

Before P. C. Jain, A.C.J. & K. S. Tiwana, J.

SUKHCHAIN SINGH AND COMPANY AND
OTHERS,—Petitioners

versus

THE FOOD CORPORATION OF INDIA
AND OTHERS,—Respondents.

Civil Writ Petition No. 4991 of 1981.

March 2, 1984.

Employees' Provident Funds and Miscellaneous Provisions Act (XIX of 1952)—Section 7-A—Constitution of India 1950—Article 14—Order of Commissioner determining the amount due under Section 7-A made final and non-justiciable in a Civil Court—No appeal provided against such an order—Provisions of section 7-A—Whether ultra vires Article 14.

Held, that as is evident from the analysis of section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the authority is required to determine the 'amount due' from any employer under the provisions of the Act and for that purpose, it has to make an enquiry and give hearing to the employer. To protect the interest of the employer, the authority is invested with the power to summon any evidence, examine any record, admit any affidavit or issue commission for examination of witnesses as he deems proper and reasonable. Further, the employer is bound to be given a reasonable opportunity of representing his case. Thus, the provisions of section 7-A of the Act prescribe a wholesome procedure for conducting enquiry for the purpose of determining the amount due from the employer under any provisions of the Act, the Scheme, or the Family Pension Scheme, or the Insurance Scheme. Further, the authority is only required to determine the amount due under the provisions of the Act to the employee, and for that purpose sufficient guidelines are provided in the Act and its various provisions. The words 'amount due' though not defined in the Act would, in the ordinary sense, mean an amount recoverable at law. The authority under the Act keeping in view the guidelines has only to make arithmetical calculations of the amount which the employee is entitled to recover and which has not been paid by the employer in law. The Act is a piece of social security legislation for the benefit of industrial employees and section 7-A had to be introduced to fill in the lacuna which existed in the Act as it did not provide any forum to the employees to get the amount due determined under the Act. The justiciability of such summary

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order in the Civil Court had to be taken away in order to avoid frustration of the object of introducing this provision. If an order under section 7-A of the Act is permitted to be challenged in a Civil Court, then the poor employees would be dragged into prolonged litigation and ultimately they would find that they have been made to spend money much more in the civil litigation than to what they have been found entitled to. In the wake of the wholesome procedure prescribed under section 7-A of the Act, it cannot be held that its provisions taking away the jurisdiction of the ordinary Civil Court are violative of the provisions of Article 14 of the Constitution of India. Again, it is true that no appeal is provided against the order of the authority but merely because of this fact a provision of the statute cannot be held to be arbitrary. Right of appeal is a creation of the statute and mere denial or taking away of such a right under the law cannot be considered as infringement of a person's fundamental right. It is, therefore, held that the provisions of section 7-A of the Act are not *ultra vires* Article 14 of the Constitution.

(Paras 6, 7, 8, 9 and 10).

Petition Under Article 226/227 of the Constitution of India praying that :—

- (a) *Section 7-A of the Provident Fund and Miscellaneous Provisions Act, 1952 be held ultra vires of the Constitution being violative of Article 14 of the Constitution of India and appropriate writ, order or direction be issued accordingly.*
- (b) *the notice Annexure P. 1 and order Annexure P. 3 being wholly illegal and against the provisions of the Act be kindly set aside by issuing a writ in the nature of Certiorari;*
- (c) *any other writ order or direction as deemed fit and necessary under the facts and circumstances of the present case may kindly be issued;*
- (d) *filing of certified copies of Annexures P.1 to P.3 may kindly be exempted as the matter is urgent and the order imposing liability is likely to be passed by the respondent—Regional Provident Fund Commissioner at any time;*
- (e) *issuance of advance notice may kindly be exempted as the matter is urgent and there is no time left as the respondent-R.P.F. Commissioner has fixed 4th of November, 1981 as date for proceedings to assess liability etc. which is also likely to result into penalty;*

(f) during the pendency of the writ petition operation of the impugned order may kindly be stayed for further proceedings before the R.P.F. Commissioner be kindly stayed;

(g) Writ be allowed with costs.

V. K. Bali, Advocate, for the Petitioner.

C. D. Dewan, Sr. Advocate with S. K. Sharma, Advocate, G. C. Garg, Advocate for Nos. 1 and 2.

JUDGMENT

Prem Chand Jain, A.C.J.

(1) The short question that needs determination by the Bench is whether Section 7-A of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') is *ultra vires* Article 14 of the Constitution of India? The question being purely legal, reference to the facts as stated in the petition is wholly unnecessary. The points urged by the learned counsel for the petitioners may be formulated thus:—

- (i) That the order passed by the Commissioner is final and non-justiciable in Civil Court;
- (ii) That there is no right of appeal from the decision of the Commissioner;

(2) It is on the basis of the aforesaid grounds that the learned counsel had contended that the provisions of Section 7-A of the Act are unreasonable and bad.

(3) Before dealing with the aforesaid points, it would be appropriate to notice and understand the scheme of the Act. This Act is a piece of social security enactment. Prior to the coming into force of the Act there was no compulsory statutory provision for the benefit of provident fund to industrial employees. This enactment enables a worker to get some money compatible with his earning capacity on which he can fall back upon at the time of retirement. It gives relief to the dependents in case of early death of the worker. The Central Government is authorised under the Act to frame schemes to be called the Employee's Provident Fund Scheme and Family Pension Scheme for the establishment of

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Provident Funds and Family Pension and Life Insurance benefits under the Act. The Act and the schemes, so framed under the Act, provide comprehensive measures of social security as well as administrative machinery to achieve the solitary object for which this Act has been made.

(4) Coming to section 7-A of the Act, it would be noticed that this section was added to the Act through amending Act No. 28 of 1963. An examination of the preceding and succeeding provisions to Section 7-A of the Act shows that section 6 of the Act deals with the quantum of contributions of the employer to the fund and other matters which may be provided for in schemes. Section 6-A of the Act deals with the Employee's Family Pension Scheme while Section 6-B deals with special grant to be made by the Central Government towards the Family Pension Scheme. Section 6-C provides for the Employees' Deposit-linked Insurance Scheme and Section 7 vests power in the Central Government for the modification of scheme. Further, Section 8 lays down the procedure and mode of recovery of money due from employers, whereas section 8-A provides safeguards for the recovery of moneys by employers and contractors. Obviously, the matter for determination of moneys due from the employer was missing, which necessitated the insertion of section 7-A of the Act. At this stage, for facility of reference the provisions of section 7-A may be noticed:—

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

- (1) The Central Provident Fund Commissioner, 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 purpose 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 commission for the examination of witnesses;
- and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Section 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."

(5) A little analysis of the above provisions would indicate that the Central Provident Fund Commissioner, or the Deputy Provident Fund Commissioner, or the Regional Provident Fund Commissioner, has been authorised to determine the amount due from an employer under any provision of the Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, and for that purpose, the authority may conduct such enquiry as it may deem necessary. Under sub-section (2) it is provided that the officer conducting the enquiry under sub-section (1) shall have the same powers as are vested in a Court under the Code of Civil Procedure in respect of the matters enumerated therein. Sub-section (3) provides that a reasonable opportunity of representing his case would be afforded to the employer before determining the amount due. Under sub-section (4) it is provided that the order made by the authority shall be final and shall not be questioned in any Court of law.

(6) Now I shall deal with the points enumerated in the earlier part of the judgment, on merits. While developing the argument, what was sought to be contended by the learned counsel for the petitioners was that by taking away the jurisdiction of the Civil Court and by not providing a remedy of appeal against the order of the Commissioner, an arbitrary, unbridled and unguided power has been given to the authority under the Act to decide the matter in any manner it likes with the result that section 7-A of the Act is *ultra vires* Article 14 of the Constitution of India. Though the argument appears to be quite attractive, yet a little scrutiny of the

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same in the light of judicial pronouncements of the Supreme Court reveals its hollowness. As is evident from the analysis of section 7-A of the Act, the authority is required to determine the 'amount due' from any employer under the provisions of the Act and for that purpose, it has to make an enquiry and give hearing to the employer. To protect the interest of the employer, the authority is invested with the power to summon any evidence, examine any record, admit any affidavit or issue commission for examination of a witness as he deems proper and reasonable. Further, the employer is bound to be given a reasonable opportunity of representing his case. Thus, the provisions of Section 7-A of the Act prescribe a wholesome procedure for conducting enquiry for the purpose of determining the amount due from the employer under any provisions of the Act, the Scheme, or the Family Pension Scheme, or the Insurance Scheme.

(7) Further, the authority is only required to determine the amount due under the provisions of the Act, to the employee, and for that purpose sufficient guidelines are provided in the Act and its various provisions. The words 'amount due' though not defined in the Act would, in the ordinary sense, mean an amount recoverable at law. The authority under the Act keeping in view the guidelines has only to make arithmetical calculations of the amount which the employee is entitled to recover and which has not been paid by the employer in law. As has been brought out in the earlier part of the judgment, the Act is a piece of social security enactment to industrial employees. Section 7-A had to be introduced to fill in the lacuna which existed in the Act as it did not provide any forum to the employee to get the amount due determined under the Act.

(8) Further, the justiciability of such summary order in the Civil Court had to be taken away in order to avoid frustration of the object of introducing this provision. If an order under section 7-A of the Act is permitted to be challenged in a Civil Court, then the poor employees would be dragged into prolonged litigation and ultimately they would find that they have been made to spend money much more in the civil litigation than to what they have been found entitled to. An employer would always be in a position to indulge in such type of litigation. It is precisely to avoid such a situation and harassment to the employees that the Legislature in its wisdom, rightly took away the jurisdiction of the Civil Court. It was never contended and could not justifiably be argued that in

a given situation, the Legislature could not take away the jurisdiction of the Civil Court. Nor was it suggested that a provision could be struck down merely on this ground that Civil Courts' jurisdiction had been taken away. In the wake of the wholesome procedure prescribed under section 7-A of the Act, it cannot be held that the provisions of section 7-A of the Act not being justiciable in the ordinary Court of law, are violative of the provisions of Article 14 of the Constitution of India.

(9) Coming to the ground that no appeal is provided against the order of the authority, I, again, find no substance in this attack. Merely this fact that right of appeal is not provided, a provision of statute cannot be held to be arbitrary. In *Sarwan Singh etc. Vs. The State of Punjab and others etc.*, (1), it has been held that right of appeal is a creation of the statute and mere denial or taking away of such a right under the law cannot be considered as infringement of a person's fundamental right. In that case, the *vires* of section 59(a) of the Punjab Town Improvement Act, 1922, were challenged as violative of Article 14 of the Constitution as it denied right of appeal against the order of acquisition. In another case in *Organo Chemical Industries and another v. Union of India and others* (2), the Supreme Court upheld the *vires* of section 14-B of the Act under which the authority has been given power to recover from the employer the amount of damages. The provisions of section 14-B of the Act had been challenged on the ground that there was absence of guidelines of appellate review in this section. While rejecting the contention raised, the Supreme Court observed as under:—

"9. Nor is the plea of absence of guidelines or appellate review sound enough to subvert the validity of Section 14-B. It is attractive to hear the argument that an order passed by an authority, which becomes infallibly final in the absence of an appeal or revision, is apt to be arbitrary and bad. An appeal is a desirable corrective but not an indispensable imperative and while its presence is an extra check on wayward orders its absence is not a sure index of arbitrary potential. It depends on the nature of the subject-matter, other available correctives, possible harm flowing from wrong orders and a wealth of other factors.

(1) A.I.R. 1975 S.C. 394.

(2) A.I.R. 1979 S.C. 1803.

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10. If a death sentence is allowed to become conclusive without so much as a single appeal, Articles 14 and 21 may imperil such a provision but if a fine of Rs. 5 imposed for a minor offence in a summary trial by a First Class Magistrate is imparted a finality, subject, of course, to a constitutional remedy in the event of perverse or patent illegality, we may still uphold that provisions with an easy constitutional conscience. In the present case, a hearing is given to the affected party. Reasons have to be recorded in the order awarding damages. The writ jurisdiction is ready to review glaring errors. The maximum harm is pecuniary liability limited by the statute. A high official hears and decides. Under such circumstances the needs of the factual situation and the legal milieu are such that the absence of appellate review in no way militates against the justice and reasonableness of the provision. The argument of arbitrariness of this score is untenable. The section is not bad. May be, action under the section may be challenged in writ jurisdiction provided infirmities which attract such jurisdiction vitiate the order."

In my view, the aforesaid observations of the Supreme Court are a complete answer to the contentions raised by the learned counsel for the petitioners. Further, a Division Bench of Patna High Court in *M/s. Inter State Transport Agency, Sitamarhi v. Regional Provident Fund Commissioner, Patna* (3), has also upheld the *vires* of section 7-A of the Act. The learned counsel for the petitioners had drawn our attention to a Division Bench judgment of Delhi High Court in *M/s. Wire Netting Stores, Delhi and another v. The Regional Provident Fund Commissioner, New Delhi and others* (4). It is correct that judgment lends support to the contention of the learned counsel for the petitioners. But, with respect, I am unable to subscribe to that view, especially, in the wake of the judgment of the Supreme Court in *Organo Chemical Industries's case* (supra). Moreover, I feel that in case the judgment of the Supreme Court in *Organo Chemical Industries's case* (supra) had been brought to the notice of the learned Judges, the fate of that case would also have been different.

(3) 1983 Lab. I.C. 940.

(4) 1981 Lab. I.C. 1015.

(10) Thus, as a result of the aforesaid discussion, I hold that the provisions of section 7-A of the Act are not *ultra vires* Article 14 of the Constitution. The case would now go back to the learned Single Judge for disposal on merits.

Kulwant Singh Tiwana, J.—I agree.
