(2005) 03 CAL CK 0019

In the Calcutta High Court

Case No : G.A. No. 4311 of 2004, APOT No. 720 of 2004 and W.P. No. 1874 of 2004

Delta Limited and Another	APPELLANT
Vs	
Regional Provident Fund Commissioner-II and Another	RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17, 17(1), 17(1A), 17(4)

Citation : (2005) 3 CALLT 301 : (2006) 2 CHN 271 : (2005) 106 FLR 16 : (2005) 3 LLJ 258

Hon'ble Judges : Soumitra Pal, J;D.K. Seth, J

Bench : Division Bench

Advocate : Ranjan Deb, Ashih Chakraborty, S. Dube and Dibakar Chandra, for the Appellant;A.K. Das Adhikari and S.C. Prasad, for the Respondent

Judgement

D.K. Seth and Soumitra Pal, JJ.

The Background:

1. The hearing on the application was concluded and the matter was directed to be placed for orders. The matter appeared for orders today. While addressing the Court on the application for interim order, both the learned counsel had addressed the Court on the merit of the appeal. Therefore, we treat the appeal by consent of the parties as on the day''s list for hearing and dispose of the same as hereafter.

2. This appeal is preferred against the order dated November 25, 2004 passed by the learned single Judge in W.P. No. 1874 of 2004 dismissing the writ petition. The writ petitioner/appellant was granted exemption by the appropriate authority under the provisions of the Provident Fund Act, 1925 since replaced by the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. On the ground of certain default, a notice was issued by the Regional Provident Fund Commissioner asking the petitioner to show cause why the exemption so granted

shall not be recommended to be withdrawn in terms of Section 17(4) of the 1952 Act. This notice was challenged in the writ petition on the ground that this was beyond the jurisdiction of the Regional Provident Fund Commissioner.

Appellants'' Contention:

3. Mr. Deb, appearing on behalf of the appellant, pointed out that it is only the appropriate Government as defined in Section 2(a) of the 1952 Act can do so. The Regional Provident Fund Commissioner can exercise only the jurisdiction limited by reason of Section 17(1-A) of the said Act inasmuch as only those provided in Sections 6, 7-A, 8 and 14-B. The authority to cancel the exemption granted is conferred on the authority, which granted such exemption as is contemplated u/s 17(4). The authority to grant exemption is vested in the appropriate Government u/s 17(1). Therefore, the Regional Provident Fund Commissioner not being the appropriate Government cannot assume jurisdiction even to recommend the cancellation in the purported exercise of power conferred upon it u/s 17(1-A). He referred to the relevant provision of the 1952 Act in order to elaborate his submission and contended that the Regional Provident Fund Commissioner can exercise any of the powers conferred upon it u/s 17(1-A), which is specific. Such jurisdiction cannot be stretched beyond the confines provided in Sub-section (1-A) of Section 17.

Respondents'' Contention:

4. Mr. Das Adhikari, learned counsel appearing on behalf of the Regional Provident 9 Fund Commissioner submitted the Sub-section (4) of Section 17 empowers the appropriate Government to cancel the exemption granted on any of the grounds mentioned therein. But the appropriate Government has no machinery to undertake the said job except through the mechanism prescribed under the 1952 Act and it was for this reason Sub-section (1-A) was included so as to monitor the process or misuse of the exemption granted by the appropriate Government. In case the provisions are not adhered to, it is open to the Regional Provident Fund Commissioner to recommend to the appropriate Government for cancellation of the exemption granted on account of non-compliance of the provisions of Sections 6, 7-A, 8 and 14-B respectively. According to the scheme of the 1952 Act, as contended by Mr. Das Adhikari, there being no other authority to monitor the use or process or misuse of the provisions of the exception granted under the 1952 Act and since the appropriate Government relies upon those machineries and utilizes the service of such mechanism, it is only the natural consequence and corollary and incidence to the exercise of the powers conferred upon the Commissioner under Sub-section (1-A) of Section 17. Therefore, the impugned notice is well within the jurisdiction of the Regional Provident Fund Commissioner.

Section 17(4)-Recommendation for cancellation-Regional P.F. Commissioner - Competence:

5. After having heard the learned counsel for the parties, the question does not

seem to pose any difficulty in answering the same. The answer is to be found out from the scheme of the Act itself. Section 17 prescribes that some establishments may be exempted from the operation of all or any of the provisions of the scheme of the 1952 Act if in the opinion of the appropriate Government the rules of the Provident Fund 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 said Act or any scheme in relation to the employees in any other establishment of a similar character or if the employees of such establishment are in enjoyment of benefits in the nature of Provident Fund, pension or gratuity and the appropriate Government is of opinion that such benefits separately or jointly are on the whole not less favourable to such employees than the benefits provided under this 1952 Act or any scheme in relation to employees in any other establishment of similar character. The proviso to Section 17 provides that no such exemption shall be made except after consultation with the Central Board, which on such consultation shall forward its views on the exemption to the appropriate Government within such time limit as may be specified in the scheme.

6. Under the rules in order to obtain exemption an establishment has to apply before the Central Board. Upon such application being made, the Central Board utilizes the mechanism and the machinery provided under the 1952 Act for the purpose of gathering information in order to form its view on the question of exemption for which the Central Board is supposed to be consulted by the appropriate Government before deciding grant of exemption. The Act however does not provide anything as to how the exemption once granted can be cancelled. No procedure having been laid down, it cannot be anything else other than what is prescribed for the purpose of granting such exemption. Therefore, it is the same machinery or the mechanism, which is required to be used or utilized for the purpose of forming an opinion for cancellation of the exemption so granted.

7. Admittedly, Regional Provident Fund Authority is a prescribed authority under the 1952 Act. The definition of ''appropriate Government'' defined in Section 2(a) by no stretch of imagination can include the Regional Provident Fund Authority neither it includes the Central Board. Therefore, neither the Central Board nor the Regional Provident Fund Commissioner has any jurisdiction with regard to the cancellation of the exemption granted by the appropriate Government. Inasmuch as, Sub-section (4) of Section 17 makes it clear that such exception can be cancelled by the authority, which granted it namely the appropriate Government. There is no doubt about the grounds on which such cancellation can be made. These have not been disputed by the parties. But from the scheme of the Act, it does not appear that the Commissioner or the Board has any jurisdiction to recommend cancellation unless the views of the Central Board is asked for by the appropriate Government and the Regional Provident Fund Commissioner is asked

to use or utilize its mechanism for collecting materials and place the same before the Central Board for forming its opinion or views to be communicated to the appropriate Government. Therefore, having regard to the scheme of the Act itself, we do not think that the Commissioner on its own is entitled to recommend cancellation.

8. But that does not preclude the Commissioner in case of violation of any of the provisions to take appropriate steps as are conferred upon him under the Act and the Scheme. In the process the Commissioner may also note whether any of the grounds contemplated under Sub-section (4) of Section 17 has not been complied with. The only thing it can do is to send a report of such non-compliance to the Central Board. It can do no more. At the same time, there is no bar in proceeding with the hearing as to whether there has been any non-compliance or not or it can exercise any of the powers conferred upon it under Sub-section (1-A) of Section 17.

9. Section 19 provides that the appropriate Government may direct that any power or authority or jurisdiction exercisable by it under the Act in relation to such matters and subject to such conditions, if any, as may be specified in the direction may be exercisable by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in that notification where the appropriate Government is the Central Government and by such officer or authority subordinate to the State Government as may be specified in the notification where the appropriate Government is the State Government. Our attention has not been drawn to any such delegation or power upon the Regional Provident Fund Commissioner to exercise the power exercisable by the appropriate Government. In the absence of any provision empowering the Regional Provident Fund Commissioner to exercise any jurisdiction in relation to Section 17(4), it cannot assume jurisdiction to discharge any of the functions exercisable by the appropriate Government. At the same time, however, there is nothing to prevent the Regional Provident Fund Commissioner to report non-compliance to the Central Board, which may bring the same to the notice of the appropriate Government. This may be part of the internal administration, but it cannot empower any of these authorities to recommend cancellation of exemption granted u/s 17.

Conclusion:

10. Therefore, having regard to the facts and circumstances of the case, we are of the view that the notice that was issued for showing cause as to why the Commissioner shall not recommend cancellation of the exemption cannot be sustained. However, the notice in relation to the compliance of the provisions of the Act contemplated under Sub-section (1-A) of Section 17 can very will be proceeded with within the scope and ambit of the Act.

Order:

11. The notice so far it relates to the purported recommendation for cancellation of the exemption granted is hereby quashed.

12. The Regional Provident Fund Commissioner shall be free to proceed with the proceedings within the scope of Section 17(1-A) in the light of the observation made above, without purporting to recommend cancellation of exemption by issuing a fresh notice and giving appropriate opportunity to the appellant. Such fresh notice may be issued as early as possible preferably within a period of four weeks from the date of communication of this order.

13. The appeal and the application are, thus, disposed of. The order appealed against is set aside.

14. There will, however, be no order as to costs.

15. All parties are to act on a signed xerox copy of this dictated order on the usual undertaking.