Supreme Court of India
Sasadhar Chakravarty & Anr vs Union Of India & Ors on 4 November, 1996
Author: M S Manohar
Bench: A.M. Ahmadi, K.S. Paripoornan, Sujata V. Manohar

```
              PETITIONER:
SASADHAR CHAKRAVARTY & ANR.

        Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT:       04/11/1996

BENCH:
A.M. AHMADI, K.S. PARIPOORNAN, SUJATA V. MANOHAR




ACT:



HEADNOTE:



JUDGMENT:
```

J U D G M E N T Mrs Sujata V. Manohar, J.

The first petitioner in this writ petition was an employee of M/s Indian Oxygen Limited. He retired from service at the end of March, 1980 on attaining the age of superannuation. Indian Oxygen Ltd. has set up a non- contributory superannuation fund known as the Indian Oxygen Ltd. Staff Pension Fund. It is a noncontributory approved superannuation fund set up under the provisions of the Income-Tax Act, 1961. On retirement, under the rules of the fund, the first petitioner is receiving an annuity under a policy purchased by the trustees of the Fund from the Life Insurance Corporation of India. The second petitioner is a society registered under the West Bengal Societies Registration Act, 1961. Its membership constists of pensioners of various non-contributory approved superannuation funds. Petitioner No.1 is the Secretary of the Association.

It is the contention of the petitioners that certain improvements which have been effected in the executive staff pension fund of Indian Oxygen Ltd. in 1985 should be made available to the existing pensioners of the Indian Oxygen Ltd. and that the denial of the benefits of such an improvement to the existing pensioners of the said fund is arbitrary and violative of Article 1 of the Constitution. The petitioners have also challenged Clause ll(cc) of Part B of schedule IV of the Income Tax Act, 1961 as conferring an unguided power to the Board to frame rules. They have also challenged Rules 89 and

91 of the Income Tax Rules, 1962 as arbitrary and violative of Article 14. The petitioners have also alleged that these rules suffer from the vice of excessive delegation. They have further submitted that the appropriation of the purchase price of annuities after the death of the annuitant/pensioner by the Life Insurance Corporation of India (respondent No.4) is ultra vires Clause 3 of Part B of Schedule IV of the Income Tax Act, 1961 and constitutes an arbitrary or excessive use of power. The petitioners have contended that the scheme of such noncontributory approved superannuation funds should be modified so as to provide for disbursement of pension by the funds themselves or in the alternative by a statutory body to be newly constituted under a new scheme.

Under Section 2(6) of the Income Tax Act, 1961, an approved superannuation fund has been defined to mean a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part B of the fourth Schedule. Under Section 36(1) of the Income- tax Act, 1961, deductions as provided in that sub-section shall be allowed in respect of the matters dealt with therein in computing the income of an assessee. Clause (iv) of sub-section (1) of Section 36 grants such deduction, inter alia, in respect of any sum paid by the assessee as an employer by way of contribution towards an approved superannuation fund subject to such limits as may be prescribed for approving the superannuation fund and subject to such conditions as the Board may think fit to specify as set out therein. Therefore, any amount paid by an employer by way of contribution towards, inter alia, an approved superannuation fund, subject to such limits as may be prescribed is deductible in computing the income of the assessee employer.

Part B of Schedule IV of the Income-Tax Act, 1961 deals with approved superannuation funds. Under Clause 3 of Part 8, in order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out in the said clause as well as any other conditions which the Board may, by rules, prescribe. Under clause 3 one of the conditions is to the effect that the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India. Another condition so prescribed is that the fund shall have for its sole purpose, the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or for the widows, children or dependants of persons who are or have been such employes on the death of those persons. Contributions in respect of each employee are required to made by the employer or the fund so set up.

The trustees of the superannuation fund are required to make an application to the Assessing Officer for approval of the fund under Clause 4 of the said Part B. Clause 11 deals with the rule making power of the Board. Clause, 11(cc) empowers the Board to make rules for regulating the investment or deposit of the moneys of an approved superannuation fund.

Part XIII of the Income-Tax Rules, 1962 covering Rules 82 to 97 and dealing with Approved Superannuation Funds is framed in exercise of the powers conferred, inter alia, under clause 11 (cc) of Part B of Schedule IV. Under Rule 85 of the Income-Tax Rules, 1962 all moneys contributed to the approved superannuation fund are required to be invested in a Post Office Savings Bank Account in India or in a current account or in a savings account with any scheduled bank or utilised in accordance with Rule 89 for making payments under a scheme of insurance or for purchase of annuities referred to in that Rule. Under Rule 87 the ordinary annual contribution by the employer to a fund in respect of any particular employee shall not exceed twenty-five per cent of his salary for each year as reduced by the employer's contribution, if any, to any provident fund (whether recognised or not) in respect of the same employee for that year. Rule 89 provides as follows:

> Rule 89.
>
> "Scheme of insurance or annuity. For the purpose of providing the annuities for the beneficiaries, the trustees shall -
>
> (i) enter into a scheme of insurance with the Life Insurance Corporation established under the Life Insurance Corporation Act, 1956 (31 of 1956), or
>
> (ii) accumulate the contributions in respect of each beneficiary and purchase an annuity from the said Life Insurance Corporation of India at the time of the retirement or death of each employee or on his becoming incapacitated prior to retirement."
>
> Rule 91 is as follows:
>
> "Beneficiary not to have any interest in insurance and employer not have any interest in funds moneys.
>
> (1) No beneficiary shall have any interest in any insurance policy taken out by the trustees under the rules of a fund and he shall be entitled only to an annuity from the fund.
>
> (2) No money belonging to the fund shall be receivable by the employer under any circumstances nor shall the employer have any lien or charge on the fund."

Under the Indian Oxygen Executive Staff Pension Fund which is an approved superannuation fund as per the above provisions, for the purpose of providing annuities to the beneficiaries, the trustees accumulate the contribution in respect of each beneficiary and purchase an annuity from the Life Insurance Corporation of India at the time of retirement or death of each employee or on his become incapacitated prior to retirement as per Rule 89(ii) Therefore, when an employee retires, all accumulated contributions in respect of the concerned employee made by the employer to the pension fund of the trust are utilised for the purpose of purchasing an annuity from the Life Insurance Corporation of India for the benefit of the employee. The right of the employee to receive the annuity and the quantum of this annuity get crystalised at the time of purchase of the annuity under hen existing scheme of the Life Insurance Corporation of India. This annuity is payable for a minimum fixed period and thereafter as long as the recepient is alive. The Life Insurance Corporation of India Ltd. in its affidavit has set out that it is the common to provide that the annuity would be payable for a selected number of years irrespective of whether the annuitant is alive or not.

At the end of the selected number of years if the annuitant is alive, the annuity is Continued throughout the life-time of the annuitant.

Rules 85 and 89 are meant to safeguard the moneys deposited in the superannuation fund and to secure to the annuitant the annuity amount. Undoubtedly, Rule 89 requires the trustees to purchase an annuity from the Life Insurance Corporation of India to the exclusion of anyone else,. But this provision must be judged in the context of the fact that the contracts of life insurance which are entered into by the Life Insurance Corporation of India are backed by a government guarantee which is provided by Section 37 of the Life Insurance Corporation Act, 1956. The payment of annuity is thus properly secured.

The petitioners contend that any improvements made in the existing pension scheme after the retirement of the employees should also be made available to such retired employees who are the existing pensioners of the Fund. The denial of the benefit of such improvements in the pension schemes to the existing pensioners is ultra vires Articles 14, 19, 21. 31 and 300A of the Constitution of India. This contention is based on a misunderstanding of the nature of the annuity which is purchased in respect of each employee as and when he retires. The right of an employee to receive the annuity and the quantum of this annuity gets determined at the time when the annuity is purchased. Any subsequent improvements in a given Pension Fund scheme would not be available to those persons whose rights are already crystalised under the annuity scheme by which they are governed because the amounts contributed by the employer in respect of such persons are already withdrawn from the Pension Fund to purchase an annuity. Any subsequent improvement in the Pension Fund will benefit only those whose moneys form a part of the Pension Fund.

As regards the improvements made in the Indian Oxygen Limited Executive Staff Pension Fund Scheme in 1585, the trustees of the said fund in their affidavit have explained that an improvement in the pension scheme of an approved superannuation fund is effected on the basis of the fund's financial position as determined by actuarial valuation based on current resources of the fund and future contributions to be received by the fund only in respect of the existing members in service. An employer cannot make tax deductible contributions to the fund in respect of its past employees. Therefore, there is no scope for augmenting the resources of the fund to meet any obligation that may arise on account of extending the benefit of improvement to the past employees who are existing pensioners. The amounts contributed in regard to such existing pensioners have already been transferred from the corpus of the fund to the Life Insurance Corporation of India for the purpose of purchasing an annuity. Hence there is no accretion coming to the said fund from out of the transferred corpus relating to such existing pensioners. Hence the improvements which are determined by actuarial valuation based on the current resources of the fund and its future expectations cannot be made available to the existing pensioners.

In these circumstances the ratio of D.S. Nakara & Ors. v. Union of India (AIR 1983 SC 130) cannot be applied to extend the benefit of improvement in the pension schemes of such funds to the existing pensioners. By the very nature of this scheme, such benefits are available only to members in service. In the present case, the Pension Fund is created out of contributions made by the employer in respect of its employees who are in service in the manner provided under the

Income-Tax Act and the Rules. The contribution is in the form of a fixed percentage of salary of each of the employees. There is, therefore, no provision for an employer making any additional payment in respect of its past employees who are the existing pensioners. In Nakara's case (supra) the increase in pension could ba met from the general revenue of the Central Government. No such reserve of funds is available to the trustees of an approved superannuation fund. As soon as an employee retires and an annuity is purchased for his benefit under Rule 89 there remains no scope for any fresh contribution on his account so as to entitle him to an increased pension prospectively on the basis of improvements made subsequently in the pension scheme of a fund. Since the existing pensioners form a distinct class, there is no question of any violation of Article 14 in this connection or of any other Article of the Constitution.

The Life Insurance Corporation of India in its affidavit has pointed out that with effect from 1.4.1985 the Corporation decided to increase the pensions payable under their annuity scheme. They decided to make this increase available not only to new pensionrers but also to the annuities which were in the course of payment. Accordingly, the first petitioner's pension under his existing annuity policies was increased with effect from 1.4.1985. This decision of the Life Insurance Corporation to enhance the pension was only with a view to grant relief to the existing pensioners and was not based on any contractual obligation of the Corporation. The Corporation has further pointed out in its affidavit that it has now introduced a new annuity scheme. An option has been given to the existing members to switch over to the new scheme. Under the new option available to the pensioners the value of the outstanding instalments is determined and the same is applied in the purchase of an annuity. Such annuity would be payable during the lifetime of the annuitant and the value of the outstanding instalments is returned to the annuitant's nominee on his death. The benefit of changing over to the new scheme is thus made available to the existing pensioners also. There is, therefore, no discrimination in this regard as against the existing pensioners.

The petitioners contend that Clause 11(cc) of Part B of Schedule IV of the Income-Tax Act. 1961 and Rules 85 and 91 of the Income-Tax Rules, 1962 which are framed under the rule-making power conferred by Clause 11(cc) are an arbitrary and uncanalised exercise of power and are, therefore, violative of Articles 14 and 19(1)(g) of the Constitution. Now, the entire scheme of approved superanuation funds is so framed as to ensure safety of the Fund so that the beneficiaries are assured of an annuity for the requisite period. Hence under Part B of Schedule IV of the Income-Tax Act the approved superannuation funds require the approval of the Chief Commissioner or the Commissioner of Income-tax. The purpose of such approval is clearly to ensure that the fund is established under an irrevocable trust for the benefit of the employees of any establishment or undertaking and to ensure that the fund shall have for its sole purpose provision of annuities for the employees on their retirement or on their becoming incapaciated or in the event of their death for the benefit of their dependants. It is necessary that the funds should be invested in a manner which secures them over a period of time for this purpose. Clause 11 (1)(cc) gives to the Board the power to make rules for the purpose of regulating the investment or deposit of moneys of an approved superannuation fund. This cannot be called as an arbitrary conferment of power on the Board. By the very nature of the scheme as framed, the purpose of regulating investment of the trust funds is to ensure their safety.

In pursuance of this rule-making power Rule 89 is framed. Under Rule 89, for the purpose of providing annuities for the beneficiaries, the trustees of a superannuation fund are required either to enter into a scheme of insurance with the Life Insurance Corporation of India or they have the option to accumulate the contributions in respect of each beneficiary and purchase an annuity from the Life Insurance Corporation of India at the time of the retirement or death of each employee or on his becoming incapacitated prior to retirement. The annuity is purchased from the accumulated contributions made in respect of each beneficiary which are a part of the approved superannuation fund. The petitioners have contended that the trustees of the superannuation fund should not be compelled to purchase an annuity from the Life Insurance Corporation of India and that the investment of the contribution in respect of each beneficiary could be made in another manner which would fetch to the beneficiary a higher return. It is however, pointed out by the Life Insurance Corporation that the secruity which is provided by purchasing an annuity from the Life Insurance Corporation of India is not comparable to other kinds of investments because all contracts of insurance entered into by the Life Insurance Corporation are backed by a government guarantee which is provided by Section 37 of the Life Insurance Corporation Act, 1956. Therefore, from the point of view of safety and security of the moneys of the superannuation fund, an investment in an annuity through the Life Insurance Corporation of India provides valuable security to a beneficiary. By ensuring that the investment is made in a manner which ensures the safety of the Fund and the payment of an annuity the Board has ensured that the Fund is not misutilised or the pensioner is not deprived of his annuity. of course, it is possible to envisage other types of schemes and other types of investments, which may have varying safety and different returns. But that does not mean that Rule 89 is arbitrary or unreasonable. The entire scheme is framed on the basis of relevant considarations and cannot be called unreasonable or arbitrary.

Rule 91 provides that the beneficiary shall not have any interest in any insurance policy taken out by the trustees under the rules of a fund and he shall be entitled only to the annuity. It is contended by the petitioners that the Life Insurance Corproation appropriate, the capital purchase price on the death of the annuitant and this amounts to an unjust enrichment of the Life Insurance Corporation at the cost of the beneficiary. The submission is based on a misconception of the manner in which annuity is calculated. The annual instalment does not consist only of the interest which is earned on the capital used for the purchase of annuity. The annual instalment contains an element both of interest as also a part of the capital so that over a period of years as actuarially calculated, the entire capital and the interest earned thereon are utilised for the payment of annuities to the beneficiary. Secondly, the Life Insurance Corporation has introduced a new annuity scheme under which an option has been given to the existing members to switch over to the new scheme. As per the new option available to the pensioners the value of outstanding instalments is determined and this is used for the purchase of an annuity. This new annuity would be payable during the life time of the beneficiary and the value of the outstanding instalments is returned to the beneficiary's nominee on his death. The petitioners have the option to switch over to this new scheme in respect of their outstanding instalments. Therefore, in any event there can be no question of the L.I.C. appropriating the capital purchase price of an annuity on the death of the annuitant. Rule 91, therefore, in any event, cannot be considered as giving any unjust gains to the Life Insurance Corporation of India.

Moreover, under sub-clause (2) of Clause 11, all rules which are made under Clause 11 are subject to the provisions of Section 296. Section 296 provides that the General Government shall cause every rule made under this Act to be laid as soon as may be after the rule is made before each House of Parliament while it is in session for a total period of thirty days, and the rule shall, thereafter, have effect only in such modified form as Parliament may suggest, or if it so decides, may be of no effect, or may be brought into effect without prejudice to the validity of anything previously done under the rule. This also is an important check on any arbitrary exercise of rule-making power under Clause 11.

Hence, the challenge to these rules and to Clause 11 (cc) has no substance.

The petitioners have also raised some objections to the changes made in the Indian Oxygen Limited Executive staff Pension Fund in 1984 and 1985. the definition of "salary" under the old Pension Fund Rules of Indian Oxygen Ltd. did not include commission payable to whole-time Directors. However, by a Deed of Variation dated 9.1.84 the definition of "salary" has been changed. "Salary" has been defined to mean the basic salary of a member and to have the same meaning as defined in Rule 2(h) of Part A of the Fourth Schedule to the Income Tax Act, 1961. In the case of a whole-time Director. "salary" now also includes the commission on net profits payable to the Director provided that such commission is a part and parcel of the remuneration of the whole-time Director according to the terms of his appointment as approved by the Central Govt. under the Companies Act. The petitioners object to the commission being included in the salary of a whole-time Director as now defined. This change has been made in the light of a decision of this Court in the case of Gestetnet Duplicators P. Ltd. v. Commissioner of Income Tax, West Bengal (117 ITR page 1) where this Court has held that the commission payable as per the terms of a contract of employment at a fixed percentage of turnover falls within the term "salary" as defined in Rule 2(h) of Part A of the Fourth Schedule to the Income-Tax Act, 1961. The change in the definition is in accordance with the meaning assigned to "salary" under Rule 2(h). The question of any discrimination on this score does not arise. In any case, the petitioners who retired prior to 1984 are in no way affected by this change.

The approved superannuation fund is set up only from the contributions made by the employer who is given certain tax benefits in order to encourage the setting up of such superannuation funds. We do not see any reason to strike down any part of the scheme for such a superannuation fund prescribed under the Income-Tax Acts 1961 and the Income- Tax Rules, 1962. The petition is therefore, dismissed. In the circumstances, there will be no order as to costs.