

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6452 OF 2012

The Employees Provident Fund
Organization and Others

Appellant(s)

Versus

Sudarshan Kumar and Another

Respondent(s)

O R D E R

As this appeal arises from a public interest litigation, we have thought it apposite not to wait for service return on the respondent No.1, who was the writ petitioner before the High Court.

The question that emerges for consideration is whether the High Court is justified in its understanding of Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'the Act') and the administrative circular issued on 19th June, 2008, by the Employees Provident Fund Organization, Ministry of Labour, Government of India. Section 7A of the Act reads 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 the 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 (5 of 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 (45 of 1860).

(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."

The relevant part of the administrative circular is as follows:-

"Whether the employer, employee or any other person recurred to attend the inquiry under sub-section (1) of Section 7A fails to attend the inquiry without assigning any valid reasons 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, in the basis of evidence adduced during such inquiry and other documents available on record as per the provision of Section 7A(3A) of the Act.

(3) The officers of the rank of APFC should not invoke powers to issue arrest warrant in the matter of 7A in a routine manner unless all other methods including the repeated

utilization of Enforcement Officer's service are exhausted and the prior permission of RPFC-II (In-charge SRO) RPFC-I as the case may be is obtained for invoking the power u/s 7A(2)(a).

(4) RPFC-II/In-charge, SRO/RPFC should exercise due diligence and duly satisfy themselves that there is no other alternative than to ensure personal presence of the Employer for proceeding with the inquiry further to its logical conclusion. All officer are advised to acknowledge the above instruction and ensure compliance."

The Division Bench of the High Court considering the statutory provision had directed as follows:-

"On consideration of paragraph 3 of the said Circular, the first part is setting out that the power to issue arrest warrant should not be exercised in a routine manner, perhaps that could be said to be merely advisory in character. However, the following sentence, "..... and the prior permission of RPFC-II (In-Charge SRO)/RPFC-I as the case may be obtained for invoking the power u/s 7A(2)(a)", can be said to directly interfere with the power of quasi judicial authority exercising its powers under Section 7A of the Act. The contention in the affidavit of respondents that even if a power has been conferred, it should be used sparingly and with utmost care cannot be faulted. The question is who will decide. Is it the quasi-Judicial Authority or by the administrative circular such as the one we have reproduced earlier. The law on exercise of discretion even by an administrative authority is well settled."

In that context, the High Court has placed reliance upon a decision rendered in J.R. Raghupathy Etc. vs. State of A.P. and Others, AIR 88 SC 1681. The relevant paragraph of the said decision reads as follows:-

"At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor D. Smith in his

Classical work 'Judicial Review of Administrative Action' 4th Edn., at pp.285-287 states the law in his own terse language. The relevant principles formulated by the courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be wayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

In view of the aforesaid, the High Court finally opined thus:-

"Therefore, it is for the authorities in whom the power is vested to exercise the power. The exercise of power cannot be interfered with by any administrative authority. If such a power is allowed to be exercised by an administrative authority which has the effect of controlling the exercise of power of quasi-judicial or judicial body that would directly impinge on the administration of justice and the rule of law. It is not possible for this Court to accept such a contention that the judicial power can be fettered by administrative instructions. The rule of law would contemplate that the judicial authority exercises its powers in terms of the act and the rules framed thereunder. If the Authority is a creature of a statute it is bound by the provisions of that statute. A body even if be a part of the machinery of the same act cannot be permitted to issue direction controlling the discretion of the authority exercising quasi-judicial powers. In our opinion, therefore, para 3 of

the impugned Circular is arbitrary and violative of the powers conferred on the authority under Section 7A of the Act and consequently will have to be set aside."

It is submitted by the learned counsel for the appellant that the circular had been issued, as non-bailable warrant of arrest was issued by certain authorities in indiscriminate manner. We appreciate the concern of the appellant. However, when a statute confers a power on an authority, it is to be exercised by it. There cannot be introduction of a concept of prior permission from any superior authority. On that score, we do not find any fault with the analysis made by the High Court. However, we would like to direct that the authorities, who are exercising the power under Section 7A of the Act, before issuing any warrant of arrest, should circumspect and not issue some mechanical direction in a routine manner i.e. it has to be remembered that issuance of warrant of arrest should be a last resort under the scheme of the Act.

With the aforesaid clarification in the order of the High Court, the appeal stands disposed of. As the respondent has not appeared, there shall be no order as to costs.

.....CJI.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

.....J.
[Dr. D.Y. Chandrachud]

New Delhi,
May 08, 2018.

ITEM NO.105

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6452/2012

EMP. PROVIDENT FUND ORGN. & ORS.

Appellant(s)

VERSUS

SUDARSHAN KUMAR & ANR.

Respondent(s)

Date : 08-05-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Appellant(s) Mr. Varun Agarwal, Adv.
Ms. Chandra Prakash, Adv.
Mr. Devvrat, AOR

For Respondent(s) Respondent-in-person

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the signed
order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)