CALCUTTA HIGH COURT

Messrs. Bharat Board Mills Ltd

Vs.

Regional Provident Fund Commissioner

Civil Revn. Case No. 1047 of 1956

(Bose, J.)

28.02.1957

ORDER

Bose, J.

1. This is an application under Article 226 of the Constitution for an appropriate writ directing the respondents to rescind or withdraw certain orders made by the Regional Provident Fund Commissioner, West Bengal, and the Central Provident Fund Commissioner, New Delhi, and to forbear from giving effect to such orders and also to cancel certain notices of demand issued under the Bengal Public Demands Recovery Act in Certificate Case No. 14 E. P. F. of 1954 and 1955 in the Court of Certificate Officer, 24 parganas.

2. The case of the petitioner is that it is a company registered under the Indian Companies' Act. On 29th June 1950, a certificate of incorporation was granted by the Registrar of Joint Stock Company, West Bengal, and the petitioner commenced business from 31st July, 1950. The business of the petitioner company consists in the manufacture and dealing of all kinds of board paper and pulp including pulp board, card board and straw board etc. The petitioner holds licenses under the West Bengal Factory Rules and on the 28th September, 1951, the Chief Inspector of Factories, West Bengal, allotted a registration number to the petitioner company being No. 347 - T. P./X. By a deed of agreement dated the 12th October, 1950, the petitioner purchased machineries from India Paper and Board Mills company and by a deed of sale dated the 13th October, 1950 the petitioner purchased a one-storied brick built house with lands measuring about 17 bighas being premises No. 71 Satgaehi Road at Dumdum in the district of 24 Parganas. On the 7th June, 1951 and 4th October, 1952 certain awards made by the Industrial Tribunal in respect of certain disputes between India Paper and Board Mills company and the petitioner company, and their employees represented by India Paper and Board Mills' workers' union, were published in the Calcutta Gazette and by such awards the petitioner company was treated as a new concern. By a letter dated the 15th October, 1952 written by the Regional Provident Fund Commissioner, West Bengal, the Managers of all factories in West Bengal to which the Employees' Provident Funds Act 1952 applies were directed to comply with the provisions of the paragraphs 33 and 36 (1) of the Employees' Provident Fund Scheme 1952. On the 10th November, 1953 the Regional Provident Fund Commissioner, West Bengal, addressed

another letter to the Manager of the petitioner company pointing out that the petitioner's factory came within the purview of the Employees' Provident Funds Act and the Scheme framed thereunder, and the Manager was therefore requested to comply with the provisions of the scheme. On the 6th May 1954 the petitioner made an enquiry from the respondent No. 1 as to whether the contributions payable under the Employees Provident Funds Act were free from income-tax. On the 19th May 1954 the Accounts Officer, Provident Fund, informed the petitioner that the question of obtaining any concurrence of the Income Tax authorities did not arise in the case of the petitioner. On 11th June, 1954 the petitioner company made a representation to the respondent No. 1, requesting him to keep the question of contribution in abeyance as the petitioner company had remained closed for about four months from the 1st April, 1952. On the 15th June, 1954 the respondent no. 1 turned down this proposal. On the 10th July, 1954, the petitioner company was again informed by the Accounts Officer that the contributions and other charges for the period from 1st November 1952 to 31st March, 1954 had not been paid till then, by the petitioner company and the petitioner company was requested to clear the arrears forthwith. On 7th August, 1954, the petitioner company made a further representation for keeping the question of contributions in abeyance on the ground that the petitioner had suffered financial loss and was therefore not in a position to pay the contributions and other charges as asked for. On the 31st August, 1954 the Deputy Secretary to the Government of West Bengal informed the petitioner that no company could be granted exemption on the ground of financial stringency, and under Section 16 (2) of the Employees' Provident Funds Act, it is only a class of factory which could be exempted on the grounds specified in Section 16 (2) of the Act. On 8th September, 1954, the petitioner company made a representation to the Deputy Minister, Labour Department, Government of India and on the same day the petitioner addressed another letter to the Deputy Minister praying for personal representation with all papers and documents, to prove the *bona fide*s of the prayer made by the petitioner. It appears that on a complaint of the Provident Fund Inspector before the Court of the Sub-Divisional Officer, Barrackpore, certain criminal proceedings were started for contravention of the provisions of the E. P. F. Act and the scheme framed there under, which was registered as Criminal Case No. C-776/27/36 of 1954. The said criminal case was started, for the petitioner company not submitting returns prescribed under the Employees' Provident Fund Scheme, and for not remitting the contributions and other charges payable in respect of the period from 1st November 1952 to 31st March 1954. In the meantime a certificate case was also started under the Bengal Public Demands Recovery Act for realization of a sum of Rs. 5505/- from the petitioner company. The petitioner filed objections thereto under Section 9 of the Bengal Public Demands Recovery Act. On the 2nd May 1955 the certificate officer rejected the application filed by the petitioner company under Section 9 on the ground that the application was time barred. The petitioner thereupon preferred an appeal before the Additional District Magistrate 24-Parganas, Alipore, against the said order of the Certificate Officer dated the 2nd May 1955. On the 23rd June, 1935, the Additional Collector, 24 Parganas, allowed the appeal and sent back the records of the case to the Certificate Officer for consideration of the objection filed by the petitioner under Section 9 of the Bengal Public Demands Recovery Act in accordance with law. In the meantime, on the 26th February 1955 the Under-Secretary to the Government of India informed the petitioner that under Section 16 (2) of the Employees' Provident Funds Act, exemption could be granted only to a class of factories and not to any individual factory. Thereafter, on the 28th November 1955, the petitioner requested the respondent No. 1, to allow the petitioner to pay the arrears of contributions by installments but on the 2nd of March 1955 the respondent No. 1 wrote back regretting his inability to agree to the proposals for installments. On the 10th March 1955

the petitioner made a representation to the Under-Secretary to the Government of India, Ministry of Labour, New Delhi, but on the 21st April 1955, the said representation was also turned down. Thereafter on the 22nd September, 1955 the petitioner made a representation to the Central Provident Fund Commissioner, New Delhi, requesting the latter to withdraw the case against the petitioner. On the 6th October, 1955, the case which was remanded to the Certificate Officer by the appellate court was taken up for hearing and upon taking evidence the Certificate Officer came to the conclusion that the notice under Section 7 of the Act have been properly served and on that ground he rejected the application of the petitioner under Section 9 of the Act. The petitioner thereupon preferred another appeal against the said order of the Certificate Officer and such appeal came up for hearing on the 20th December, 1955. Various points were argued at the hearing of the appeal but the Additional District Magistrate allowed the appeal on the ground that notice under Section 7 was not properly served and the records of the case were again sent back to the Certificate Officer with a direction to issue a fresh notice under Section 7 of the Act. On the 22nd February 1956 the petitioner filed another objection under Section 9 of the Act after a fresh notice under Section 7 as directed by the appellate court had been served upon the petitioner Company. On the 23rd of March 1956, the petitioner's objection under Section 9 of the Act was heard in part and the case was adjourned till 24th April 1956.

3. In the meantime on the 2nd December 1955 the Central Provident Fund Commissioner, New Delhi, informed the petitioner that the petitioner company could not be exempted from the provisions of the Employees' Provident Funds Act as a mere change of ownership would not affect the date of the establishment of the factory for the purpose of the Act and the petitioner company was accordingly requested to comply with the provisions of the Act and the Scheme. On the 19th January 1956 a letter in the same strain was written by the Central Provident Fund Commissioner to the petitioner. Thereafter certain further representations were made to the respondents but the respondents did not accede to such representations.

4. The present Rule was thereafter obtained on the 18th April 1956. The Certificate Officer, 24-Parganas, has filed a counter-affidavit wherein all the facts relating to the certificate case started against the petitioner company have been set out and it is pointed out in this affidavit that the second objection of the petitioner company filed under Section 9 of the Act denying liability was heard in part on the 23rd March 1956 and as a report of the requiring officer was necessary, such report was called for and the case was adjourned till the 24th April 1956 but in the meantime the petitioner approached this Court under Article 226 and obtained the present Rule and informed the Certificate Officer about this fact on the 27th April, 1956.

5. The Senior Provident Fund Inspector appointed under the Employees' Provident Funds Act has also affirmed an affidavit-in-opposition to the application and it is stated in this affidavit that upon proper investigation made into the affairs of the petitioner company, it has been ascertained that the factory which was originally established by the India Paper and Board Mills Company was continued by the petitioner company after it had purchased the said factory and no new factory had been established by the petitioner after it commenced business in 1950. It is stated in this affidavit that as the date of establishment of the factory was sometime in the year 1936, the petitioner could not be granted exemption from the operation of the provisions of the Employees' Provident Funds Act and the scheme made thereunder. It is further pointed out in this affidavit that the proper remedy of the petitioner is to approach the Central Government for determination of the question whether the petitioner's factory is an infant factory within the meaning of Section

16 of the Act and the petitioner has no right to invoke the jurisdiction of Article 226 of the Constitution for determination of any such question which involves decision on disputed facts. It is not necessary to deal any further with this counter-affidavit filed on behalf of the respondents Nos. 1, 3, 4 and 5.

6. It has been contended by Mr. Arun Kumar Dutt, the learned Advocate for the petitioner, that Section 19-A of the Employees' Provident Funds Act infringes Article 19 (1) (g) of the Constitution and as such is void under Article 13 of the Constitution.

7. Section 19-A is as follows :-

> "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 a factory is engaged in any industry specified in schedule I; or
> (ii) whether fifty or more persons are employed in a factory; or
> (iii) whether three years have elapsed from the establishment of a factory; or (iv) 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."

8. It is argued that the provisions in this Section 19-A vest an uncontrolled and arbitrary power in the Government to make a subjective determination of the various matters specified in clauses (i) and (iv) of the section without giving the owner of the factory any opportunity of a hearing or without giving such owner opportunity to make representation against or to prefer an appeal against any adverse order made by the Government. Accordingly, the provision is an unreasonable restriction on the fundamental right of the petitioner as guaranteed under Article 19 (1) (g) of the Constitution. It appears to me that this contention is not without force. The order of the Government is made final under the provisions of this section. There is no provision for any appeal or representation by the party aggrieved by the order. The Government is not required to disclose its reasons for making any order. The matter is therefore left to the subjective satisfaction of the Government. There are no means of checking whether the order is arbitrary or malafide or not. Further, unless it can be established that the Government has acted outside the fourcorners of the statute or in excess of its jurisdiction, recourse to the Civil Court by the aggrieved party is barred inasmuch as the order of the Government is, as I have pointed out already, made conclusive by the terms of the section. There is no specific procedure laid down for making the determination. The Government may or may not give the owner of the factory an opportunity of hearing before making the Order. So the party owning the factory or having interest in the factory is left entirely at the mercy of the Government. It appears to me therefore that the section lacks the element of reasonableness and abridges and violates the fundamental right guaranteed by Article 19 (1) (g) of the Constitution and as such is void under Article 13 (2) of the Constitution.

9. Mr. Amiya Kumar Mukherjee, the learned Advocate appearing for the respondents Nos. 1, 3, 4 and 5 has however pointed out that the Section 19-A is the only section in the Employees' Provident Funds Act which enables a party aggrieved to approach the Government and make representations for redress and the Government can thus take up the matter and resolve the doubt or difficulty. According to Mr. Mukherjee, Section 19-A is a beneficial provision and not an unreasonable restriction and but for this provision the Act would become arbitrary inasmuch as Section 1 (3) makes the provisions of the Act applicable to all factories. That may be so, but in my view, for the reasons which I have already stated before, the section does appear to be an unreasonable provision which restricts the right conferred by Article 19 (1) (g) and therefore should be regarded as unconstitutional.

10. In the case of *Raghubir Singh v. Court of Wards, Ajmer*[1], the Supreme Court made the following observations :

> "When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil Court."

In the case of *Dwarka Prosad v. State of Uttar Pradesh*[2], it was held that a law or order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business cannot but be held to be unreasonable. In this case it was further held that Clause 3 (2) (b) of the Uttar Pradesh Coal Control Order, 1953, which gave an unrestricted power to the State Controller to make exemptions and which do not provide for any check or any method of obtaining redress if the Controller acted arbitrarily or from improper motives was void. Following these principles laid down by the Supreme Court I hold that Section 19-A of the Act is void under Article 13 (2) of the Constitution. But as it appears to me that this section is severable from the rest of the Act, the entire Act is not rendered void by reason of the invalidity of this section.

11. This Section 19-A being invalid, the argument advanced by Mr. Amiya Kumar Mukherjee on the authority of the case reported in *Annamalai Mudaliar v. Regional Provident Fund Commr*[3]., to the effect that the question whether the petitioner is the owner of an infant factory or not can be determined only by the Government under Section 19-A and this Court cannot go into any such question, loses its force.

12. The next point that has been argued by Mr. Dutt is that Section 16 (2) of the Act

[1] AIR 1953 SC 373
[2] AIR 1954 SC 224
[3] AIR 1955 Mad 387

violates Article 14 of the Constitution and as such it is void. The line of argument advanced in support of this proposition is not easy to follow. Section 16 of the Act may be set out hereunder :

> "16. - Act not to apply to factories belonging to Government or Local Authority and also

to infant factories. -

(1) This Act shall not apply to-

(a) any factory belonging to the Government or a local authority, and

(b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

Explanation :- For the removal of doubts, it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory.

(2) If the Central Government is of opinion that having regard to the financial position of any class of factories or other circumstances of the case, it is necessary or expedient, so to do, it may, by notification in the official gazette, and subject to such conditions as may be specified in the notification, exempt that class of factories from the operation of this Act for such period as may be specified in the notification."

The argument of Mr. Dutt is that this clause in Section 16 (2) empowers the Government to grant exemption to a class or group of factories but it does not enable the Government to exempt an individual factory from the operation of the Act even though there may be good grounds for excluding a particular factory from the operation of the Act. It has been repeatedly pointed out by the Supreme Court that any law providing for classification is permissible provided the classification is on a reasonable or rational basis. Furthermore, unless an actual classification is made on the ground of financial position or other circumstances in relation to a group of factories carrying on a particular kind of industry as specified in Schedule I to the Act, it is not possible to say whether Article 14 of the Constitution has been infringed or not. If Section 16 (2) of the Act had empowered the Government to grant exemption in case of any individual factory, then it appears to me that such a provision would become more exposed to challenge or attack on the ground that it enabled the Government to single out an individual at their own sweet-will and pleasure and exempt it from the operation of the Act. It appears to me therefore that Section 16 (2) cannot be impugned as infringing Article 14 of the Constitution. Mr. Dutt has drawn the attention of the Court to certain decisions of the Supreme Court and the High Courts reported in *State of West Bengal v. Anwar Ali Sarkar*[4], *Lachman Das v. State of Bombay*[5], *Ram Prasad Narayan Sahi v. The State of Bihar*[6] *Harman Singh v. Regional Transport Authority, Calcutta Region*[7], *Shree Meenakshee Mills Ltd. v. A.V. Vishvanatha Sastri*[8], *Budhan Chaudhry v. State of Bihar*[9], and several others in support of his argument on Article 14 but as there cases turned on their special facts, it is not necessary to deal with them in any detail.

12. A further ground on which Mr. Dutt has attached the validity of sub-Clause 2 of

[4] AIR 1952 SC 75 [6] AIR 1953 SC 215 [8] AIR 1955 SC 13

[5] AIR 1952 SC 235 [7] AIR 1954 SC 190 [9] AIR 1955 SC 191

Section 16 of the Act is that it violates Article 19 (1) (g) of the Constitution. It is pointed out that the expression "other circumstances of the case" is vague and indefinite and the Government may take into consideration arbitrarily any "circumstance" which the Government may choose. Moreover the whole thing is left to the uncontrolled subjective determination of the Government and the Government is also empowered to grant exemption for any period it pleases. So, according to Mr. Dutt, this is an unreasonable provision and should therefore be declared void. I do not however think that this provision can be condemned on the ground that it infringes Article

19 (1) (g). I fail to see how this provision can be said to restrict or abridge in any way the right conferred by Article 19 (1) (g) of the Constitution. The provision has been enacted for the benefit of the factories. It enables the Government to grant temporary reliefs to a particular class of factories carrying on a particular industry. The business of a particular industry mentioned in the Schedule may for some reason become dull or the said business may suffer financial loss or stringency for a particular period. In such a case the Government may be approached for granting temporary reliefs to this class of industry and the Government may upon a consideration of all the circumstances of the case grant exemption to the group of factories engaged in the particular industry. How can such a provision be regarded as unreasonable, it is difficult to follow. It is true that the words "other circumstances of the case" do vest a wide discretion in the Government but there is no reason to presume that this power conferred on the Government will be abused by the Government while exercising this power. If it can be established that the Government has acted arbitrarily in any case, such arbitrary act can be challenged in a Court of law inasmuch as an arbitrary exercise of discretion is no exercise at all. For all these reasons I am unable to hold that this provision violates Article 19 (1) (g) of the Constitution. Mr. Dutt has drawn the attention of the Court to the case reported in *Bidi Supply Co. v. The Union of India*[10],), but that case is distinguishable on facts.

13. It is next argued by Mr. Dutt that Section 19-A being unconstitutional and being thus out of the way, the petitioner can ask this Court to determine the question whether the petitioner's factory is an infant factory or not within the meaning of Section 16 (1) (b) of the Act and the contention of Mr. Dutt is that the petitioner's factory, comes within the purview of Section 16 (1) (b) and is therefore exempt from the operation of the Act. I have already set out in extenso the provisions of Section 16 in an earlier part of this judgment.

14. It is submitted by Mr. Dutt that the petitioner company obtained the certificate of incorporation on the 29th June 1950 and commenced business on the 31st July 1950. A particular registered number was allotted to the factory, which the petitioner purchased from the India Paper and Board Mills Co., on the 28th September 1951 by the Chief Inspector of Factories, West Bengal. The number given was 347-T. P./X. Prior to that on the 12th October 1950 the petitioner purchased the machineries from the India Paper and Board Mill Co. and on the 13th October 1950 it purchased the brick-built house and land on No. 71 Satgachi Road, Dum Dum, from the said India Paper and Board Mill Co. The premises number was subsequently changed to 74 Nagendra Nath Road, Dum Dum. The petitioner company did not purchase the goodwill of the India Paper and Board Mill Co., nor did they take over the liabilities of the said company. Furthermore, the awards of the Industrial Tribunals which decided certain disputes between the employees of the factory

[10]1956 SCR 267 : AIR 1956 SC 479

and the previous and the present owners of the factory treated the petitioner company as a new concern and in the circumstances it should be held that the date of the establishment of the factory is sometime in 1950 when the petitioner took over charge of the running of the factory. This is the line of argument addressed by Mr. Dutt but I am unable to accept this contention as correct. The term 'factory' has been defined in Section 2 (g) as follows :

> "factory" means any premises, including the precincts thereof, in any of part of which a manufacturing process is being carried on or is ordinarily so carried on whether, with the aid of power or without the aid of power;"

The expression 'manufacture" has been defined in Section 2 (ia) as follows :

> "manufacture" means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;"

15. Now it is an admitted fact that the company India Paper and Board Mills Ltd. started production after the establishment of the factory some time in the year 1936. There is nothing to show that the production stopped at any time prior to 12th May 1950. It appears from the counter-affidavit of the Senior Provident Fund Inspector that the petitioner company is running the factory since 12th May 1950 although the actual sale in its favor took place in October 1950. After the purchase by the petitioner there were no doubt some breaks in the continuity of the production but there is no doubt that this factory ran into production in 1936 and it is this identical factory which is still manufacturing goods though the ownership of the factory has changed hands in the meantime. The petitioner is of course a new concern since 29th June 1950 but the factory continues to be the same. In my view, the date of establishment of a factory is the date when the factory starts its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of the establishment of the factory to the date of its taking over or acquisition; nor does the fact that the factory had ceased to produce goods for a certain time and resumed production after certain brief intervals result in extinction of the old factory and establishment of a new factory. I therefore hold that there is no substance in this point of Mr. Dutt. See the unreported decision of the Bombay High Court - *Chagganlal Textile Mills Private Ltd. v. P.A. Bhaskar*[11]*,*

16. A further point was taken by Mr. Dutt to the effect that the requisition pursuant to which the certificate proceedings were started against the petitioner under the Bengal Public Demands Recovery Act 1913 read with Section 8 of the Employees' Provident Funds Act 1952 was an invalid requisition and therefore the certificate proceedings were without jurisdiction. It was submitted by Mr. Dutt that an industry engaged in the manufacture of paper being a controlled industry (as defined in Section 2 (d) of the Act), the appropriate Government in relation to the factory engaged in a controlled industry, is the Central Government (Section 2 (a) of the Act) and so the requisition issued under the signature of the Join Secretary to the Government of West Bengal was not in order in the absence of delegation of power under Section 19 of the Act and so the certificate proceedings initiated on the strength of such a requisition were bad and without

[11] Misc. Appln. No. 289 of 1956, judgment of Tendolkar, J., D/-5-11-1956

jurisdiction. It appears that in the present case the requisition was issued some time in July, 1954 and the certificate case was initiated on 18th August, 1954. Mr. Amiya Kumar Mukherjee has produced before this Court a notification dated 12th June, 1954 to show that the delegation as contemplated by Section 19 of the Act was made in favor of the State of West Bengal after this Mr. Dutt has not pressed this point any further.

17. Mr. Chakraborty, the learned Senior Government Pleader, has argued that the petitioner having pursued the remedies provided by the Bengal Public Demands Recovery Act cannot suddenly turn round and have recourse to the remedy provided by Article 226 of the Constitution. According to Mr. Chakraborty the adoption of the alternative remedy as prescribed

in the Bengal Public Demands Recovery Act precludes the petitioner from having recourse to the extra-ordinary remedy provided by Article 226 of the Constitution. Mr. Chakraborty has relied on two Bench decisions of this Court reported in *Abanindra Kumar Maity v. A.K. Majumdar*[12], and *Kanai Lal v. Collector of Land Customs, Calcutta*[13], In the first mentioned case, it was laid down by a special Bench of this Court that although the existence of an alternative remedy is not an absolute bar to the entertainment or maintenance of an application under Article 226 of the Constitution, still if a party had availed himself of the alternative remedy he could not after having exhausted those remedies or gone a certain way in its pursuit switch round to Article 226 of the Constitution and start a fresh line of proceeding under that provision. In the last mentioned case, it was held that while the existence of an alternative remedy is not an absolute bar, if a party has availed himself of the ordinary remedies provided for by special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Article 226 of the Constitution. In this case a party had availed himself of the right of appeal given by the Land Customs Act and had also availed himself of the right of revision given by the same Act. It was thereupon held that he could not be allowed to renew his attack on the order of the Collector of Customs in another chain by means of an application under Article 226 of the Constitution. Mr. Chakraborty has also referred to the decisions of the Supreme Court reported in *Veerappa Pillai v. Raman and Raman Ltd*[14]*., K.S. Rashid and Son v. Income-tax Investigation Commission*[15], and to the unreported decision of Sinha, J., in *Kalipada Bhattacharjee v. Ganendra Nath Bhowmick*[16],

18. Mr. Dutt has on the other hand placed reliance on the cases reported in *Romesh Thappar v. State of Madras*[17], *Rashid Ahmed v. The Municipal Board of Kairana*[18], *The State of Bombay v. The United Motors India Ltd*[19]*., Himmatlal Harilal v. State of M. P*[20]*., Rakhaldas Mukherjee v. S.P. Ghosh*[21], at p. 175 (U); *Buddhu v. Municipal Board, Allahabad, AIR 1952 Allahabad 753 (FB)* and *Chairman Budge Budge Municipality v. Mangru Mia, 57 Cal WN 25 : (AIR 1953 Calcutta 433) (SB)* .

19. I do not think it necessary to prolong this judgment by detailed discussion of these cases as in my view the question as to whether the adoption of alternative remedy as prescribed in the Public Demands Recovery Act precludes the petitioner from invoking
the jurisdiction of this Court under Article 226 of the Constitution should be decided on

[12] 60 Cal WN 299: (AIR 1956 Cal 273)
[13] 80 Cal WN 1042
[14] AIR 1952 SC 192
[15] AIR 1954 SC 207
[16] Civil Revn. Case No. 3595 of 1956, judgment D/-29-1-1957
[17] AIR 1950 SC 124
[18] AIR 1950 SC 163
[19] AIR 1953 SC 252
[20] AIR 1954 SC 403
[21] AIR 1952 Cal 171

the special facts of the case before me. Different cases have taken different views on this point and no hard and fast rule can be laid down as to when a party should be forced to have recourse to the alternative remedy and when not. In the case before me the certificate proceedings were started against the petitioner on 18th August, 1954. On 1st April, 1955 the petitioner filed its first objection under Section 9 of the Public Demands Recovery Act denying liability on the ground that no notice under Section 7 of the Act had been served upon the petitioner. On 2nd May 1955 the Certificate Officer disallowed the objection on the ground that the application filed by the petitioner under Section 9 was time barred. An appeal was preferred against this order and such appeal was ultimately allowed and the certificate case was remanded to the Certificate Officer for consideration of the question whether the notice had been duly served. On 27th July, 1955 the records were received back by the Certificate Officer. On 6th October 1955 the Certificate

Officer again heard the petitioner and dismissed the objection filed under Section 9. Another appeal was preferred against this order of dismissal and such appeal was allowed. Thereafter fresh notice under Section 7 was served upon the petitioner according to the direction of the appellate authority and the petitioner filed a fresh objection under Section 9 denying the liability on 22nd February 1956. On 23rd March 1956 this fresh objection of the petitioner was heard by the Certificate Officer and as a report of the requiring officer was found necessary, such report was called for and the case was adjourned till 24th April 1956. On 18th April 1956 the petitioner obtained the present Rule. It is thus clear that the petitioner has already gone through the procedure prescribed by the Bengal Public Demands Recovery Act and it had to approach the appellate authority twice and was successful on each occasion before the appellate authority. Certain points which have been urged before this Court were also urged in course of these certificate proceedings and the judgment of the appellate authority is made an annexure to the petition. It was after filing the second objection under Section 9 that the petitioner has been advised to have recourse to Article 226 of the Constitution. Already a long time had elapsed in pursuing the remedies provided by the Bengal Public Demands Recovery Act and as the petitioner company thought that it was not likely to get proper redress at the hands of the Certificate Officer who had already dealt with the matter before on several occasions, it was thought proper to invoke the jurisdiction of this Court under Article 226. The question of constitutionality about some of the provisions of the Employees' Provident Funds Act have been raised in this case and as there are also questions affecting the fundamental rights of the petitioner the petitioner was advised to have these points decided by this Court instead of by the Certificate Officer. If the petitioner had availed himself of the provisions of appeals and revisions as provided in the Bengal Public Demands Recovery Act and then had come to this Court, it might be said as was said in the cases reported in 60 Cal WN 1042, cited above that it was not open to the petitioner to come to this Court after exhausting all the remedies under the Public Demands Recovery Act.

20. Mr. Chakravarty has also argued that in respect of the criminal case which is pending against the petitioner for contravention of the provisions of the Employees' Provident Funds Act and the scheme made thereunder, the petitioner should have invoked the criminal revisional jurisdiction of this Court and the petitioner's approach to this Court invoking the jurisdiction under Article 226 is nothing but an abuse of process of the Court. But it is to be noted that no specific relief has been asked for in this application so far as the criminal proceeding pending before the Barrackpore Court is concerned. In the circumstances I am not prepared to throw out this application on the ground that the petitioner by pursuing the remedies provided in the Bengal Public Demands Recovery Act has precluded itself from having recourse to Article 226 of the Constitution.

21. It has also been contended on behalf of the opposite parties that the notice as required under Order 27-A of the Code of Civil Procedure should have been given to the Attorney-General for India as a substantial question of law as to the interpretation of the Constitution is involved in this case. Order 27-A, R. 1 is as follows :

> "In any suit in which it appears to the Court that (any such question as is referred to in Clause 1 of Article 132 read with Article 147 of the Constitution) is involved, the Court shall not proceed to determine that question until after notice has been given to (Attorney-

General for India) if the question of law concerns the Central Government and to the Advocate General of the State if the question of law concerns the State Government."

22. Rule 2 of Order 27-A provides that the Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question if the Attorney-General or the Advocate-General, as the case may be, whether upon receipt of notice under Rule 1 or otherwise applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

23. It is clear that this provision was intended to apply to suits. An application under Article 226 of the Constitution is however not a suit. But it is to be noted that Section 141 of the Code states that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. It has been held by this Court that the jurisdiction which the High Court exercises under Article 226 of the Constitution is a special and limited jurisdiction. It is not a revisional jurisdiction, nor is it an appellate jurisdiction. The High Court also does not exercise any jurisdiction of superintendence under Article 226 as it does under Article 227 of the Constitution: 57 Cal WN 25 : (AIR 1953 Calcutta 433) (SB) (W). Neither Order 27-A, nor Section 141 of the Code therefore apply literally to proceedings under Article 226 of the Constitution. Furthermore, the scope and implications of Article 19 and Article 14 of the Constitution of India have been the subject of several decisions of the Supreme Court and the scope and implication of these two Articles are now well-known. So it cannot be said now that, merely because in considering the question whether a particular statute offends against the Constitution, Article 19(1) (g) and Article 14 have to be referred to, for finding out whether the provisions of the Constitution are violated by the impugned statute, there is substantial question as to the interpretation of the Constitution involved in this case.

23-A. This Court had occasion to decide similar questions about the constitutionality of statutes of the Union Legislature in the past but no notice on the Attorney-General was insisted on, nor was any such notice given in proceedings under Article 226 of the Constitution. It is further to be noted that in the present proceedings the Union of India has been made a party and the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner are also parties to this proceeding. All these parties have been represented before me by Mr. Amiya Kumar Mukherjee. In the circumstances it appears to me that no notice to the Attorney-General is necessary assuming that the provisions of Order 27-A of the Code are applicable to this case.

24. In view, however, of my finding that the petitioner has not been able to make out any ground for exemption from the operation of the provision of the Employees' Provident Funds Act 1952 or the Scheme framed thereunder, this petition must fail. The Rule is accordingly discharged but there will be no order as to costs.

25. The petitioner says that he intends to prefer an appeal against this order and prays that the operation of this order be stayed for six weeks.

26. Let the operation of this order remain stayed for six weeks, as prayed for.
Petition disallowed.