Union Of India & Anr vs Ogale Glass Works on 1 September, 1971

Equivalent citations: 1971 AIR 2577, 1972 SCR (1) 525, AIR 1971 SUPREME COURT 2577, 1971 LAB. I. C. 1516, 1971 2 LABLJ 513, 24 FACLR 56, 40 FJR 258, 1 SCR 525, 1972 (1) SCJ 269

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, G.K. Mitter, P. Jaganmohan Reddy

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
OGALE GLASS WORKS

DATE OF JUDGMENT01/09/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
MITTER, G.K.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 2577 1972 SCR (1) 525
1971 SCC (2) 678

ACT:
Employees' Provident Fund Act, 1952-Scope of s. 19A of the Act-Whether decision under s. 19A of the Act by the Central Government is final in the facts and circumstances of the case.

HEADNOTE:
The respondent company was manufacturing various articles including. Lantern and Safety Stoves etc. In November 1952, Employees Provident Fund Act, was passed and the company was making regular contributions to the Provident Fund for all employees.
After sometime, another establishment which was carrying on similar business, filed a writ petition in Bombay High Court

contesting the claim of the Regional Provident Fund Commissioner, that the Act applied to all sections of the glass works. The Bombay High Court held that the Act and the scheme applied only to such sections of the company as were covered by Sch. 1 of the Act and not to all sections. Against this decision, an appeal was preferred before this Court and the Court reversed the decision of the High Court and held that the Act and the scheme applied to all employees working under the said glass works.

Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandra, [1962] Supp. 3 S.C.R. 815.

The respondent, although was making contributions in respect of all its employees, discontinued to do so after the decision of the High Court in the above matter, except for those employees who were working in the Lantern and Stove Sections. Thereafter, the employees raised a dispute, and the dispute was referred to the Industrial Tribunal, Maharashtra and the Industrial Tribunal gave its award against the management but exempted the respondent company from contributing for certain years. After the decision of this Court in Shree Krishna Metal Co.'s case, the Regional Provident Fund Commissioner, called upon the respondent to make contributions but the respondent pleaded that there has been already a decision by the Central Government under s. 19A of the Act holding that the Act and the scheme applied only to the Lantern and Stove Sections and therefore the respondent asked for refund of the contributions made for employees of other sections and maintained that the Department was not entitled to call upon the company to make contributions for the years in question. The Department threatened to take coercive steps and in consequence, respondent filed a writ petition in the Nagpur Bench of the Bombay High Court challenging the demand made by the Regional Provident Fund Commissioner and sought relief.

The High Court held that in view of the Central Governments decision under s. 19A of the Act, the appellants have no right to reopen the question of liability of the respondent.

On appeal, the following questions arose for consideration : (i) Whether there has been a decision of the Central Government under s. 19A of the Act. (ii) the effect of the Award passed by the Industrial Tribunal exempting the company from contributing for certain years; (iii) whether the company is liable to pay the administrative charges for the exempted periods. Allowing the appeal,

-1340 Sup. CI/71

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HELD : (1) From the evidence it is clear that there has been no ,final decision by the Central Government under s. 19A of the Act. it was only a limited decision not to apply the Act and the scheme in view ,of the judgment of the Bombay High Court and till the final decision of the appeal by this Court. After the matter is finally disposed of by this

Court, the appellants are perfectly justified in demanding contributions for all employees from the respondent in terms of the demand notice. [545 E]
Although the Award passed by the Industrial Tribunal exempted the management from contributing for a certain number of years, it is not relevant for the purpose of applying the Act arid the scheme. Moreover, the appellants were not parties to the award. Since the Act and the scheme applies to all sections of the respondent, the respondent is liable to make contributions at the rate specified in the Act. The rate specified by the Industrial Tribunal is not in accordance with the Act. Therefore, the award of the Industrial Tribunal does not stand in the way of the appellant's demand for the period in question. [545 G-546 C]
(3)Once the employer is held liable for payment of its share of Provident Fund contribution for the period in question, it will also be liable to pay the administrative charges. [546 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2591 of 1966.

Appeal from the judgment award order dated September 17, 1965 the Bombay High Court in Special Civil Application No. 380 of 1964.

R. H. Dhebar, Ram Panjwani, S. P. Nayar and P. R. Ram Asish,for the appellants.

V. M. Tarkunde and K. R. Chaudhuri, for the respondent. The Judgment of the Court was delivered by Vaidialingam, J. This appeal on certificate, by the Union of India and the Regional Provident Fund Commissioner., Maharashtra State, is directed against the judgment and order dated September 17, 1965 of the Bombay High Court allowinG Special Civil Application No. 380 of 1964 filed by the respondent company under Art. 226 of the Constitution and quashing the notice of demand dated May 22, 1963 issued by the Regional Provident Fund Commissioner. The circumstances under which the writ petition was filed by the respondent may be stated : The respondent a limited company having its Head Office at Ogalawadi in Satara District was manufacturing at the relevant time Glassware, Stoves, Lanterns and Enamel wares. It had several sections in its factory, namely, (1) Glass Manufacturing Section, (2) Lantern and Safety Stoves Section, (3) Enamel Section, (4) General Section and (5) Canteen Section. In or about 1946 the Company had introduced a Provident Fund Scheme for its workers under which it paid 12 pies in a rupee as the employer's contribution towards the said fund. In 1951 the Provident Fund Scheme was amended and the Company agreed to make contributions to the. fund only if it made profits.

On November 1, 1952, The Employees' Provident Fund Act, 1952, Act No. XIX of 1952 (hereinafter to be referred to as the Act), came into force and it made applicable to certain scheduled industries. There is no controversy that the Act was made applicable to the respondent on October 6, 1952 and

the Company had been paying its contribution to the Employees Provident Fund from November 1, 1952. For the purpose of the Fund, a scheme had been framed under the Act. According to the Regional Provident Fund Commissioner, the Act and the Scheme framed thereunder applied to the entire body of employees working under the respondent. Though the Company then raised objections on the ground that only the employees in the Lantern and Stoves Section were covered by the Scheme and that it was bound to make contributions only in respect of those employees, nevertheless, the Company continued to make its share of contribution to the Provident Fund even in respect of other employees working in other sections.

In the mean while, another establishment in the area, the Nagpur Glass Works, which was carrying on a business similar to that of the respondent company filed a writ petition before the Nagpur Bench of the Bombay High Court under Art. 226 of the Constitution, being Miscellaneous Petition No. 122 of 1956 contesting the claim of the Regional Provident Fund Commissioner that the Act applied to all sections of the Glass Works. In the said writ petition the contention was that the Act and the Scheme will apply only to the Lantern and Stove Section. Though this claim was contested by the Department, a Division Bench of the, Bombay High Court, by its decision dated March 7, 1957 reported in The Nagpur Glass Works Ltd., v. Regional Provident Fund Commis- sioner(1) upheld the contentions of the Nagpur Glass Works that the Act and the Scheme applied only to such sections or departments of the Company as were covered by Schedule The respondent before us continued to make its contribution in respect of All the employees. There was some correspondence between the Company and the Department, to which we will refer later. The Department had challenged the decision of the Bombay High Court before this Court. The decision of the Bombay High Court was reversed by this Court on March 14, 1962 in the decision reported in The Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara(2). This Court after referring to the relevant Provisions of the Act including s. 2A which had been introduced by an amendment in 1960 held that the Act applied to composite factories and that the Glass (1) 1. L. R. [1958] Boni. 444.

(2) [1962] Supp. 3 S. C. R. 815, 5 28 Works therein was commercially engaged in a Scheduled industry among others and hence the Act was applicable to it. On this basis, this Court held that all the employees working under the said Glass Works were covered by the Act and the Scheme.

To resume the narrative, after the decision of the Bombay High Court, the respondent began to discontinue making contributions in respect of the employees, other than those working in the Lantern and Stoves Section. The employees raised a dispute regarding the discontinuance of the Provident Fund Scheme and in consequence the State Government referred the dispute to the Industrial Tribunal, Maharashtra, being Reference No. I.D. 29 of 1960. The Industrial Tribunal, by its award dated June 24, 1960, after considering the financial position of the Company, held that for the years, 1951, 1957, 1958 and 1959, the Company should make contributions to the Provident fund at the rate of 8- 1/3 per cent of the basic wages to the workers uncovered by the Scheme under the Act and that the Company need not make any contributions for the years 1950 and 1952 to 1956, as during those years they have suffered loses. It gave a further direction that from March 1, 1960 the Company is to make contribution at 6-1/4` per cent of the wages and Dearness Allowance. The Reference also related to the claim for Dearness Allowance and the Tribunal had adjudicated on that

aspect also.

After the decision of this Court, referred to above, rendered on March 14, 1962, the Regional Provident Fund Commissioner, by his letter dated March 22, 1963 called upon the respondent to make its share of the Provident Fund contributions at the statutory rate for the period November 1, 1952 to December 31, 1960 together with administrative charges for the said period. The Company made representations protesting against the demand made, by the Regional Provident Fund Commissioner. In particular, they pleaded that there has been already a decision by the Central Government under S. 19A of the Act holding that the Act and the Scheme apply only to the Lantern and Stoves Section and on the basis of that decision the contributions made by them, under protest, with regard to the employees working in the other sections had been refunded and therefore the department was not entitled to call upon the Company to make contributions for the years in question. They further contested the claim of the department on the ground that the question regarding the liability of the Company to make contributions to the provident fund was the subject of adjudication under the Award of the Industrial Tribunal dated June 24, 1960 and this Award precluded the department from 'Claiming contributions for the identical period. The Company raised a further objection that even on the basis of the decision of this Court, the Act does not apply to its other sections.

These objections raised by the Company were negatived by the department which threatened to take coercive steps to collect the contributions if the demand, under the order dated May 22, 1963 was not complied with. The respondent, in consequence filed the writ petition in the Nagpur Bench of the Bombay High Court challenging the demand made by the Regional Provident Fund Commissioner by his order dated May 22, 1963 and sought relief for restraining the officers concerned from enforcing the demand and for quashing the said order.

The appellant contested the writ petition on various grounds, but it is only necessary to note that their main plea was that there has been no decision of the Central Government under S. 19A of the Act to the effect that the Act and the Scheme apply only to the Lantern and Stove Section of the respondent. On the other hand, their plea was that the Act and the Scheme had been made applicable to the entire establishment of the respondent comprising all its sections and covering the entire body of workmen employed in the said establishment. The respondent has been making contributions as per the scheme framed under the Act. But i n view of the decision of the Bombay High Court, which they had to respect and obey, they had provisionally decided that the contributions will be collected from the respondent only in respect of those sections, which have been held by the High Court to be governed by the Act. This decision was a purely provisional and tentative one pending the adjudication by this Court regarding the correctness of the decision of the Bombay High Court, which was being challenged by the appellants. It was in view of the Bombay High Court's judgment that the amounts by way of contributions collected from the respondent in respect of the workmen who were held not to be governed by the Act, were either refunded or adjusted towards his future contributions in respect of those workmen to whom the Act applied. In this connection the appellants relied on the correspondence that passed between them and the respondent as well as the correspondence that the appellant had with the employees' Union. But after the decision of this Court holding that the Act applies even to a composite establishment, the

appellants necessarily had to take up the matter from the stage at which it was left because of the Bombay High Court's decision and in consequence made demands on the respondent to comply with the provisions of the Act and the Scheme. The appellants further pleaded that the award of the Industrial Tribunal had no relevancy in considering the statutory liability of the respondent under the Act. Further, it was pointed out by them that the principles on which the adjudication was given were not at all in conformity with the Act. Finally, the appellants pleaded that they, having a duty to enforce the provisions of the Act, which was a benevolent measure in the interest of the workmen, issued the demand 5 30 dated May 22, 1963 which is in conformity with the decision of this Court.

The High Court, by its judgment and order under appeal, has held that the letter dated August 19, 1959 sent by the Central Provident Fund Commissioner, New Delhi, to the Regional Provident Fund Commissioner read with the letter dated September 21, 1959 sent by the latter to the respondent clearly shows that there has been a decision under s. 19A of the Act that only the Lantern and Stoves as well as Enamel Sections of the respondent Company would be covered by the provisions of the Act and that the order of the Central Government having become final, the appellants have no right to have the question of liability of the respondent in respect of the other sections reopened. In this view, the High Court did not consider it necessary to go into the question whether the decision of the Central Government as contained in the two letters referred to above, was inconsistent with the provisions of the Act, nor did it think it necessary to consider the effect of the award in I.D. No. 29 of 1960. The High Court rejected the claim of the appellants that the decision not to enforce the Act in respect of the other sections was only a tentative one pending adjudication by this Court regarding the correctness of the Bombay High Court's judgment. Though it was contended by the respondent that even on the basis of the decision of this Court, the Act and the Scheme will not apply to all sections of its establishment, the High Court rejected that contention on the ground that the manufacture of glass wares, the enamel wares and the lantern and stoves was the industrial activity of the respondent and that to such a case the decision of this Court will apply and that the respondent Company will be governed by the provisions of the Act and the Scheme. Ultimately, the High Court quashed the demand made under the order dated May 22, 1963 and gave directions to the appellants not to enforce the said demand. On behalf of the appellants Mr. R. H. Dhebar, learned coun- sel, very strenuously urged that the High Court has committed a very serious error in construing the letters dated August 19, 1959 and September 21, 1959 as indicating that there has been a decision by the Central Government under s. 19A, accepting the contentions of the respondent. The counsel pointed out that the entire correspondence clearly shows that in view of the decision of the Bombay Hi- gh Court, the respondent's claim for adjustment of the amount paid by them was provisionally accepted pending the appellants' appeal in this Court challenging the decision of the Bombay High Court. The counsel further urged that the award of the Industrial Tribunal has no relevancy or bearing in considering the statutory liability of the respondent under the Act. The appellants were not parties to the award and they have got a statutory duty to enforce the provisions of the Act in the interest of the employees. On facts, the counsel urged, there can be no controversy regarding the application of the Act to all the activities of the respondent. Therefore, he pointed out that the demand made by the Regional Provident Fund Commissioner on May 22, 1963 was justified and the demand in any event are for the periods not covered by the industrial adjudication.

Mr. V. M. Tarkunde, learned counsel for the respondent, has supported the judgment of the High Court in full as also the reasons given by the High Court for holding, that there has been a decision by the Central Government under S. 19A. In this connection he referred to certain passages contained in the communications that passed between the appellants and the respondent. The counsel further urged that when the Central Government took a decision under S. 19A, as is evidenced by the letters dated August 19, 1959 and September 21, 1959, that decision was not in any manner inconsistent with the provisions of the Act. The said decision by the Central Government was not a provisional one to abide the adjudication by this Court regarding the Bombay High Court's judgment. On the other hand, the said decision was a totally independent one taken under s. 19A by the Central Government in respect of the respondent's establishment in view of the contentions raised by it before the appropriate authorities. The counsel further urged that the liability of the respondent for the period now covered by the demand dated May 22, 1963 was the subject of adjudication by the Industrial Tribunal on a dispute raised by the employees. The award has considered all aspects. and has exempted the respondent from making any contribution for certain years. That decision is binding on the workmen and the award is still in force. The claim made by the appellants is really an attempt made by the employees indirectly to circumvent the decision in I.D. No. 29 of 1960. Finally, the counsel urged that even on the principles laid down by this Court regarding the applicability of the Act, the respondent's objections regarding their liability in respect of certain sections are valid.

We can straightaway dispose of the last point urged by Mr. Tarkunde that the Act does not apply to all sections of the respondent's establishment. We have already referred to the decision of the High Court rejecting the contentions of the respondent in this regard and holding that the manufacture of glass material, enamel and lantern and stoves, was the industrial activity of the respondent and that the decision of this Court squarely applies which, in consequence, makes the Act and the Scheme applicable to all sections of the respondent. That is a decision recorded by the High Court on facts and we see no error in this conclusion reached by the High Court.' Mr. Tarkunde, however, contended that this Court in the case of The Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara(1) has held that the Act and the Scheme apply to all the sections of the glass works on the basis of s. 2A, which was inserted in the Act, with effect from December 31, 1960 by the Employees Provident Fund (Amendment) Act, 1960 (Act 46 of 1960). Section 2A is as follows "2A Establishment to include all departments and branches:

> For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different, places, all such departments or branches shall be treated as parts of the same."

> As the said section takes effect only from December 31, 1960, the counsel argued, that the decision of this Court does not apply to the respondent for the years in respect of which the demand is made. We are not inclined to accept this contention of the learned counsel. This Court has elaborately considered the various provisions of the Act, and having due regard to the activities of the Company with which they were dealing held that the Act applies to a composite factory. No doubt this Court has also

referred to s. 2A, which has been added by the Amendment Act 46 of 1960 only for the purpose of emphasising that the said provision makes it clear that an establishment may consist of different departments or may have different branches, whether situated in the same place or in different places and yet all such departments or branches shall be treated as parts of the same establishment. Reference to this Section has been made only for the purpose of giving an additional reason for negativing the contention that the establishment under s.. 1(3) (a) does not contemplate a composite factory. Therefore, it follows that the Act and the Scheme fully apply to a composite establishment like that of the respondent, as held by this Court, in the decision referred to above.

Two questions now fall, to be considered in this appeal, namely, (i) whether there has been a decision of the Central Government under S. 19A of the Act as contended by the respondent, and (ii) the effect of the award in I.T. No. 29 of 1960. In ,order to appreciate the contentions of the learned counsel on both sides, it is necessary to refer to the material provisions of the Act and also to the correspondence that passed between the appellants and the respondent.

The Act, as its preamble shows is to provide for the institution ,of provident fund for the employees in factories and other establishments. Sub-section 3 of S. 1 provides for the applicability (1) [1962] Supp. 3 S.C.R. 815.

of the Act to the establishments referred to therein. There is no controversy that the Act has been made applicable to the respondent Company on October 6, 1952 and the Company has been paying its share of contribution to the employees provident fund from November 1, 1952.

Section 2 defines the various expressions. In particular four expressions require to be noticed, namely, "contribution" "scheme" ,'member' 'and "fund". Under s. 2(c) "contribution" means a contribution payable in respect of a member under a Scheme. Under s. 2(1) "Scheme" means a Scheme framed under the Act. Under s. 2(j) "member" means a member of the fund and under s. 2(h) "Fund" means the provident fund established under a Scheme. We have already pointed out that s. 2A. has also been referred to by this Court in The Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara(1) for holding that the Act applies to a composite establishment.

Section 5 deals with the framing of a Scheme by the Central Government called "Employees Provident Fund Scheme". Under sub-s. 2 of s. 5, a scheme framed under sub-section (1) can provide that any of the provisions shall take effect either prospectively or retrospectively from such date as may be specified in this behalf in the Scheme. Sections 5A to 5C deal with the constitution of the Central Board, the State Board and treating the Board of Trustees a body corporate, Section 5D(i) empowers the Central Government to appoint a Central Provident Fund Commissioner who is to be the Chief Executive Officer of the Central Board and to work subject to the general control and superintendence of the Central Board. Sub-section (2) of s. 5D similarly empowers the Central Government to appoint Provident Fund Commissioners, Regional Provident Fund Commissioners

and other officers to assist the Central Provident Fund Commissioner in the discharge of his duties. Section 5E provides for the Central Board, with the prior approval of the Central Government and a State Board with the prior approval of the State Government to delegate to its Chairman or any of its officers such of its powers and functions under the Act as are necessary for the efficient administration of the Scheme.

Section 6 deals with the contributions to be paid by the employer to the fund. It is to be at 6-1/4% of the basic wages and Dearness Allowance and Returning Allowance, if any, for the time being payable to the employees. It also provides for the employees contribution to be equal to the contribution payable by the employer. At this stage it may be mentioned that during the period for which the demand has been made contribution is to be (1) [1962] Supp. 3 S.C.R.815.

made at 6-1/4% of the basic wages including Dearness Allowance, though the expression "Basic Wages" under S. 2B excludes Dearness Allowance. In I.T. No. 29 of 1960 the Tribunal, even for the years for which the contribution has been directed to be made, has fixed it only on the basic wages excluding Dearness Allowance.

Under s. 7A the officers mentioned therein have been em- powered to determine the amount due from any employer under any provision of the Act or of the Scheme. Section 8 deals with the manner of recovery of the amount due from the employer. Section 19 provides for the appropriate government delegating any power, authority or jurisdiction exercisable by it under the Act or the Scheme to the appropriate offices mentioned therein.

Section 19A, under which, according to the respondent, a decision has been taken by the Central Government regarding non-applicability of the Act to some of its sections, disputed by it, runs as follows:

> "19A. Power to remove difficulties:
>
> If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to:
>
> (i) whether an establishment which is a factory is engaged in any industry specified in Schedule 1;
>
> (ii)whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of notification under clause (b) of sub-section 3 of section 1;
>
> (iii)the number of persons employed in an establishment;
>
> (iv)the number of years which have elapsed from the date on which an establishment has been set up; or

> (v) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty;

and the order of the Central Government, in such cases, shall be final."

It may also be stated that according to the respondent a controversy arose whether its establishment is one falling within the class of establishment to which the Act applies by virtue of noti-

fication under cl. (b) of sub-section (3) of s. 1 and it is in view, of that controversy that the Central Government took a decision. accepting the respondent's contention. Such a dispute raised by the respondent squarely comes under cl. (2) of s. 19A, and that decision has become final. It is not necessary to refer to the, Scheme as there is no dispute that if the Act applies, the Scheme framed thereunder does not violate any provision of the Act. From a review of the sections, it will be seen that the Act is essentially a measure for the welfare of the employees; and if the Act applies and a Scheme has been framed for an establishment, the employer is bound to make the contributions as provided for tinder s. 6. There is a statutory liability on an employer to pay the contribution at the rate mentioned in s. 6. Stringent provisions have been made for non compliance with the requirement of the statute and very drastic powers have been given to the authorities to recover the contribution due from an employer. Though there is a hierarchy of officials, nevertheless, it is only the Central Government that has been given power under s. 19A to give a direction not inconsistent with the provisions of the Act, if any doubt arises regarding one or other matters referred to in Cls.

(i) to (v); and that power is to be exercised when any difficulty or doubt arises in giving effect to the provisions of the Act. While the contention of the respondent is that the letter dated August 19, 1959 read with letter dated September 21, 1959 constitutes a direction given by the Central Government under s. 19A, according to the appellants no such direction has been given because the Central Government had no occasion to consider the matters mentioned under cl. (ii) of s. 19A.

Now the question arises whether there was any occasion for the Central Government to give a direction under s. 19A in the, case of the respondent. In order to understand the context in which the letters dated August 19, 1959 and September 21, 1959 relied on by the respondent came to be written and to understand' their full implication, it is necessary to refer to the correspondence that passed between the appellants and the respondent, both prior and subsequent to August 19, 1959. The judgment of the Bombay High Court in the Nagpur Glass Works' case(1) was rendered on March 7, 1957. The respondent in its letter dated December 10, 1957 addressed to the Regional Provident Fund Commissioner, Bombay, after referring to the Act having been made applicable to its establishment, gave a list of its activities, as well as the number of the employees working in the various sections. The number of employees to whom the Provident Fund Scheme under the Act applied has also been stated. The respondent then refers to a representation made to the Regional Provident Fund. Commissioner stating that the Act applied only to, (1) I. L R. [1958] Rom. 444.

some of its sections, but this representation was rejected by the officer concerned as early as March 31, 1953. The Company then states that the view of the Regional Provident Fund Commissioner as expressed in his letter dated March 31, 1953 that the Act applies to all sections of the establishment is erroneous in view of the decision of the Bombay High Court rendered on March 7, 1957 in the case of Nagpur Glass Works(1). After referring to the material part of the judgment of the High Court, the respondent states that in view of the said decision, the Act, which has been made applicable to all the employees working under the res- pondent can be made applicable legally only to those employees engaged in the manufacture of Hurricane Lanterns and non pressure stoves. On this basis, the Company further makes a request to the Regional Provident Fund Commissioner to reconsider his previous view expressed in the letter of March 31, 1953 and grant suitable relief to. The Company winds up the letter by making a request to the Officer that the contributions made by it all along even in respect of the employees not covered by the Act as per the Bombay High Court decision, may either be refunded ,or adjusted towards future contributions payable by them in respect of employees to whom the Act will apply under the said decision. Two circumstances emerge from this letter of the Company (i) that from the very beginning the Act has been applied to all the employees of the respondent working in all its sections and that a representation made by it to revise the Scheme was not accepted by the Department even as early as March 31, 1953 and the Company has been making provident fund contributions for all its employees; and (ii) the letter dated December 10, 1957 is necessaciated, as expressly mentioned therein because of the judgment of the Bombay High Court dated March 7, 1957 and it is on the basis of that judgment that the Department was being asked to reconsider its previous view regarding the applicability of the Act to all the employees of the Company. Therefore, even the very earlier letter written by the Company asking for modification of the Scheme is really rested on the judgment of the Bombay High 'Court. On November 28, 1958 the Regional Provident Fund Commissioner, Bombay wrote a letter to the Company. In that letter he referred to the Company's letter of September 1, 1958 where the latter appears to have stated that it "would be justified in withholding the payment of employer's share till final decision from Supreme Court is obtained "The officer then refers to the ,General Secretary for the employee's Union having met him and repre sented that the respondent was recovering the employees share ,of provident fund contribution every month. On inquiry, the officer states, that the said amount is not being remitted or credited towards the employees' share for the months for which the (I) I.L.R. [1958] Bom.444.

amounts have been collected by the respondent. The officer makes a request to the respondent to remit the amounts collected by it as early as possible. This letter of the Regional Provident Fund Commissioner again indicates that the respondent itself has been taking up the position that it will be justified in not making contribution to the provident fund till a final decision is given by the Supreme Court. That clearly indicates that the Department had taken up in appeal the judgment of the Bombay High Court to this Court and the respondent was fully aware of the same. This letter further shows that it was not as if the employer, the respondent, was totally denying its liability under all circumstances. It limits it only till a final decision regarding the correctness of the Bombay High Court's view is given by this Court.

On December 22, 1958, the respondent again sends a letter to the Regional Provident Fund Commissioner stating that they nave never disputed their liability to pay the workers and

Company's contribution so far as the Lantern and Glass Departments were concerned. However the Company affirms that they are disputing their liability to contribute in respect of the workers in the Glass, Enamel and, other Departments. The Company gave an account of the total amount contributed by it from November 1, 1952, the date when the Act was made applicable to the Company, till October 31, 1958. The Company further says :

> "We have so far remitted to you Rs.
>
> 7,06,914.87 np. i.e. we, have paid you in excess a sum of Rs. 1,11,940/since employees in Glass, Enamel and other Departments are not covered by the Act according to the decision of the High Court and the matter is now under consideration of the Supreme Court of India."

The Company makes a request to the Officer to adjust, what according to them, were excess payments. The Company further states :

> "The excess amount of Rs. 1,11,940/- after adjusting all dues upto 31-10-58 may be retained with you till the Supreme Court finally decides the matter."

This letter further emphasises that the respondent was raising a dispute regarding their non-liability to contribute in respect of certain sections mainly on the basis of the Bombay High Court decision. They also specifically referred to the appeal against the decision of the Bombay High Court pending in this Court. It is on this basis that the respondent states that the excess amounts that have been paid by them may be retained till this Court finally decides the matter. Therefore, the non-liability pleaded by the respondent is again based upon the judgment of the Bombay High Court and the period during which the non-liability is sought to be extended is till this Court finally adjudicates upon the matter.

Then we come to the two crucial letters dated August 19, 1959 and _September 21, 1959. The first is a letter written by the Central Provident Fund Commissioner, New Delhi to the Regional Provident Fund Commissioner, Bombay. Obviously, after the judgment of the Bombay High Court, some correspondence seems to have taken place between the officers concerned and the Regional Provident Fund Commissioner sought clarification from the Central Provident Fund Commissioner. The Central Provident Fund Commissioner in this letter states :

> "We have since been advised by the Government of India that the "enamel" and "lanterns and stoves" sections of the Ogale Glass Works Ltd., will continue to be covered under the Employees Provident Fund Act, 1952. The Provident Fund contributions deposited by the management in respect of the remaining sections of the factory viz., (i) general,
>
> (ii) glass, and (iii) canteen may be refunded to them."

.lmo The second letter dated September 21, 1 959 was addressed to ,the respondent by the Regional Provident Fund Commissioner after getting clarification from the Central Provident Fund Commissioner. In this letter it is stated that the Act and the Scame framed thereunder has been made applicable to Enamel and Latern and Stoves sections of the respondent's factory and that the amounts deposited by them in respect of the other sections, namely, (i) general, (ii) glass, and

(iii) canteen are to be refunded. The respondent was desired to submit a list as on August 31. 1959, giving the account numbers and the names of the employees who will be uncovered by the Act and also put in a claim for the excess amount paid by it. Prima facie if these two letters of August 19, 1959 and September 21, 1959 are read each by itself and in isolation without having any regard to what has passed between the parties and the Department, both prior and subsequent, the matters mentioned in these two letters may appear to 'Support the contentions of the respondent that the Central Government hasgiven a direction that the Act and the Scheme will apply ,only to the Enamel and Lantern and Stoves Sections of the respondent. That is what is stated in the letter of the Central Provident Fund Commissioner to the Regional Provident Fund Commissioner. On the basis of the letter dated August 19, 1959, the Regional Provident Fund Commissioner also informs the respondent that the Act and the Scheme will apply only to those sections and the excess contributions will be refunded. The High Court, in our opinion. has laid undue emphasis oil the use of the expression "We have since been advised by the Government of India"

> occurring in the letter of August 19, 1959. According to the High 'Court some doubt must have been raised by the Regional Provident Fund Commissioner regarding the applicability of the Act to all the sections of the establishment of the respondent and these doubts must in turn have been referred to by the Central Provident Fund Commissioner to the Central Government for resolving the doubts. The Central Government, according to the High Court, can be moved only under s. 19A of the Act, and it must have given a direction, as indicated in the letter of August 19, 1959. There fore, it is the view of the High Court that a final direction has been given under S. 19A by the competent authority, the Central Government, regarding non-applicability of the Act and the Scheme to
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> (i) general, (ii) glass, and (iii) canteen sections of the respondent establishment. The advice that is referred to in +he letter of the August 19, 1959 is really a direction of the Central ,Government. The High Court finds further support for this conclusion in the letter of September 21, 1959. This letter, according to the High Court, makes the position very clear that the decision of the Central Government regarding the non-applicability of the Act to the (i) general,
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> (ii) glass; and (iii) canteen sections has been communicated to the respondent and in addition the Department has also undertaken to refund the excess payments made by the respondent in respect of the employees working in these three sections. According to the High Court the contentions of the respondent in this regard have been accepted by the Central Government and a decision, which has become final, has been given in favour of the respondent under s. 19A.

We are not inclined to agree with this reasoning of the learned Judges of the High Court in the interpretation placed on these two letters. They have not given due weight to the earlier letters already referred to by us, where it has been categorically stated, even by the respondent, that its claim regarding non-applicability of the Act in respect of the three sections is exclusively based on the decision of the Bombay High Court and it wants the excess payment made by it to be kept to its credit till the matter is finally adjudicated upon by this Court. The Department also in its replies specifically refers to the matter pending in this Court in appeal. The High Court has ignored all these factors when it held that there has been a decision taken under S. 19A by the Central Government.

The further view of the High Court is that there is nothing in the letters of August 19, 1959 and September 21, 1959 that the decision of the Central Government was only a tentative or provisional one, which could be taken up for reconsideration depending upon the judgment that may be given by this Court.

Even here the view of the High Court is wrong. If the two letters are properly understood in the context of the previous correspondence, the position that there has been no decision by the Central Government under S. 19A and that any order for refund of the excess amount that may have been passed was purely provisional or tentative pending the decision by this Court, is made clearer by the subsequent letters to which we will make a reference immediately.

On October 14, 1959 the Central Provident Fund Commissioner addressed a letter to the General Secretary of the Employees' Union that the Central Government has decided, at the instance of the respondent, that the coverage of (i) general, (ii) glass, and (iii) canteen sections be discontinued and that the pro- vident fund amounts deposited be refunded. The letter proceed, to say :

> "This decision is due to the judgment of the Bombay High Court in the cases of Oudh Sugar Mills Ltd., etc. You will agree that the decision of the Bombay High Court, had to be given effect to till the appeal preferred by us in those cases is favorably decided by the Supreme Court of India. It will take some more time for getting the Supreme Court's decision and you will appreciate that it is not in our hands to expedite the decision."

The officer then refers to a suggestion made by the Union for amending the Act and states that it is not acceptable to the Government of India. Finally, the officer winds up the letter by saying that nothing can be done till a favorable decision is obtained from this Court in the appeal filed by the Department against the Bombay High Court judgment. The Union appears to have been distressed at the decision of the Bombay High Court and representations appear to have been made to the authorities. The Union is pacified by the officer that the decision taken regarding the respondent being a limited one and that such a decision was inevitable in view of the Bombay High Court's judgment and that the position will continue to be the same till the final adjudication by this Court in appeal.

Therefore, here again it is seen that the Department is putting in the forefront the Bombay High Court judgment as an obstacle to enforce the provisions of the Act in respect of all the sections of the

respondent and is waiting the judgment of this Court.

On October 17, 1959, the Union through its Secretary again addressed a letter to the Regional Provident Fund Commissioner regarding the decision of the respondent to discontinue its contribution under the Act in view of the letter of the Regional Provident Fund Commissioner dated September 21, 1959. The Union takes objections to the Department having taken a decision like that in favour of the Management when the matter is pending appeal before this Court. The Union expressed its resentment that the Department has not waited till the decision was given by this Court. On November 20, 1959 the respondent wrote a letter to the Regional Provident Fund Commissioner giving. a statement of accounts of the deposits made by them and stating the excess amount that is refundable to them being the contributions made in respect of the employees not covered by the Act. The respondent makes a request for refund of the amount. On April 20, 1960 the Regional Provident Fund Commissioner informed the respondent about the refund of the amount of all the employees who are not covered by the Act.

It appears that in view of the fact that the respondent stopped making the contributions in respect of the employees in the three sections concerned, the Union raised a dispute and the Government accordingly referred the said matter for adjudication to the Industrial Tribunal, Maharashtra. The Tribunal has made an award on June 24, 1960 in I.T. No. 29 of 1960, which will be referred to by us when dealing with the second contention. At this stage it is enough to note that there was a reference regarding the provident fund and there was an award on June 24, 1960. This Court delivered its judgment on March 14, 1962 reversing the decision of the Bombay High Court. In view of the decision of this Court, which was favorable to the employees, the Union on March 28, 1962, addressed a letter to the Central Provident Fund Commissioner drawing his urgent attention to the decision of this Court wherein it has been held that the Act applies to all composite units. The letter then refers to' the discontinuance of contributions by the respondent, in view of the letter dated September 21, 1959 of the Regional Provident Fund Commissioner. The Union reiterates that in view of the decision of this Court, the respondent is liable to pay the provident fund amount according to the Act and the Scheme. The officer is requested by the Union to take, the necessary steps to realise the amounts from the employer, the respondent.

On January 3, 1963 the Central Provident Fund Commissioner addressed a letter to the Secretary, Government of India, Ministry of Labour and Employment. In the said letter the officer states that the applicability of the Act to the respondent has to be reconsidered in the light of the decision of this Court overruling the decision of the Bombay High Court. The officer proceeds to state that the respondent who was originally making the contributions stopped doing so after the decision of the Bombay High Court and the excess payment made between November, 1952 to December, 1960 were adjusted in view of the advice given by the Central Government. The Central Provident Fund Commissioner finally requested the Government to reconsider the case of the respondent and to direct the same to pay the 6-L I 340SupCI/71 contributions as per the Act and the Scheme in the light of the decision of this Court from November, 1952 to December, 1960 at the statutory rate.

On January 21, 1963, the Union again wrote a letter to the ,Central Provident Fund Commissioner. After a reference to the various matters regarding the Bombay High Courts' judgment ,and the

contributions being stopped by the respondent and the decision of this Court as well as the award of the Industrial Tribunal in Reference 1. T. No. 29 of 1960, it requested the officer to collect the provident fund contributions from the respondent from 1952 to 1959 in respect of general, glass and canteen sections. On May 22, 1963, the order impugned by the respondent in its writ petition in the High Court was passed by the Regional Provident Fund Commissioner calling upon therespondent to pay its share of provident fund contribution at thestatutory rates for the period November 1, 1952 to December 31,1960 together with the administrative charges for the said period. It is stated that the demand is made as per the directions-issued by the Government of India. The respondent made a representation by its letter dated May 27, 1963 disputing its liability to pay the amount and relied on the award of the Industrial Tribunal in I.T. No. 29 of 1960. The Company also made a request for being furnished with a copy of the Government's directions. The Regional Provident Fund Commissioner sent a reply dated August 31, 1963 decli ning to furnish a copy of the Government's directions as they were all contained in the Departments files. It is further stated that the respondent has to pay the employer's share of provident fund contributions at the statutory rates from November 1, 1952 to December 31, 1960 in view of the decision of this Court making the Act and the Scheme applicable to a composite factory and the officer rejected the plea of the respondent that they are not liable to pay the amount.

On October 5, 1963, the respondent sent a further communi- cation to the Regional Provident Fund Commissioner. In that letter after setting out all the previous matters, the Company took up the stand that there has been a decision by the Central Government under S. 19A of the Act and that the said decision is final and binding on the parties and that it is not open to the Department to go behind those directions. The Company refers to the letter written by the, Regional Provident Fund Commissioner on September 21, 1959 regarding the decision of the Central Government about non-applicability of the Act to the three sections of the respondent. Ultimately, the respondent ,disputed its liability to pay the demand made on May 22, 1963 and has further stated that if the, demand is pursued the respondent will seek relief in a Court of law. On January 22, 1964 the Regional Provident Fund Commissioner sent a reply stating that the claim made by the respondent about its non-liability is rejected. The officer in turn called upon the respondent to pay its share of the provident fund dues and administrative charges immediately as demanded by the letter dated May 22, 1963. On receipt of this communication the respondent filed the writ petition. From the letters referred to above, which have passed between the respondent and the Department as well as the latter and the Union concerned subsequent to September 21,. 1959, it is clear that the Department has been taking up the position consistently that the original decision of the Central Government not to apply the Act and the Scheme to the three sections of the respondent was a purely tentative and provisional one and that decision was passed because of the decision of the Bombay High Court. The correspondence referred to above leaves no room for doubt that any decision taken by the Central Government-if it can be called a decision-was a purely tentative one subject to the final adjudication that is to be made by this Court. Under those circumstances it is idle for the respondent to contend that when the authorities informed them that the Act has been made applicable only to some sections of its establishment, an irrevocable decision has been taken in favour of the Company. On the other hand, it is very clear from the stand taken by the officers, as well as the respondent itself, that it was only a tentative decision taken by the Government by which it advised the officers not to enforce the Act to the three sections of the establishment of the

respondent, in view of the decision of the Bombay High Court. Immediately after the decision of this Court was given on March 14, 1962, the employees' Union of the respondent promptly on March 28, 1962 moved the officers to apply the provisions of the Act as per the decision of this Court. It was only at that very late stage that the respondent took up the plea that there has been originally a decision by the Central Government under S. 19A of the Act and that the said decision having become final is binding on the Company and the Department. From the entire corres- pondence it is clear that there has been no final decision taken by the Central Government under S. 1.9A of the Act regarding non-applicability of the Act and the Scheme in respect of the, three sections of the respondents establishment. At the most, a decision was taken to suspend the applicability of the Act during the pendency of the appeal in this Court. Once the decision of the Bombay High Court was set aside by this Court, the Department was within its right in making the demand made under the letter dated May 22, 1963. Under sub- s. (2) of S. 3 of the Act, we have already pointed out that a scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively. In fact there is no question of any claim being made in this case retrospectively. The position is that the amounts that were originally paid but later on adjusted or refunded in view of the Bombay High Court's judgment are being asked to be paid back for the same period in view of the judgment of this Court. Therefore,-,, the demand made on May 22, 1963 to pay the amount from 1952 is, in our opinion, justified.

The matter may be considered from another point of view also. It is the case of the respondent that there has been a direction given by the Central Government under S. 19A by letters dated August19, 1959 and September 21, 1959. The matters referred to inthese letters have already been referred to by us. The judgmentof the Bombay High Court was given on March 7, 1957. If so, after the decision given by the High Court interpreting the Act in a particular manner, we fail to see how an occasion will arise for the Central Government giving a direction under s. 19A on the ground that a difficulty has arisen in giving effect to the provisions of the Act and that doubt has arisen regarding the matters mentioned in cls. (i) to (v). After a decision has been given by a court on a particular aspect relating to the Act and the Scheme, in our opinion, there is no question of any difficulty arising in giving effect to the provisions of the Act or to any doubt arising in respect of the matters mentioned in cls. (i) to (v). The question whether an establishment, like that of the respondent relating to the glass works coming under el. (2) of S. 19A was subject of a judicial adjudication and therefore S. 19A could not have come into play for the Central to give any direction. The Central Government and all other authorities were bound to give effect to the decision of the Bombay High Court so long as it held the field. Even according to the respon- dent, as is seen by its letter dated December 10, 1957 addressed to the Regional Provident Fund Commissioner, when the Act and the Scheme were applied in 1952 to all the employees of the respondent, the latter raised an objection that the Act and the Scheme will apply only to employees engaged in the manufacture of Hurricane Lanterns and non pressure Stoves. The said letter also refers to the fact that the Regional Provident Fund Commissioner, Bombay, by his reply dated March 31, 1953 rejected the said objection and held that the whole of the establishment of the respondent was covered by the Act and the Scheme. There is no controversy that the respondent has been ever since making contributions in respect of all the employees and had raised no dispute at all till after the judgment of the Bombay High Court. The proper stage when a doubt might have arisen for the Central Government to exercise its jurisdiction under s. 19A was when the respondent raised an objection early in 1953 regarding non-applicability

of the Act to all its employees, and when that objection was rejected on March 31, 1953. If the matter had been pursued further and the Central Government moved and a direction was given by the Central Government then it could be said that the Central Government has given a direction under s. 19A. The position before us is entirely different. After the decision of the Bombay High Court there is no warrant for assuming that there was still a difficulty or doubt in respect of which the Central Government had to give a direction under s. 19A. Considering the matter from this aspect also it follows that there could not have been a direction issued by the Central Government under s. 19A when the letter of August 19, 1959 was sent by the Central Provident Fund Commissioner to the Regional Provident Fund Commissioner.

To conclude we are not inclined to agree with the view of the High Court that there has been decision under s. 19A of the Act under the letter dated August 19, 1959 read with letter dated September 21, 1959. There has been, in our opinion, no such decision and as pointed out earlier it was only a limited decision not to apply the Act and the Scheme, in view of the Bombay High Court's judgment I till the disposal of the appeal in this Court. After the decision of this Court the demand made on the respondent is perfectly justified and the High Court committed an error in quashing the notice dated May 22, 1963.

The second contention about the non-liability of the respon- dent based upon the award of the Industrial Tribunal in 1. T. No. 29 of 1960 need not detain us very long. It is true that in view of the decision of the Bombay High Court the employees' Union moved the State Government to refer the dispute regarding the provident fund. The award dated June 24, 1960. has given as mentioned certain directions in this regard. The Company has been absolved from making any provident fund contributions during certain years on the ground that it has suffered loss. The award is not based upon circumstances which are relevant for the purpose of applying the Act and the Scheme.

Admittedly the appellants were not parties to the award. No doubt under the Industrial Disputes Act the award will be binding as against the respondent and its workmen. 'But the appellants are seeking in these proceedings to enforce the statutory duty cast upon them to collect the contributions due from the respondent which again is a statutory liability under the Act and the Scheme. The object of the appellants in enforcing the Act is only to discharge the statutory duty enjoined on them for the benefit of the employees concerned. In view of the decision of this Court, it is clear that the Act and the Scheme apply to all the sections of the respondent, and if so it follows that the respondent is liable to make contributions and that at the rate specified in the Act. Even the rate given by the Industrial Tribunal for the limited period is not in accordance with the Act. We have already pointed out that the High Court has not expressed any opinion on the effect of the award. But according to us, the award in I. T. No. 29 of 1960 does not stand in the way of the appellants demand for the period mentioned in the letter dated May 22, 1953 regarding the provident fund and the administrative charges. From the discussion contained above, it is also clear that even if a decision has been taken by the Central Government, it is not inconsistent with the provisions of the Act. On the, other hand, as pointed out by us, that decision was only in accordance with the decision of the Bombay High Court subject to its being revised, if the appeal succeeded in this Court. The Department having succeeded in the appeal in this Court, it is clear that the demand made by the Department is justified.

We, however, make it clear that in realising the amounts on the basis of the demand dated May 22, 1965 the appellants will give due credit for any amounts that may have been contributed by the employer as its share of the provident fund under the award in I.T. No. 29 of 1960 for the periods in question. If no contribution has been made for those periods, it is open to the Department to realise the dues of the employer as per the provisions of the Act. If, however, the amounts have been contributed only at a lesser rate, the appellants can realise only the balance, if any, due under the Act and the Scheme.

A subsidiary contention was raised by Mr. Tarkunde that in any event the demand for payment of administrative charges for the period referred to in the letter of May 22, 1963 is not warranted. We are not inclined to accept this contention of the learned counsel. When once the employer is held liable for Payment of its share of provident fund contribution for the periods in question, it follows that it will also be liable to pay the administrative charges.

In the result, the judgment and order of the High Court dated September 17, 1965 are set aside and the writ petition filed by the respondent will stand dismissed. The appeal is allowed and the appellants will be entitled to their costs in this appeal.

S.C. Appeal allowed.
Petition dismissed.