(2016) 09 CAL CK 0044

In the Calcutta High Court

Case No : Writ Petition 19473 (W) of 2016.

Burn Standard Company Limited - Petitioner @HASH Regional Provident Fund Commissioner

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7(1), Section 7A

Citation : (2017) 152 FLR 656 : (2016) 151 FLR 731 : (2017) LabLR 182 : (2017) LabLR 82

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Mr. Bikas Ranjan Bhattacharya and Mr. Soumya Majumder, Advocates, for the Petitioner; Mr. Anil Kumar Gupta, Advocate, for the PF Authority

Final Decision : Disposed Off

Judgement

Subrata Talukdar, J. - Sri Bikas Ranjan Bhattacharya, learned Senior Counsel appears for the petitioner and submits that the petitioner is aggrieved by the order dated 7th October, 2015 issued by the respondents-Provident Fund Authority (for short PF Authority) as well as the notice of demand dated 1st August, 2016 directing the petitioner/establishment to pay damages and penal interest for belated Provident Fund remittances.

2. Sri Bhattacharya submits that the issue of Provident Fund dues as well as the issue of implementation of the Employees'' Provident Fund Scheme - 1995 (for short EPS- 95) was the subject matter of litigation before this Hon''ble Court as well as the Hon''ble Apex Court. During pendency of such lis several interim orders were passed and, ultimately the Hon''ble Supreme Court decided in favour of the PF Authority directing implementation of EPS-95.

3. Sri Bhattacharya therefore makes the next submission that pursuant to the final verdict of the Hon''ble Apex Court the necessary contributions along with interest have been deposited with the PF Authority by the petitioner and hence

no case for recovery is made out against the petitioner/establishment vide the impugned order dated 7th October, 2015 and the notice of demand dated 1st August, 2016.

4. Sri Bhattacharya also points out that the Provident Fund dues were deposited with the Board of Trustees (for short BOT) and, by the order dated 7th October, 2015 the BOT, being an independent entity and impleaded as the respondent No. 4 in this writ petition, was asked to explain by the PF Authority the pattern of its fund investments. According to Sri Bhattacharya, the failure of the BOT to explain its position before the PF Authority should not mean that the petitioner/establishment has defaulted.

5. Furthermore, during the period of the demand the petitioner/establishment was under the Board of Industrial and Financial Reconstruction (for short BIFR).

6. Appearing for the respondents-PF Authority, Sri Anil Kumar Gupta, learned Counsel raises the point of maintainability of this writ petition since an alternative remedy of appeal is provided under Section 7(I) of The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the 1952 Act).

7. Having heard the parties and considering the materials placed, this Court is prima facie satisfied that the order dated 7th August, 2015 and the notice of demand dated 1st August, 2016 have been issued in error of exercise of jurisdiction qua the writ petitioner/establishment by failing to notice both the circumstances of the lis connected to the PF contributions made by the petitioner/establishment post the verdict of the Hon''ble Apex Court, the rehabilitation of the petitioner/establishment and the independent role of BOT.

8. Therefore, this Court grants an interim order in terms of prayer (e) of the writ petition till the end of November, 2016 or until further orders whichever is earlier.

9. This Court grants an opportunity to learned Counsel for the PF Authority to argue on the point of maintainability on the next date. Let this matter next appear under the heading ''Specially Fixed Motions Group-III'' in the Monthly Combined List of November, 2016.