

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 490 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SONAL GUM INDUSTRIES

Versus

REGIONAL PF COMMISSIONER

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Appearance:

None present for Petitioner

MR JD AJMERA for Respondent No. 1

None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/10/97

ORAL JUDGEMENT

1. The petitioner in this special civil application has prayed for declaration that the provisions of the Provident Fund Act and the scheme framed thereunder are not applicable to the petitioner-firm in so far as the workers engaged by respondent No.2 are concerned. Further prayer has been made for quashing and setting aside of the orders dated 30th March, 1993 of Regional

Provident Fund Commissioner passed under section 7-A and 25th March, 1987 passed by the Central Government under section 19-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. These proceedings were initiated by the petitioner against the order dated 16th December, 1983 of the Regional Provident Fund Commissioner under which the responsibility of the petitioner with respect to the employees employed through the contractor and other ancillary things under the aforesaid Act was fixed. Another order dated 29th March, 1984 has also been challenged of the said authority under which the amount of provident fund dues were determined. The first order was maintained by the Central Government and the second order was set aside and the matter was remanded back for fresh determination of the amount of provident fund dues. Thereafter under the order dated 30th March, 1993 passed under section 7-A of the aforesaid Act, the Regional Provident Fund Commissioner has determined the dues of the provident fund to be paid by the petitioner.

3. In this special civil application, challenge has been made to the orders of the Central Government aforesaid as well as this later order passed by the Regional Provident Fund Commissioner. Against the order of the Central Government which has been passed in the year 1987, the petitioner has not taken any further proceedings. So that order to the extent where the petitioner was declared to be responsible for making the payment of provident fund for the employees of the contractor has attained the finality. Challenge of the petitioner to that extent in this special civil application otherwise suffers from the defect of delay and laches. However, so far as the second order is concerned, this order admittedly has been passed under section 7-A of the aforesaid Act against which now appeal is available to the petitioner under section 7-I of the said Act before the Appellate Tribunal.

4. This special civil application against the later order is dismissed only on the ground of availability of statutory alternate remedy. However, in case the petitioner prefers an appeal against the second order before the Appellate Tribunal within a period of one month from today, it is expected of the Tribunal not to dismiss the same on the ground of limitation but to decide the same on merits. Whatever interim relief granted by this Court in this case in favour of the petitioner shall continue on the same terms and conditions for six weeks and thereafter the Tribunal

shall consider the matter afresh for continuation or extension of the interim relief and while considering the same it shall not be influenced by the fact that this Court has granted the interim relief in favour of the petitioner. The special civil application is dismissed and rule is discharged subject to the aforesaid directions.

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