
(2012) 08 JH CK 0034
In the Jharkhand High Court
Case No : Writ Petition (C) No. 785 of 2007

Bihar Cement Concrete Products

APPELLANT

Vs

Employees' Provident Fund Organisation and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
7A, 7B, 7Q, 8F

Citation : (2013) 136 FLR 430 : (2012) LLR 1272

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : D.K. Pathak, for the Appellant; P.P.N. Roy, Sr. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—This writ petition has been preferred for quashing the order dated 16.11.2006 issued by the respondent No. 2, Regional Provident Fund Commissioner, whereby he has assessed the damages u/s 14B of the Employees Provident Fund and Misc. Provisions Act, 1952. The petitioner has also sought for quashing of the order dated 11.1.2007 passed by the respondent No. 2, wherein an application for review on behalf of the petitioner against the order passed u/s 14B has been rejected stating that the same cannot be reopened. The petitioner has also sought for quashing of the order dated 14.12.2006 issued under the signature of respondent No. 2 u/s 8F of the Act, whereby the bankers of the petitioner have been directed to attach the amount demanded and remit it to the respondents. Learned counsel for the petitioner submits that the Establishment, in question, was earlier in the name of the father of the petitioner and on his death the Adityapur Industrial Area Authority allowed the transfer of the name of the Firm in the name of the petitioner vide order dated 27.1.2006. It is further submitted that earlier vide order dated 26.5.2006, the Regional Provident Fund Commissioner had raised a demand for payment of interest and damages for the

belated payment under Sections 7Q and 14B of the Act of 1952. However, it is submitted that the petitioner protested against the said demand as it was passed without any opportunity of hearing to the petitioner-establishment whereafter notices were again issued vide Annexure-6 dated 18.9.2006 to the petitioner asking him to show cause why the orders u/s 14B for payment of damages be not passed against it for having committed default in payment of the provident fund. It is submitted that the petitioner sought time on 9.10.2006 giving reasons of his ill health and thereafter the case was adjourned. Another request was made on 16.10.2006 vide Annexure-8, wherein it is stated on behalf of the petitioner that R.P.F.C was informed that the name of the petitioner's establishment has been subsequently transferred in the name of the present petitioner and also the outstanding dues levied for certain payment of interest have been made in lieu of the demand raised earlier, which should be adjusted against the outstanding dues. It appears from a perusal of the said letter contained at Annexure-8 dated 16.10.2006 that petitioner sought exemption from payment of Rs. 50,621 as unpaid interest u/s 7Q of the Act. It was also submitted on behalf of the petitioner, if no such exemption is granted the petitioner is liable to pay under any circumstances and for that four installments for payment of the same be granted. It is submitted that without allowing further time the order contained at Annexure-9 has been passed by the Respondents R.P.F.C, wherein the aforesaid demand under the provisions of Section 14B have been assessed as penal damage of Rs. 1,85,713 and penal interest of Rs. 50,621.00 u/s 7Q and the Establishment have been directed to pay the said amount within 15 days on receipt of this order, failing which steps for recovery under the relevant provisions of the Act could be undertaken.

2. The petitioner being aggrieved by the impugned order, had moved this Court and also consequential orders, by which the bankers of the petitioner have been asked to attach the amount and remit the amount due as per the impugned order in favour of the Respondents' Organization.

3. Learned counsel for the respondents, on the other hand, submits that the petitioner was originally assessed under the aforesaid Act since 1982 and has been regular defaulter. It is further submitted that the order impugned has been passed after giving opportunity as would appear from the averments and the documents annexed on the part of the petitioner himself. It is further submitted that the contention of the petitioner that the order passed u/s 14B should be reviewed u/s 7B of the Act is misconceived as the powers u/s 7B is available against the orders passed u/s 7A of the Act. It is further submitted that the petitioner had an alternative remedy where pre-deposit is required to be made, but in stead of availing the same the petitioner had moved this Court in writ jurisdiction and as such there is no flaw in the decision making process on the part of the E.P.F.O. Further the impugned order also does not suffer on account of lack of following the principle of natural justice, as the petitioner kept on asking for time in relation to the assessment of damages u/s 14B, obviously since the original demand had also not been deposited in time leading to

initiation of proceeding for assessment of damages and interest under sections 7Q and 14B of the Act. Moreover, it is submitted that the impugned order has taken into account the contention of the petitioner relating to financial difficulties and clearly stated that these are no mitigating circumstances to rescue the petitioner's establishment from statutory liability arising under the Act as the Act itself is a beneficial piece of legislation intending to ameliorate the conditions of the deprived section of the society being the workmen covered under the Act. It is submitted that the demands have been made for long and because of failure on the part of the petitioner to deposit the original amount under damages and interest has been levied in terms of the Act.

4. I have heard learned counsel for the parties, and after going through the records including the impugned order, it appears that the respondents had after passing of the previous order as contained in Annexure-4, reconsidered the question relating to assessment of damages and issued fresh notices as contained in Annexure-6 dated 18.9.2006. Thereafter the petitioner sought repeated time and in fact did not come with any cogent reason or document to justify any reasons for being relieved of the assessment of damages or less assessment of damages. It is also not in dispute that the assessment of damages was done when the original amount lying with the Establishment has not been paid and ultimately beneficiaries of the said amount being the workmen, in question, are deprived for a long period of the benefits of the Beneficial Scheme, in question. From perusal of the impugned order, it appears that the authorized representative of the petitioner had himself appeared on notice and made his submission before the Respondents R.P.F.C, who took into the account the contention of the petitioner relating to the question of financial difficulties and prolonged illness of the original Proprietor for certain periods, but has proceeded to hold that the employee cannot escape from the statutory liability for payment of provident fund dues on account of such alleged financial difficulties. The respondents authorities has thereafter proceeded to assess the damages u/s 14B as well as penal interest u/s 7Q of the Act. From the aforesaid facts, it, therefore, appears that neither the principle of natural justice has been violated in passing the impugned order nor the contention of the petitioner have not been considered while passing the impugned order, it is trite that in : exercise of powers of judicial review under article 226 of the Constitution of India in certiorari jurisdiction, it is the decision making process which is subject to judicial review and not the correctness or otherwise of the decision in the nature of an appeal. The appellate remedy was already available under the aforesaid Act of 1952 to the petitioner who has failed to pursue the same and came to this Court straightway, In the circumstances, I do not find any infirmity in the impugned order or in the decision making process as such the writ petition is dismissed