal or other proceedings by the Tribunal, the officer who signs those orders, his name and designation shall be clearly mentioned.

(26) In courts all proceedings take place in writing. As the file shows in the present case after 21.9.2007 when the case was adjourned to 14.12.2007, only a notice is available on record fixing the date of hearing as 19.5.2010 at Chandigarh. There is no order to take up the file on any date and directing for fixing next date of hearing and issuance of notice to the parties. In the absence thereof, under what authority a notice was issued to the parties is not available on record. The Principal seat of the Tribunal is at Delhi. As was informed, some times, it holds Circuit Bench at different places. Whichever cases are to be fixed at Circuit Bench, there has to be specific order in the file fixing the case in a particular bench. The aforesaid order should either be passed in the presence of the counsels or the parties when it listed at the Principal Bench or it should be ensured that the notice has, in fact, been served upon both the parties. Whatever the appeal is taken up for hearing there has to be an interim order on record passed on that date showing the proceedings. One of the method to ensure service of notice on the parties could be through the concerned Regional office of Employees'

Provident Fund Organisation, as the establishment normally pertains to that area. We are living in the cra of technology. For the means of communication, the same should be utilised. Wherever the establishments are having fax or email I.D. efforts should be made to sent a copy of the notice through that mode as well. In case it is successful, this can be adopted as the method of service of notice in future. In addition thereto, the counsel who filed the appeal should also be informed. The same can also be by way of emails. At the time of filing of the appeal, it should be a requirement that the party, and the counsel who has filed the appeal should provide their complete address, telephone number, fax number and email address so as to enable the Tribunal to communicate with them.

(27) Similar process for service of notice, etc. can be followed in the proceedings before the Regional Provident Fund Commissioner- Assistant Provident Fund Commissioner.

(28) A copy of the order be sent to Central Provident Fund Commissioner, New Delhi.

(29) The writ petition stands disposed of accordingly.
