(2007) 06 CAL CK 0002

In the Calcutta High Court

Case No : MAT No. 4257 of 2005 and CAN No''s. 10189 and 15743 of 2005

Bengal Services Society (School) and Another APPELLANT

Vs

Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(2), 1(3), 13B, 7A
Income Tax Act, 1961 — Section 80G

Citation : (2008) 1 CHN 614 : (2008) 117 FLR 951

Hon'ble Judges : Tapan Kumar Dutt, J;Pinaki Chandra Ghosh, J

Bench : Division Bench

Advocate : Haradhan Banerjee, N. Haque and M. Thakur, for the Appellant;A. Das Adhikary and M. Kundu, Aloke Ghose and J. Desgupta, S.G., for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is against an order passed by the Hon''ble First Court on 4th October, 2005 whereby His Lordship was pleased to direct the petitioner to make payment of the dues as assessed by the Provident Fund Authority. However, liberty was given to the petitioner to approach the authority with a scheme for repayment of the said dues.

2. Further, the petitioner was allowed to make over the property to the Provident Fund Authority so that the property can be sold to liquidate the dues and the Provident Fund Authority was directed not to initiate any penal proceedings for a period of four weeks after the long puja vacation so that the petitioner can approach the authority with a particular Scheme for payments.

3. The facts of the case briefly are as follows

4. The Provident Fund Authority issued a Notice of Demand on the writ petitioners claiming a sum of Rs. 21,44,300/- on account of provident fund dues

and a certificate case was initiated against the writ petitioner.

5. According to the writ petitioner the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the said Act") has no application to the writ petitioners in terms of Section 1(3) of the said Act.

6. Mr. Haradhan Banerjee, learned Advocate appearing in support of this appeal contended that a notification has to be issued by the authorities for application of the said Act. It is submitted that admittedly the establishment of the writ petitioners is not a ''factory'' as specified in Schedule I, and as such Section 1(2)(a) of the said Act does not apply to the writ petitioners and there was no notification published by the Central Government in the Official Gazette affecting the writ petitioners'' establishment within the arena of the said Act.

7. It is further the case of the writ petitioners that the Bengal Services Society (hereinafter referred to as "the said Society") is a welfare society and have been rendering services to the poor children coming from various slums in and around Kolkata and further rendering services to provide education, healthcare, vocational training etc.

8. It is further submitted that the said Society runs on donations only and there is no other source of income.

9. Mr. Banerjee further contended that due to inadvertence and by mistake the writ petitioner No. 2 appellant wrote a letter, to the Provident Fund Commissioner expressing their inability to make payment of the employees'' share towards the Provident Fund Contribution, since the Society did not deduct any amount from the salaries of the employees/workers towards the Provident Fund Contributions.

10. It is further submitted that some payments were made under wrong advice and misconception of law. The returns in Form 12A was submitted in support of the payment made for the month of January, 1988 in favovir of the Provident Fund Commissioner.

11. He also submitted that the said Act is not applicable in the case of the establishment of the writ petitioners. He also submitted that the sister organization of the said Society is also a Charitable Organization and they were excluded from the applicability of the provisions of the said Act by the parties.

12. He further pointed out that the said Society is a Charitable Organisation which has no profit earning motive. The Income Tax Authorities has granted exemption towards donation to be collected by the petitioners u/s 80G of the Income Tax Act, 1961.

13. He also submitted that 41 employees filed an application jointly who were added as parties to the writ petition and they have also pointed out before the writ Court that they did not want the Provident Fund to be introduced in respect of the writ petitioners.

14. Subsequently, it appears that two applications were also filed by two other

employees and the Hon''ble First Court did not allow the stand taken by the said employees who had filed their application before the Hon''ble First Court.

15. Mr. Banerjee further contended that the question involved in the matter is not as to whether exemption from paying provident fund would apply in the case of the petitioners but the question of issue involved is whether the provision of the Act is applicable or not to the writ petitioner in the facts and circumstances of this case. Hence, he submitted that the said Act has no application to the writ petitioner.

16. On the contrary, Mr. A. Das Adhikary, learned Senior Advocate appearing on behalf of the Regional Provident Fund Commissioner, West Bengal and Ors. contended that the writ petitioners are covered u/s 13B of the said Act as per the Notification being S.O. No. 986 dated 19lh February, 1982 published in Fart II Schedule III (II) of the Gazette of India dated 6th March, 1982. That the decision of applicability as determined u/s 7A of the said Act of 1952 was an appealable order which was never questioned by the appellants. Rather after the dues were determined u/s 7A of the said Act, the petitioners made part-payment and further prayed for time.

17. It is further submitted by Mr. Das Adhikary that the President of the said Society requested the authority to allow the Society to make payment in 30 equal instalments.

18. He further pointed out that the applicability was never challenged before the Hon''ble First Court and it was only urged that exemption should be granted to the writ petitioners.

19. He further submitted that the Act is applicable to the writ petitioners and drew our attention to the fact that the school of the petitioners is covered under the said Act. Therefore, any agreement with the employer and the employees of the said School/writ petitioner cannot have any application to by pass the said Act.

20. He contended that on 3rd November, 1997, the said Society wrote a letter to the Regional Provident Fund Commissioner and permission was sought from the authorities to deposit the said amount in 30 equal instalments and thereafter, the appellant could not turn around and can suggest of claim that the said Act is not applicable to the writ petitioners and/or the appellant.

21. It also appears from the fact that the returns were duly filed by the appellant. Subsequently, a plea has been adopted by the writ petitioner/appellant on the ground of mistake and improper advice and inadvertently took the steps in the matter.

22. Hence, he submitted that the Hon''ble First Court correctly passed the said order and there is no irregularity in the said order and the appeal should be dismissed.

23. Mr. Aloke Ghosh, learned Advocate appearing on behalf of the added respondents submitted that there is no ground has been made out by the appellant to file this appeal and there is no merit in the appeal. Hence, the stay petition and the appeal should be dismissed.

24. After hearing the learned Counsel appearing for the parties and after perusing the facts of the case and the materials on record, we do not have any hesitation to hold that there is no irregularity or illegality of the order so passed by the Hon''ble First Court. The appellant duly submitted and accepted the jurisdiction of Provident Fund Commissioner. They duly asked for time to deposit the amount in 30 equal instalments. The appellant did not question the authority of the Provident Fund Commissioner. No appeal was preferred from the order passed u/s 7A of the said Act. Therefore, it is too late in the day to challenge the applicability of the said Act. Part payments are also admitted.

25. Whether the petitioner comes within the purview of the said Act or not, that is to be decided by the said authority and furthermore from the facts it appears to us that the writ petitioner/appellant herein did surrender to the jurisdiction of the Provident Fund Authorities and thereafter, on the ground a mistake and improper advice appellants are trying to change their stand which, in our opinion, cannot be accepted.

In these circumstances, we affirm the order so passed by the Hon''ble First Court and accordingly we dismiss the stay petition as well as the appeal.

P.C. Ghose & T.K. Dutt, JJ.

