

that had it been the case of unguarded level crossing, the question of apportionment would have arisen, but in the present case, the crossing being a guarded crossing the apportionment of the liability between the Railways and the truck driver was uncalled for.

21. The submissions of Mr. Mehta, though attractive, cannot be accepted for the simple reason that even while crossing a guarded level crossing, which may be on account of negligence or mistake on the part of the Railways remained open, the passers-by do not close their eyes while crossing the level crossing and more particularly, when the Railway traffic is bound to have sound to the tune which can be taken note of even from a far distance, and therefore, this submission of Mr. Mehta is not accepted and the same is rejected.

22. It is reported by the learned Advocates appearing in the matter that when the matters were placed before the Lok Adalat on 25th December, 2001, the claimants were present before the Court and they had complained that they have received only meagre amount which runs in few thousands of rupees. Taking that into consideration, it is felt necessary that the Tribunal be directed in this matter to verify the amount received by each of the claimant by calling them in person and the Tribunal shall make a report mentioning specifically that what amount is received by each of the claimants and when.

23. In view of the aforesaid discussion, these First Appeals are dismissed. The finding of the Tribunal about the apportionment of the liability, quantum and cross-objections stands. No order as to costs.

(SBS)

Appeals dismissed.

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice Jayant Patel

TATA CHEMICALS LTD. v. REGIONAL PROVIDENT FUND
COMMISSIONER-II, RAJKOT*

Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (XIX of 1952) — Sec. 7A(2) — The Act does not empower the Commissioner to direct a party before him to serve the notices on the other parties to the proceeding.

The contention raised on behalf of the petitioner is that there is no power to compel the petitioner to serve the summons to the Contractor. (Para 4)

The P.F. Authorities could not have directed the petitioner who is a party to the proceedings to serve the summons after collecting them the office of the authorities, in the absence of any power shown to this Court on the part of the P.F. Authorities to compel one of the parties to the proceedings to effect service of summons on the other party to the proceedings, which in the present case is the Contractors. (Para 8)

*Decided on 4-2-2004. Special Civil Application No. 17730 of 2003.

Special Civil Application No. 15321 of 2003 decided on 8-12-2003
by G.H.C. (1), relied on.

K. S. Nanavati for Nanavati Associates, for the Petitioner.

P. J. Mehta, for the Respondent.

JAYANT PATEL, J. Rule. Mr. Mehta, learned Advocate for the respondent waives services of Rule. With the consent of parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner for challenging the legality and validity of the order dated 9-12-2003/12-12-2003 so far as it relates to directing the petitioner Company to serve its summons upon 129 Contractors.

3. Heard learned Senior Counsel Mr. K. S. Nanavati for the petitioner and Mr. Mehta for the respondent.

4. The contention raised on behalf of the petitioner is that there is no power to compel the petitioner to serve the summons to the Contractor. Mr. K. S. Nanavati submitted that whatever details of the Contractors available with the Company are given and the petitioner is also ready to give further details if they are in a position to do so. It is further submitted that the Contractors are impleaded as parties, and therefore, it will be for the concerned authority to effect the service through proper machinery and the petitioner cannot be compelled to effect service of the summons. Mr. Nanavati relied on the decision of Co-ordinate Bench of this Court (Coram : Ravi R. Tripathi, J.), in *Spl.C.A. No. 15321 of 2003*.

5. Mr. Mehta, on behalf of the respondent, submitted *inter alia* that the Contractors are the agents of the petitioner-Company, and it is the petitioner-Company who is having all the details, and therefore, with a view to speed up the proceedings, the petitioner is required to serve the summons. Mr. Mehta has not been able to show any source of authority on the concerned officer to compel the petitioner to serve the summons. However, Mr. Mehta tried to submit that there is power under Sec. 7A(2) with the officer.

6. Section 7A(2) of the Employees' Provident Funds and Misc. Provisions Act, 1952 provides that for conducting inquiry, the authority shall have the same powers as are vested in a Court under the Code of Civil Procedure, and any inquiry shall be deemed to be judicial proceedings within the meaning of Secs. 193 and 228 and for the purpose of Sec. 196 of the I.P.C. Therefore, there is power to issue summons and said aspect is not even disputed by the learned Counsel for the petitioner. However, so far as the mode of service of summons is concerned, it will be either through the agency serving the summons, the Government machinery or the police as the case may be, as per the provisions of the Civil Procedure Code. The reference may be made to the relevant provisions of Code of Civil Procedure for service of summons as per Order V, Rules 9 to 31 of C.P.C. providing for issue and service of summons. It

(1) Spl.C.A. No. 15321 of 2003 decided on 8-12-2003 by Guj.H.C.

may be that in a given case if the authority finds that the summons cannot be served personally, then it may resort to procedure of service by post, by substituted service through public notice and other mode as per C.P.C. However, it is difficult to accept that such power can be extended for the purpose of enforcing service of summons through one of the party to the proceedings. The petitioner-Company is one of the party to the proceedings and if the Contractors are impleaded as parties, it will be for the authorities to affect the service of summons through the procedure known to law as per the Code of Civil Procedure. If the authorities find that certain documents are required from the petitioner, then certainly orders can be passed calling upon the petitioner-Company for production of such documents. Such documents may also help in identification of the Contractors, the address of the Contractors and such other details which may be found proper by the authority, for the purpose of conducting of the inquiry and its implementation thereof.

7. Even in the decision of this Court in *Spl. C. A. No. 15321 of 2003 dated 8-12-2003*, this Court (Coram : R. R. Tripathi, J.), has held that if the employer is willing to co-operate with the Provident Fund Authorities, he may serve the Contractors extending necessary co-operation, and in the event of non-co-operation, the authorities may act in accordance with law.

8. Under the circumstances, it appears that the P.F. authorities could not have directed the petitioner who is party to the proceedings to serve the summons after collecting them from the office of the authorities, in the absence of any power shown to this Court on the part of the P.F. authorities to compel one of the parties to the proceeding to effect service of summons on the other party to the proceedings, which in the present case is the Contractors. Hence, I find that the impugned order passed by the P.F. Commissioner cannot be sustained in the eye of law so far as it relates to directing the petitioner to effect service of summons to the concerned Contractors.

9. In view of the aforesaid, the order dated 9-12-2003/12-12-2003 at Annexure 'D' to the petition, so far as it relates to directing the petitioner-Company to serve the summons on the Contractors, are quashed and set aside, with a clarification that it will be open for the P.F. Authorities to effect service of summons upon the Contractors through the manner and method as provided under the Code of Civil Procedure referred to hereinabove. It is also clarified that the remaining part of the order is not challenged by the petitioner, and therefore, the same shall continue to operate. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order to costs.

(ATP)

Petition allowed.

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