(2009) 06 CAL CK 0008

In the Calcutta High Court

Case No : G.A. No. 1067 of 2009

Dunlop India Ltd. and Another — APPELLANT

Vs

Regional Provident Fund Commissioner and Others — RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 8C

Citation : (2009) 122 FLR 156 : (2009) 4 LLJ 741

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Judgement

Jayanta Kumar Biswas, J.—The petitioners in W.P. No. 325/2007 have taken out G.A. No. 1067/2009 seeking interlocutory orders. The application has come up for consideration as a new motion. In the course of hearing counsel for the parties were invited to argue the two writ petitions, if they have no objection, for their final disposal. They have agreed to do so. Hence the two writ petitions and the interlocutory application all have been taken up for hearing together.

2. W.P. No. 216/2005 was filed questioning two requisitions for certificate u/s 8C of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, both issued by the authorised officer; a notice to show cause why a warrant of arrest should not be issued, issued by the recovery officer; and an order of attachment of movable property, also issued by the recovery officer. The two requisitions both dated January 17, 2005 are Annexure P-8 at pp. 173-175, the notice to show cause dated January 27, 2005 is Annexure P10 at p. 190 and the order of attachment dated January 27, 2005 is Annexure P11 at p. 191. The requisitions were issued for recovery of, certain dues payable for the period from March, 2000 to October, 2000. The notice to show cause was issued in connection with Certificate No. REX/716 dated April 28, 1999, and the order of attachment was issued also in connection with Certificate No. REX/716 dated: April 28, 1999.

3. W.P. No. 325/2007 was filed questioning six prohibitory orders issued in connection with recovery of dues under. Certificate Nos. 213/99-00, 127/05-06

and 128/05-06. The prohibitory orders dated March 6, 2007 are Annexure P19 at pp.292-297. In W.P. No.325/2007 the petitioners have prayed for a mandamus quashing the prohibitory, orders and directing the respondents to grant them 36 instalments to pay the provident fund dues under the certificates without any interest and without any other condition.

4. It is submitted that orders were passed in, W.P. No. 325/2007 from time to time, and that in compliance with such orders the petitioners have paid in excess of the dues mentioned in the certificates. Stating that the authorities have wrongfully lodged FIR alleging commission of offence by them in connection with payment of statutory dues payable under the Act and the Schemes framed thereunder, and that having paid all the dues, they should be discharged from their all liabilities, the petitioners have taken out the application in W.P. No. 325/2007. In the interlocutory application they have prayed for orders directing the respondents not to take any coercive measures, to withdraw the FIR, to discharge them from all liabilities, and to rescind the prohibitory orders.

5. The question is whether the petitioners have paid the statutory dues alleging nonpayment whereof the provident fund authorities issued the requisitions for certificate, notice to show cause why an arrest warrant should not be issued, the attachment order, and the six prohibitory orders.

6. I do not find any reason to initiate a process for ascertaining what amount has been paid by the petitioners for which period. Such a process is to be initiated only by the provident fund authority competent to initiate proceedings u/s 7A of the Act, if the petitioners raise a dispute that the authorities are asking them to pay dues for the same period twice over. It is not the case that though the petitioners raised a Section 7A dispute, without determining their liability, if any, the provident fund authority has issued the two requisitions, the notice and the orders for the period in question. As a matter of fact, these steps were taken by the authorities after determining the dues payable for the periods concerned by initiating proceedings u/s 7A, and the final orders made in the proceedings have not been challenged in these two writ petitions.

7. It seems to me that W.P. No. 325/2007 has been filed only for getting instalments to pay the dues in question. The discretion to grant instalments has been conferred on the authority under the Act. Today the question has lost its significance to some extent, because in compliance with the orders made by this Court, as submitted by counsel of the parties, the petitioners have paid from time to time, and hence it is not known exactly what amount, if any, is still to be paid under the requisitions, the notice to show cause, the attachment order and the prohibitory orders. Needless to say that if all the amounts mentioned in these things have already been paid by the petitioners, then they will of course lose their significance. In my view, this aspect should be examined by the Provident fund authorities concerned after hearing the petitioners.

8. There is, however, no scope at all to say that the petitioners can be permitted

to pay the statutory and other dues without interest and condition. They were under an unqualified statutory obligation to pay the dues and their failure to pay within the stipulated periods has definitely made them liable to pay interest. Proceedings for levying damages may also be initiated according to law. I am unable to see how they can say that the respondents should withdraw the FIR. The FIR has been lodged alleging commission of offence. It is for the police to investigate and decide whether a charge-sheet should be filed before the appropriate criminal Court. I only say that if by not paying the statutory dues within the stipulated periods the petitioners committed any offence, their subsequent payment of the dues, even in compliance with the orders of this Court, cannot wipe out the offence. The criminal case initiated will reach its logical conclusion according to the criminal law of the land. There is no reason to interfere in the matter in exercise of writ powers.

9. For these reasons, I dispose of both the writ petitions and the interlocutory application ordering as follows. The petitioners will be at liberty to make detailed representations to the authorities concerned stating why they should rescind the requisitions, the notice to show cause, the attachment order and the prohibitory orders challenging which the two writ petitions were filed. If such representations are filed within three weeks, then within eight weeks from the date of receipt of the respective representations and after giving reasonable opportunity of hearing to the authorised representative of the petitioners, the authorities concerned shall give decisions stating whether on the facts the requisitions, the notice to show cause, the attachment order and the six prohibitory orders have lost utility and hence should be rescinded. It is made clear that if any amount under these things is still payable, then the petitioners will be at liberty to seek instalments from the appropriate authority. It is also made clear that the petitioners will be free to ventilate their grievances against any 5 statutory order made by the provident fund authorities before other forums in accordance with law. There shall be no order for costs.

10. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the department concerned.