(2012) 01 BOM CK 0149

In the Bombay High Court

Case No : Writ Petition No. 191 of 2012

Birla Sun Life Insurance Co. Ltd. and Another — APPELLANT

Vs

Shri Subhash Kumar, Under Secretary to Govt. of India and Others — RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 6

Citation : (2012) 4 ALLMR 907 : (2012) 3 LLJ 655 : (2012) LLR 266

Hon'ble Judges : M.S. Sanklecha, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : K.M. Naik, with Mr. S.P. Palkar, for the Appellant; B. Chandran B.G., Advocate, for the Respondent

Judgement

Dr. D.Y. Chandrachud

1. The challenge in this proceeding is to an order dated 27 December 2012 passed by Government of India in the Ministry of Labour and Employment by which an application filed by the petitioners for grant of exemption under Paragraph 27A of the Employees'' Provident Fund Scheme, 1952 has been rejected. The order of rejection furnishes the following reasons:

4 The proposal for grant of exemption was then placed before the CBT (EPF) in its meeting held on 23-12-2011. The CBT (EPF) did not recommend the proposal for exemption on the following grounds:

(i) The Board of Trustees (BOT) of the establishment has not invested the trust fund according to the investment pattern prescribed by the Government of India vide Notification No. S.O. 2125 dated 9th July 2003 during the years 2007-08, 2008-09 and 2009-10 inasmuch as it has invested the money in equity shares and equity mutual funds @ 12.38%, 5.29% and 0.22% respectively. It has maintained the partner of investment for the period 2010-11 and 2011-12 with minor variations of 1% in State Government securities during the year 2011-12.

(ii) Investments in securities worth Rs. 5 lakhs each of infrastructure leasing and financial services Limited is held in physical form with BOT.

5. The non-investment of the funds in accordance with the directions of the Government is violation of condition No. 17 of Appendix "A" of para 27AA of the EPF Scheme, 1952. Further, holding of securities in physical forms is violation of condition No. 18 (a) of the Appendix to the said para.

2. Learned counsel appearing on behalf of the petitioners submits that the basis for the rejection is misconceived. According to the petitioners, Section 17 of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 specifies the basis on which the appropriate Government may grant an exemption. Paragraph 27AA of the Scheme, it has been urged, specifies the conditions subject to which an exemption can be granted u/s 17 and the conditions which are spelt out in Appendix-A thereof are conditions which can be imposed while granting an exemption. In other words, it has been submitted that the conditions which are specified in Appendix-A to the scheme have to be fulfilled once an exemption is granted.

Section 17 of the Act confers a power to grant an exemption on the appropriate Government. Under Sub-section 1, the appropriate Government is inter alia empowered to grant an exemption if in its opinion, the rules of the Provident Fund of the establishment with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. In Paragraph 27AA of the Employees'' Provident Fund Scheme, 1952 it has been stipulated that all exemptions already granted or to be granted thereafter u/s 17 or Paragraph 27 of the scheme shall be subject to the terms and conditions as given in Appendix A. Condition No. 17 provides that the Board of Trustees shall invest monies of the Provident Fund as per the directions of the Government from time-to-time and failure to do so will render the Board of Trustees liable to surcharge as may be imposed by the Provident Fund Commissioner. Moreover, Clause 18 provides for other conditions.

3. We find merit in the contention which has been urged on behalf of the petitioners that the primary requirement which the appropriate Government has to consider is as to whether the conditions specified in Section 17 of the Act have been fulfilled. Insofar as the provisions of Clauses 17 and 18 of Appendix-A to the scheme are concerned, it is evident from a bare reading of Paragraph 27AA that the exemptions to be granted u/s 17 shall be subject to the terms and conditions as given in Appendix-A. In other words, while granting an exemption the Appropriate Government is within its jurisdiction in imposing conditions which require compliance with the requirements specified in Appendix-A. A reading of the impugned order indicates that the appropriate Government has not considered as to whether the conditions specified in Section 17 have been

fulfilled. If the appropriate Government comes to the conclusion that the conditions specified in Section 17 have been fulfilled, it would be within its power to grant an exemption subject to compliance of conditions which it may impose including those that are spelt out in Appendix-A of Paragraph 27AA of the Scheme.

We, accordingly, dispose of this petition in the following terms by directing the appropriate Government to re-examine the matter as follows:

(i) The impugned order dated 27 December 2011 of the Government in the Ministry of Labour & Employment is quashed and set aside and the application filed by the petitioners for exemption u/s 17 read with Paragraph 27A of the Scheme is restored for fresh consideration. The appropriate Government shall determine as to whether the conditions which have been specified in Section 17 read with Paragraph 27A of the Scheme have been duly fulfilled. This exercise shall be carried out after furnishing to the petitioner an opportunity of being heard;

(ii) In the event that the appropriate Government comes to the conclusion that the conditions for the grant of exemption u/s 17 read with paragraph 27A of the scheme have been fulfilled and an exemption should be granted, necessary orders shall be passed according to law granting an exemption subject to compliance of such conditions as may be specified consistent inter alia with Appendix-A and Paragraph 27AA of the scheme;

(iii) We clarify that this order shall not be construed as restricting the power of the appropriate Government to impose suitable conditions necessary to protect the interest of the employees in accordance with the provisions of law;

(iv) The aforesaid exercise shall be completed within a period of three months from today and until final orders are passed no coercive steps shall be taken against the petitioners; and

(v) In the event any adverse orders are passed, no coercive steps shall be taken for a period of three weeks from the date of communication of the order.

The petition is, accordingly, disposed of.

