

(2010) 12 GUJ CK 0112
In the Gujarat High Court

Case No : Special Civil Application No. 16545 of 2010

Air Control And Chemical Engineering Co Ltd	APPELLANT
Vs	
Assistant Provident Fund Commissioner - Employees Provident	RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2010) 12 GUJ CK 0112

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; E.Shailaja, for the Respondent

Judgement

K.A. Puj, J.—RULE. Ms. E. Shailaja, the learned advocate appearing for the Respondent waives service of notice of rule.

2. The Petitioner has filed this petition under Articles 226 and 227 of the Constitution of India, praying for a declaration that the action on the part of the Respondent in making coercive recovery from the Petitioner and from its Directors is illegal & unjust, and also praying for a direction to grant reasonable installments to the Petitioner to make the payment in question. The Petitioner has also prayed for an interim relief restraining the Respondent from coercively recovering the amount in question and also seeking direction to the Respondent to immediately lift the attachment made by an order dated 21st December 2010.

3. This Court has issued notice on 27th December 2010. Pursuant to the said notice, Ms. Shailaja, the learned advocate appears on behalf of the Respondent.

3. Mr. Dipak Dave, the learned advocate appearing for the Petitioner has submitted that as per the order passed u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, the Petitioner was liable to pay an amount of Rs. 1,54,94,693=00. The Petitioner had earlier approached this Court by way of

filing Special Civil Application No. 21436/2006 and this Court has granted interim relief against the coercive recovery on condition that the Company shall make payment of Rs. 5 lakhs every month against its outstanding liabilities in addition to the payment of regular dues towards the provident fund. He has further submitted that after the said order, the Petitioner's prayer to grant installments was considered by the Employees' Provident Fund Organization and the Petitioner was directed to clear the provident fund dues in 36 installments. He has further submitted that as far as the interest amount is concerned, the Petitioner was granted 12 months' time to make payment of interest amount, by an order dated 10th September 2007 and the Petitioner, however, could make the payment of Rs. 9,00,156=00 towards interest amount out of Rs. 54,21,091: 00. He has, therefore, submitted that as on today the total outstanding dues for interest amount are to the tune of Rs. 45,20,935: 00. He has further submitted that the principal amount has already been paid by the Petitioner as per the installments granted. Since the Petitioner could not fulfill its commitment to pay the interest amount in 12 installments, the impugned action was taken and, therefore, the Petitioner has to seek indulgence of this Court.

4. Ms. E. Shailaja, the learned advocate appearing for the Respondent, on the other hand, has submitted that earlier the department had granted 12 installments for clearing the dues of interest. However, the said order was not complied with and hence, there is no guarantee that if any further installments are granted, the same may be fulfilled. She has, therefore, submitted that either a bank guarantee should be given or some securities must be provided so as to ensure the recovery of the interest amount and on that condition only the installments may be granted.

5. Having considered the submission made by the learned Counsels for the parties, and looking to the facts and circumstances of the case as well as the averments made in the petition, the Court is of the view that the question is only with regard to interest amount of about Rs. 54 lakhs. The Petitioner has already paid Rs. 9 lakhs and now the balance amount of Rs. 45 lakhs only is to be paid. Furnishing of bank guarantee is again creating financial strains for the Petitioner. If the Managing Director of the Petitioner Company i.e. Shri B.R. Daga files an undertaking before this Court that entire interest amount shall be paid by the Company in 12 installments consisting 11 installments of Rs. 3,75,000=00 each and the last installment of Rs. 3,95,935=00, then in that case, the impugned order passed by the Respondent authority shall remain under suspension till the last installment is paid and only on the payment of the last installment, the impugned order shall stand quashed and set-aside.

6. It is also to be made clear under an undertaking that may be filed before the Court that if the Company fails to make such payment, the same shall be recovered from the personal properties of the aforesaid Managing Director Shri Daga. It is also to be made clear that till the last installment is paid, the Company shall not sale, transfer, alienate and/or otherwise dispose of the assets

of the Company. This undertaking shall be filed within one week from today and copy thereof shall be furnished to the Respondent authority.

7. It is further made clear that in case any default is committed by the Petitioner, in that case, it is open for the Respondent authority to take further action under the impugned order as well as other actions that may be permissible under the law.

8. Each installment shall be paid on or before 10th day of each calendar month and the installments shall be commenced from January 2011 and the entire payment shall be made on or before 10th December 2011.

9. With these directions and observations, this petition is accordingly disposed of with no order as to cost.

10. In above view of the matter, the attachment made by the Respondent authority shall be lifted on the payment of first installment as indicated above.

11. Direct service is permitted.