

FOOD CORPORATION OF INDIA

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v.
PROVIDENT FUND COMMISSIONER AND ANR.

OCTOBER 26, 1989

[K. JAGANNATHA SHETTY AND T.K. THOMMEN, JJ.]

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Employees' Provident Funds and Miscellaneous Provisions Act, 1952: Section 7A—Determination of amounts payable by employer as contribution—Statutory authority—Whether duty bound to summon evidence when requested by party, before coming to proper conclusion.

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Respondent No. 1—the Provident Fund Commissioner called upon the appellant—Food Corporation of India to deposit contribution payable by it under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme thereunder, in respect of workers employed by the contractors appointed by the appellant for handling storing and transporting food grains and other articles in its depots in Rajasthan. On appellant's non-compliance, Respondent No. 1 made an order under Section 7A of the Act determining the amount payable by the appellant. Against the aforesaid order, the appellant filed writ petition before the High Court, which dismissed the same. Hence the appeal, by special leave, by the appellant—Corpotation.

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It was contended that the appellant was denied a reasonable opportunity to produce actual proof of identification of workers in respect of whom contribution was payable inasmuch as Respondent No. 1 neither gave notice to contractors, who were in possession of the relevant lists of workers, nor made them parties to the proceedings, despite its repeated requests.

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Allowing the appeal,

HELD: The Commissioner, while conducting an inquiry under Section 7A of the Employees, Provident Fund and Miscellaneous Provisions Act, 1952 has the same powers as are vested in a court under the Code of Civil Procedure for trying a suit. Thus, the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the

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A **workmen.** The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person. [757H; 758A; F-H]

B In the instant case, the appellant—Corporation had some problems in collating the lists of all workers engaged in depots scattered at different places. It requested the respondent—Commissioner to summon the contractors to produce the respective lists of workers engaged by them. However, the appellant—Commissioner did not summon the contractors, nor the lists maintained by them. The matter is, therefore, remitted to the Commissioner for fresh disposal. [757F; 759A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4552 of 1989.

D From the Judgment and Order dated 23.12.1988 of the Rajasthan High Court in C.W.P. No. 13 of 1987.

G.L. Sanghi and Y.P. Rao for the Appellant.

C.S. Vaidyanathan, S.R. Setia and K.V. Mohan for the Respondents.

E The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. Special leave granted.

F Having heard counsel on both sides and having perused the material on record, we are of opinion that the matter requires reconsideration by the Provident Fund Commissioner.

G The Food Corporation of India has depots located at various places in Rajasthan for handling storing and transporting food grains and other articles. It has appointed contractors for execution of such works and the contractors in turn engaged some workers. In respect of such workers, the Provident Fund Commissioner called upon the Corporation to deposit contribution payable under the Employees, Provident Fund Act and the scheme framed thereunder. When there was non-compliance, the Commissioner made an order under section 7A of the said Act determining amount payable by the Corporation.

H Being aggrieved by that determination, the Corporation moved the

High Court for relief under Art. 226 of the Constitution. The High Court has dismissed the petition. Hence the Corporation has appealed to this Court. A

The grievance complained of by the Corporation is that it was denied of reasonable opportunity to produce material in proof of identification of the workers in respect of whom the contribution was payable. It is urged that the contractors are in possession of the relevant lists and the Commissioner has not even given notice to contractors nor made them parties to the proceedings in spite of repeated requests made by the Corporation. Counsel for the Union of Workmen, however, contended that under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 the Corporation being the principal employer has to maintain list of workers; that it has failed to produce such list and, therefore, it cannot throw the burden on the contractors to prove the case. B

We have carefully perused the Commissioner's order and also the order of the High Court. The total amount ordered to be payable comes to about Rs.22,48,000 in respect of the employees of depots namely: Udaipur, Jaipur, Ajmer, Badmer and Sawai Madhopur. The Commissioner has also directed the Divisional Officer, Jaipur to deposit the Provident Fund Contribution i.e. Rs. 18,72,194 to the Fund being maintained by the trustees of the establishment. It is indeed a large amount for the determination of which the Commissioner has only depended upon the lists furnished by the workers, Union. It is no doubt true that the employer and contractors are both liable to maintain registers in respect of the workers employed. But the Corporation seems to have some problems in collating the lists of all workers engaged in depots scattered at different places. It has requested the Commissioner to summon the contractors to produce the respective lists of workers engaged by them. The Commissioner did not summon the Contractors nor the lists maintained by them. He has stated that the Corporation has failed to produce the evidence. C

The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act. D

It is of importance to remember that the Commissioner while conducting an inquiry under section (7A) has the same powers as are E

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A vested in a Court under the Code of Civil Procedure for trying a suit. The section reads as follows:

“S. 7(A) Determination of Moneys due from Employer—

B (1) The Central Provident Fund Commissioer, any Deputy Provident 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.

C (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, for trying a suit in respect of the following matters, namely:

D (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;

E (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.”

F It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.

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We, therefore, allow the appeal and reverse the order of the Commissioner and that of the High Court. The matter stands remitted to the Commissioner to dispose it of afresh and in accordance with law and in the light of the observation made. A

The parties shall appear before the Commissioner to receive further orders on December 12, 1989. The Commissioner, shall dispose of the matter within three months thereafter.

N.P.V.

Appeal allowed.