(2021) 10 CAL CK 0047

In the Calcutta High Court

Case No : Writ Petition No. 17421 Of 2021

Bollore Logistics India Private Limited & Anr. APPELLANT

Vs

Regional Provident Fund Commissioner ? I, Regional Office, Park Street & Ors. RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Employees? Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7A, 7I, 7Q, 14B

Citation : (2021) 10 CAL CK 0047

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Soumya Majumdar, Deepan Kumar Sarkar, Soumitra Datta, Anil Kumar Gupta, Paritosh Sinha, Amitava Mitra, Antara Choudhury

Judgement

Affidavit of service filed in Court today be kept on record.

Learned counsel for the respondent Nos.1, 2 and 4 are present.

The challenge in the instant writ petition is restricted to the imposition of interest under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the 1952 Act") to the tune of Rs.50,72,956/- by an order dated October 11, 2021 passed by the Regional Provident Fund Commissioner -I- Regional Office, Park Street for the period from September 21, 2011 and November 21, 2016.

Mr. Majumdar, learned advocate appearing for the petitioners draws the attention of this Court to the said order wherein it was recorded that the establishment deposited the money through challan in bank on time and the date mentioned in Annexures - 'A' and 'B'.

Mr. Majumdar also submits that after accepting the contention of the establishment that they have deposited the money on time and the authorities exceeded its jurisdiction by directing the petitioners to pay interest amounting to

Rs.50,72,956/- without assigning any reasons therefor.

Mr. Gupta, learned advocate appears for the Provident Fund authorities and submits that the impugned order being a composite order passed under Section 14B read with Section 7Q of the 1952 Act, the instant writ petition is not maintainable as there is a statutory provision of an appeal under Section 7I against an order passed under Section 14B of the said Act. He also relies upon a judgment of the Coordinate Bench of this Court reported at (2005) 2 WBLR Cal 898 (M/s. Capri Home Products Ltd. & Ors. Vs. The Regional P. F. Commissioners (I) W.B., Sikkim, the Adndaman & Nicobar Island & Ors. in support of his submission.

I have heard learned counsels for both the parties and have considered the materials on record.

The dispute involved in the instant writ petition is required to be decided after exchange of affidavits. However, Mr. Majumdar, learned advocate appearing for the petitioners prays for an interim order restraining the respondents from recovering any amount on account of interest as indicated in the order dated October 11, 2021.

For the limited purpose of deciding the issue with regard to passing of the interim order, the point of maintainability of the instant writ petition is to be decided first. Section 7A of the 1952 Act empowers the competent authority to determine the amount due from any employer under the provisions of the 1952 Act, the Scheme or the Pension Scheme or the Insurance Scheme as the case may be.

Section 7Q of the said Act provides that the employer shall be liable to pay simple interest at the rate of 12% or at such higher rate as may be specified in the scheme on any amount due from him under the 1952 Act from the date on which the amount has become so due till the date of its actual payment.

Thus, from a bare reading of the aforesaid two provisions of the 1952 Act it is evident that interest is to be charged at the rate fixed under Section 7Q on the amount determined to be due from the employer under Section 7A of the said Act.

The order passed under Section 7A is appealable under Section 7I of the said Act.

The Co-ordinate Bench in Capri Home Products (supra) held that in case a composite order is passed under Section 7A read with Section 7Q of the 1952 Act the Tribunal while deciding an appeal against an order passed under Section 7A of the said Act is competent to grant consequential relief by reducing the amount of interest in the event the quantum of amount determined under Section 7A of the said Act is reduced.

However, in the instant case the impugned order is an order passed under Section 14B and 7Q of the said Act. The same is not a composite order passed under Section 7A read with 7Q of the Act.

Section 14B provides for recovery of damages. The object of levying damages under Section 14B and charging interest under Section 7Q is different. An order passed under Section 14B is also appealable under Section 7I of the said Act. In the instant case the petitioner has preferred an appeal against the order passed under Section 14B. But in an appeal against an order passed under Section 14B of the said Act the Tribunal is not empowered to grant any consequential relief in the form of reduction of interest charged under Section 7Q of the said Act as interest under Section 7Q is charged on the amount determined under Section 7A and not on the penalty levied under Section 14B. As such the judgment of the Co-ordinate Bench in the case of Capri Home Products (supra) is not applicable to the facts of the instant case.

Furthermore, an order passed under Section 7Q is not appealable. Thus, in my considered opinion the instant writ petition is maintainable. However, for the purpose of grant of an interim order, the petitioners are to be put to terms. Upon perusal of the order impugned this Court is of the prima facie view that the impugned order insofar as imposition of interest is concerned is bereft of any reasons therefor. However, since, the petitioners have been directed to pay a sum of Rs.52,72,956/- on account of interest, the impugned order insofar as it relates to realization of the said amount shall remain stayed subject to the following conditions:-

(1) There shall be an unconditional order of stay of operation of the order in so far as it relates to realization of the aforesaid amount till November 10, 2021. (2) Petitioners shall deposit a sum of Rs.26,00,000/- (Rupees Twenty Six Lac only) with the Learned Registrar General, High Court at Calcutta by way of Demand Draft on or before November 10, 2021. (3) In the event, the said amount is deposited within the time limit mentioned hereinabove, the order of stay shall continue till the end of November, 2021 subject to the condition that the petitioners shall deposit the balance amount of Rs.24,72,956/- on or before November 30, 2021. In the event, the said amount is deposited within the aforesaid time limit, the order of stay shall continue till the disposal of the instant writ petition.

It is, however made clear that in the event the petitioners make a default in making payment as indicated above, the order of stay shall stand vacated without any further reference to this Court.

Let affidavit in opposition be filed within three weeks after reopening of this Court after Puja Vacation; reply, if any, be filed within one week thereafter.

Liberty to mention after expiration of the period fixed for exchange of affidavits strictly upon notice to each other.