
(2005) 02 DEL CK 0093

In the Delhi High Court

Case No : WP (C) No. 7580 of 2001 and CMs 7401/04 and 1781/05

Air France

APPELLANT

Vs

Mr. D. Rammel and Others

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Citation : (2005) 02 DEL CK 0093

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : S.N. Bhandari and Geeta Sharma, for the Appellant; R.C. Chawla and Saurab Prakash Advs., for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition challenges the order dated 13th September 2001 passed by the Regional Provident Fund Commissioner issuing fresh summons for assessment of dues upon holding the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) applicable to the petitioner, M/s Air France.

2. In 1999 the petitioner, M/s Air France, filed a writ petition No 3075 of 1999 against the notices issued by the respondent RPFC, seeking to cover the petitioner u/s 7A of the EPF Act 1952. The petitioner's case was that the petitioner was not covered under the Act 1952 and that the impugned notice seeking to extend the coverage of the Act was issued after more than 30 years of the operations in India.

3. The writ petition No. 3075 of 1999 filed by the petitioner was disposed of on 22nd December 1999 by a learned single Judge of this Court with the following directions:

""Accordingly, the writ petition is disposed of with the direction that RPFC would first decide the issue regarding the applicability of the provisions of the Act 1952 to the petitioner's establishment treating it as preliminary issue. Petitioner would be entitled to produce whatever material it wants to produce in

support of its submission. At this stage while deciding this issue the respondent shall also exercise the powers of production of documents confined to this issue only. Till this issue is decided there shall be no prosecution of the petitioner nor any coercive steps be taken against the petitioner for not complying with the provisions of Act, 1952. However, it is made clear that it would not prevent RPFC to take any such action if he orders if any passed by RPFC for the production of documents, etc., which are material for the purpose of deciding the question of applicability of the Act are not complied with by the petitioner.

The questions of law raised by the petitioner in this case are left open.""

4. Thereafter the impugned order dated 13th September 2001 was passed by the respondent RPFC, and has been challenged directly by filing the present petition by the petitioner raising several pleas about the applicability of the Act and the errors in the order passed by the RPFC.

5. The learned counsel for the respondent has taken a preliminary plea as a matter of law that this petition ought not to be entertained as the order under challenge directly under article 226 of Constitution of India in this writ petition is amenable to an appeal u/s 7I of the Act. It was also contended that while there is no bar in law against the entertainment of a writ petition even if the statutory provision of the appeal exists, yet the petitioner must make out very strong grounds for passing the statutory remedy of appeal u/s 7I of the Act. Section 7I of the Act reads as under:

""7I. Appeal to Tribunal.--- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of Section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.""

6. Mr. S.N. Bhandari, learned senior counsel appearing on behalf of the petitioner has sought to assail the order directly in this Court on the ground that the plea of alternate remedy does not come in the way of the petitioner challenging the order if it is wholly without jurisdiction as the petitioner is not covered under the Act. Even if this plea of the learned counsel for the petitioner is accepted, the plea raised by the learned counsel regarding the coverage of the petitioner is not entirely a matter of law but in this case at best a mixed question of fact and law. Even otherwise this petition with rival pleadings running into more than a thousand pages also raises several disputed questions of fact for consideration for which the writ court under Article 226 of the Constitution is not an appropriate remedy. It is even open to the petitioner to raise purely legal pleas before the appellate Tribunal. The learned single Judge in CW 3075/99 had also

relegated the petitioner to the RPFC leading to the impugned order. I am also of the view that all the pleas raised in the writ petition including the challenge to the impugned order dated 13th September, 2001 on the ground that the Act does not cover the petitioner can be raised conveniently before the Appellate Authority to challenge the impugned order.

7. Accordingly the writ petition is dismissed with liberty to the petitioner to approach the appellate authority under the Act by filing an appeal within 60 days from today. If such an appeal is filed within the time of sixty days specified above, it shall not be dismissed on the ground of limitation but will be heard on merits and disposed of by the appellate Tribunal expeditiously in view of the long pendency of disputes raised in the writ petition. It will be open to the petitioner to raise the pleas sought to be raised in this writ petition in the memorandum of appeal which may be filed pursuant to this order. In the meanwhile no coercive steps be taken against the petitioner during the pendency and disposal of the appeal by the Appellate Tribunal.

8. Accordingly the writ petition stands disposed of with no order as to costs. The pending applications also stand disposed of.