(2011) 01 PAT CK 0045

In the Patna High Court

Case No : C.W.J.C. No. 17977 of 2010

Bihar State Co-operative Land Development Bank Limited and Another	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1), 7A, 7I

Citation : (2011) 129 FLR 540 : (2011) LLR 624 : (2011) 1 PLJR 841

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the Bihar State Cooperative Land Development Bank Limited, Bihar and Jharkhand challenging order dated 17.9.2010 (Annexure-1) by which the Regional Provident Fund Commissioner, Bihar (Respondent No. 3) rejected Petitioners'' application for exemption and directed the Petitioners to deposit all the provident fund dues to the Employees Provident Fund Office, Regional Office, Patna immediately and also challenging letter dated 20.10.2010 and other similar letters (Annexure-2 series) of the Assistant Provident Fund Commissioner (Recovery), Bihar (Respondent No. 5) directing the Branch Managers of different Banks for attachment of the bank accounts of the Petitioner''s Bank and directing the Petitioners to send demand draft of Rs. 11,34,55,657/- in favour of Regional Provident Fund Commissioner, Bihar (Respondent No. 3). Petitioner has also sought a direction to the Respondents to settle the claim of exemption of the Petitioners once for all pursuant to the direction of this Court vide order dated 21.5.2010 (Annexure-13) passed in CWJC No. 8761 of 2010 and to refund Rs. 66,00,000.00 to the Petitioners which was realised after the said order passed by this Court and further to restrain the Respondents from taking any coercive steps against the Petitioner''s bank for realisation of the amount of provident fund dues until it is settled as per the aforesaid order of this Court.

2. Learned Counsel for the Petitioner has stated that Petitioner No. 1 Bihar State Co-operative Land Development Bank Limited (hereinafter referred to as ''the Bank'' for the sake of brevity) was established in the year 1957 as a society registered under the provision of the Bihar and Orissa Cooperative Societies Act, 1935 in the name of Bihar State Cooperative Land Mortgage Bank Ltd., Patna which was subsequently changed to the present nomenclature and was controlled by Registrar Cooperative Societies, Bihar and for certain purpose by its Board of Trustees. It is also claimed that after coming into force of the Multi-State Co-operative Society Act, 2002, Petitioner No. 1 became a Multi-State Cooperative Society u/s 103 of the said Act and certificate of registration was granted by the Central Registrar, whereafter it is managed by its Board of Trustees, a member of which is Petitioner No. 2 who also happens to be the General Secretary of the Employees Union of the Bank.

3. The Petitioner-Bank came under the purview of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'' for the sake of brevity) from April, 1977 when Code No. BR/2801 was allotted to it. It is also apparent that the Petitioner entered into correspondences and discussion with the Regional Provident Fund Commissioner for seeking exemption u/s 17 of the Act but failed to comply the provisions of the Act with respect to remission of the contribution to the EPF fund and hence, a notice was sent by the Assistant Provident Fund Commissioner under the Act to the Petitioner who responded by sending letter dated 28.8.2000 to the Assistant Provident Fund Commissioner asking for grant of exemption as per the provision of Section 17(1)(a) of the Act annexing photocopies of four documents with his letter.

4. It further transpires that thereafter an inquiry u/s 7A of the Act was held in which the representative of the Petitioner appeared on 26.4.2001 but he did not produce any document and stated that he does not have to say anything more. On the other hand the Enforcement Officer appointed under the provisions of the Act calculated and disclosed before the Assistant Provident Fund Commissioner, the calculation of the amount due under five account heads. The said calculation was based on the wages mentioned in the compliance sheet of the Petitioners. Hence, in absence of the submission of the documents by the Petitioners, order dated 21.5.2001 (Annexure-9) was passed by the Assistant Provident Fund Commissioner (Respondent No. 5) determining the dues of the Petitioner for the month of April, 1977 to March, 1998 and directed the Petitioners to pay the amount in their respective accounts within a period of 15 days from the date of receipt of the said order. It was specifically mentioned that it would be without prejudice to any other action that may lie under the provision of law for which the establishment has already rendered itself liable.

5. Against the aforesaid order, the Petitioner filed CWJC No. 8355 of 2001 which was disposed of by a Bench of this Court vide order dated 19.7.2001

(Annexure-10) with a liberty to the Petitioners to avail the alternative remedy of appeal before the Tribunal u/s 7-I of the Act. Accordingly, the Petitioner filed appeal bearing ATA No. 438(3) of 2001 before the Employees Provident Fund Appellate Tribunal, New Delhi under the provision of Section 7-I of the Act and by interim order dated 5.8.2005 (Annexure-12) the appellate tribunal keeping in mind the statement of learned Counsel for the Appellant that the dues had been assessed on the basis of last balance-sheet reduced the condition of deposit of the amount to its half only, which was deposited by the Appellant with the Assistant Provident Fund Commissioner, Patna within two months.

6. The Appellate Tribunal finally heard the matter, but no document having been produced by the Appellant to show that the establishment was constituted under the State or the Central Government or it was covered under the scheme of its own whereas the record showed that it was not an exempted establishment, no infirmity was noticed in the order, of the Assistant Provident Fund Commissioner and the appeal was dismissed by the Tribunal vide order dated 9.4.2010 (Annexure-25). In view of the aforesaid order of the appellate tribunal dated 9.4.2010 (Annexure-25) the Respondents-authorities revived the earlier orders of attachment which were kept pending in view of interim order dated 5.8.2005 (Annexure-12) passed by the appellate tribunal.

7. Against the aforesaid orders of the authorities dated 21.5.2001 (Annexure-9) and 9.4.2010 (Annexure-25), the Petitioner filed CWJC No. 8761 of 2010 which was disposed of by a Bench of this Court vide order dated 21.5.2010 (Annexure-13) with a direction that within four weeks the Managing Director of the Bank would fix an appointrnent with the Commissioner, Provident Fund, Bihar (Respondent No. 3), both sides having such assistance, as they required, and would get a date fixed so that the matter of exemption be decided by bringing it to rest once for all and till such time the matter is finally settled with respect to the claim of exemption and that too retrospectively, the Provident Fund Department was restrained from taking any further coercive action against the Petitioners.

8. From the minutes of the meeting held on 26.8.1988 (Annexure-3) between the Regional Provident Fund Commissioner (Respondent No. 3) and Administrator, Bihar State Land Development Bank (Petitioner), it transpires that there was a discussion on the issue relating to grant of exemption in which it was specifically noted that proposal was received from the Bank authorities seeking exemption with regard to Provident Fund Scheme which had been examined and the deficiencies thereof had been pointed out separately for which a letter had also been issued and the authorities of the Petitioner-Bank agreed to regularize the deficiencies and re-submit their proposal alongwith information for constitution of Board of Trustees and its registration under the Act for enabling the Provident Fund Commissioner to consider Petitioner''s request for grant of relaxation u/s 79 of the Act.

9. However, during the pendency of the appeal before the appellate tribunal the

Petitioners filed an application dated 25.7.2001 (Annexure-11) before the Regional Provident Fund Commissioner, Patna (Respondent No. 3) requesting that the matter be fully considered and the Applicant-Bank be exempted from the operation of the scheme framed under the Act. This application remained pending until the order was passed by a Bench of this Court on 21.5.2010 (Annexure-13) in CWJC No. 8761 of 2010 in which direction was given to the authorities to decide the matter of exemption.

10. When the matter of exemption was considered by the Regional Provident Fund Commissioner it was found during scrutiny of the exemption application that several deficiencies were present, removal of which were mandatory for grant of exemption. Hence Enforcement Officers were directed to inspect the records of the Bank and submit its report. When the Enforcement Officers visited Petitioner''s establishment on 1.9.2010 and met the Chairman and Managing Director of the Bank, they did not produce any record for verification on the plea that the Director (Finance) of the Petitioner-Bank was not well and the Chairman of the Bank requested 10 days more time for producing the documents. Accordingly, the Enforcement Officers again went to the Petitioner''s Bank on 15.9.2010 and met the Managing Director, but on that date also-no records were produced before them for verification. However, in view of the specific order of this Court dated 21.5.2010 (Annexure-13) passed in CWJC No. 8761 of 2010 it was the duty of the Petitioners and their authorities to be ready with all the documents which were required for grant of exemption and to remove the deficiencies found in its application for exemption, but although more than about 31/2 months lapsed they could not comply the said directions and hence the Regional Provident Fund Commissioner (Respondent No. 3) had no other remedy but to reject the claim of exemption by the Petitioner by his impugned order dated 17.9.2010 (Annexure-1).

11. It further transpires that by non-removal of the deficiencies in the exemption application and non-production of any document before the Regional Provident Fund Commissioner, Bihar (Respondent No. 3), the Petitioners not only violated the specific directions of this Court vide order dated 21.5.2010 (Annexure-13) passed in CWJC No. 8761 of 2010, but also proved that they were trying to mislead the court by making frivolous and baseless submission as the Petitioners had also failed to produce any document before the Assistant Provident Commissioner, Patna (Respondent No. 5) when the matter was enquired u/s 7A of the Act or even before the Tribunal when their appeal u/s 7-I of the Act was being considered as is apparent from their respective orders dated 21.5.2001 (Annexure-9) and 9.4.2010 (Annexure-25).

12. In the said circumstances, this Court does not find any merit in this writ petition which is, accordingly, dismissed.

