
(2010) 08 BOM CK 0238
In the Bombay High Court
Case No : Writ Petition No. 615 of 2009

Asstt. Provident Fund Commissioner	Vs	APPELLANT
Nirmitee Holidays (P) Ltd.		RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7(I), 7A

Citation : (2011) 2 LLJ 469 : (2011) LLR 28

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : P.P. Singh, for the Appellant; A.V. Nigalye, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard Mr. P.P. Singh learned Counsel appearing for the Petitioner and Mr. A.V. Nigalye, learned Counsel appearing for the Respondent.

2. By this petition, the Petitioner has challenged the order passed by the Employees' Provident Fund Tribunal, New Delhi, in an appeal preferred u/s 7-I of the Employees' Provident Fund and Miscellaneous Act, 1952 ("The Act" for short) preferred by the Respondent against the order passed by the Petitioner himself u/s 7-A of the said Act. When the matter was called out, Mr. Nigalye, learned Counsel for the Respondent submitted that the present petition filed is not maintainable, in as much as the Appellate Authority has set aside the order passed by the Petitioner himself u/s 7-A of the said Act. The learned Counsel further submitted that the Petitioner while passing the order which was impugned before the Appellate Authority was discharging quasi-judicial functions and, as such, the Petitioner is not entitled to challenge the order passed by the higher authority, setting aside his order by filing the writ petition. According to Mr. Nigalye, permitting the Petitioner to file the present petition would be subversive of judicial discipline and in support of his contention, Mr. Nigalye placed reliance upon the judgment passed by the learned single Judge of this Court in the case of Village Panchayat of Velim v. Shri Valentine S.K.F. Rebello

and Anr. (1990) Writ Petition No. 405/20091 Goa Law Times (70) and on the judgment dated August 13, 2010 (unreported) in and other connected matters Village Panchayat of Sancoale and Anr. v. M-Tech Developers Ltd.

3. Mr. P.P. Singh the learned Counsel appearing for the Petitioner submitted that the Petitioner is not personally benefited by challenging the orders passed by the Appellate Authority and by filing the present petition, the Petitioner has tried to protect the interest of the employees, since by the order passed by the Petitioner, the Respondent was ordered to pay the dues of its employees and the said order has been set aside by the Appellate Authority. He, therefore, submitted that the ratio laid down in the two cases relied upon the learned Counsel for the Respondent would not be applicable.

4. Bare perusal of the provisions of the Act and particularly Section 7-A and Section 7-I of the Act discloses that while discharging jurisdiction u/s 7-A of the Act, the Petitioner was discharging quasi-judicial functions and the said order was challenged by the Respondent in an appeal filed u/s 7-I of the Act and the Appellate Authority by discharging quasi-judicial functions has allowed the appeal preferred by the Respondent. Once it is clear that the Petitioner was exercising quasi-judicial functions while passing the order which has been set aside by the Appellate Authority, in my considered opinion, it would not be permissible for the Petitioner to challenge the order passed by the Appellate Authority reversing his order. Permitting such an exercise would be subversive of judicial discipline. It is well-settled that an authority while discharging quasi-judicial functions cannot challenge the order passed by the Appellate Authority, reversing his/her order. In my considered opinion, the ratio laid down in the case of Village Panchayat of Velim v. Shri Valentine S.K.F. Rebello and Anr. (supra) and in the case of Village Panchayat of Sancoale and Anr. v. M-Tech Developers Ltd. (supra), relied upon by the learned Counsel for the Respondent would be squarely applicable. I do not find any merit in the submission of Mr. Singh, learned Counsel appearing for the Petitioner that the petition is maintainable since the Petitioner himself is not benefited by challenging the order passed by the Appellate Authority and he has filed the present petition only to protect the interest of the employees of the Respondent. In my opinion, this issue does not arise in the present petition. An authority exercising judicial or quasi-judicial functions; is not even supposed to defend its own order when challenged before higher forum. In this connection, it would be appropriate to refer to the judgment of the Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , in which the Apex Court has held that the Tribunals are not suppose to defend his own orders unless allegations are made against them. It is therefore well-settled that the Tribunal discharging quasi-judicial functions its not supposed to defend its action even when its order are challenged before the higher forum, as has been held in the case of Syed Yakoob v. K.S. Radhakrishnan and Ors. (supra).

5. In view of the above, I find that the present petition is not maintainable. Accordingly, the petition stands dismissed.