

(2004) 11 DEL CK 0008

In the Delhi High Court

Case No : WPC 10368 and 10369 of 2004 and CM 7172 and 7173 of 2004

Elbee Services Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7, 7(1), 7A

Citation : (2004) 11 DEL CK 0008

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Chetan Sharma and Rajiv Shukla, for the Appellant; Atul Bandhu, for R-1 and R.C. Chawla, for R - 2 and 3, for the Respondent

Judgement

Swatanter Kumar, J.

1.The Assistant Provident Fund Commissioner vide its order dated 7.5.2003, in exercise of his powers u/s 7(A) of the EPF and MP Act determined the amount of Rs.23,17,005/- against M/s Elbee Service Ltd. On account of provident fund of employees pension fund and insurance fund contribution, vide the same order he directed that the amount shall be paid within a period of 15 days from the date of receipt of the order failing which it was directed that amount be recovered u/s 7(1) of the Act against the order dated 7.5.2003 within the period of limitation and also an application u/s 7(o) of the Act praying for waiver of the requirement of pre-deposit before the Appellate Forum. The appeal has not been heard so far as the residing Officer of the Appellate Tribunal has not been appointed.

2.The petitioner is a company duly registered under the Companies Act since 1981 and it has been regularly and diligently complying with the statutory requirements since the very beginning. There were certain labour problems in various units of the company all over the country, resultantly they became non-operational. This resulted in starting of the proceedings by the competent

authority u/s 7(a) of the Act in which representative of the petitioner appeared and sought time to put forth facts and documents. However, without granting any opportunity and in violation of the principles of natural justice, the order dated 7.5.2003 was passed. The same has been impugned in the present writ petition.

3.The order dated 7.5.2003 relates to the period of November 2002 to January 2003, the default period against which WPC No.10369/2004 has been filed while the order dated 4.8.2003, relates to the default period of February 2003 to January 2003, which has been challenged by the petitioner in WPC No.10368/2004 Thus both these writ petitions can be disposed of by a common order.

4.In the grounds of appeal, the company has taken various grounds including factual and computation errors in the orders. The case of the petitioners before this Court is that they have a prima facie case and are likely to succeed before the Appellate Authority. It is the basic contention on behalf of the petitioners that they cannot be condemned unheard inasmuch as their appeal along with the stay/ waiver application is pending before the authority which is not being appointed by the Union of India on the one hand, while on the other the authorities are taking coercive steps for recovering the said amount. This has caused serious prejudice to the rights of the petitioners which are provided under the statute itself. On 26.6.2004, notice was received by the petitioners threatening that they would be arrested if they did not pay the amount demanded. In these circumstances, the petitioners have been forced to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. At this stage, it will be appropriate to refer to a detailed order passed by this Court in WPC No.16137/2004

""It is a known fact that the post of the Presiding Officer of the Tribunal are lying vacant now for more than a year. Its repercussions are serious and must invite attention of all concerned at the relevant quarters of the Govt. of India. Where this is hampering the administration and justice there it equally and adversely affects the recovery of State revenue and distribution of funds to its rightful claimants. The employers who are fastened with the liability for contribution of fund under the provisions of the Act are not able to take benefit of the statutory remedy provided to them in law and are compelled to file writ petitions before the High Court which certainly is an avoidable litigation. Mr. Pati also conceded that different Benches of this Court have passed orders and directions requiring the authorities to effectively and expeditiously deal with this problem. Today even orders of other High Courts have been brought to the notice of Mr. Pati. Despite of these orders the matter has lingered for too long, may be for one reason or the other. Furthermore, it also amounts to loss to Government revenue as the Courts are normally inclined to grant stay in such cases because there is hardly any fault attributable to the employer at least prima facie.

In the above circumstances it is clear that nobody stands to gain by this inaction

on the part of the Government. To provide expeditious justice is not a concept confined to Courts only but it must equally apply to the Institutions/Tribunals performing quasi judicial functions.

The Court must take judicial notice of the fact that large number of writ petitions are being filed in this Court as well as other High Courts, where the petitioners pray for grant of interim orders only on the ground that the Tribunal is not constituted and the Appeals filed by them in the Office of the Tribunal have not been heard till date. It is their contention that they cannot be asked to pay huge amounts and their properties be attached by the Department without even granting them an opportunity of being heard. The remedy of appeal before the Tribunal is a statutory remedy and thus every person affected adversely by the order of the lower authorities must be granted an opportunity to substantiate his contentions before the Tribunal. In the case of "Arihant Threads Ltd. v. Union of India" in WP(C) No. 3331 of 2004 a Division Bench of the Punjab and Haryana High Court while disposing of number of writ petitions vide its order dated 25th March, 2004 had passed the following directions :-

""Learned counsel appearing for the Union of India also assures the Court that all steps will be taken by the concerned ministry to have the appointments finalised expeditiously and without any unnecessary delay. In view of the statements made on behalf of the Union of India as well as the Provident Fund Commissioner, we do not consider it necessary to go into the merits of the various contentions raised before us. Suffice it to say that the stand taken by the respondents is fair, just and equitable. On the basis of the statements made on behalf of the respondents, we dispose of this writ petition with directions that the petitioner can file appeal(s) accompanied by a stay application, if not already filed, within two weeks from today. If such appeal(s) are filed proof thereof is shown to the Recovery Officer, then said Officer would not affect recovery of the demand issued u/s 7-A of the Act till decision of the stay application, as stated by the learned counsel appearing for the respondents. We make it clear that the direction would obviously operate only till the disposal of the stay application by the competent authority. We have pious hope that Union of India shall expeditiously make the appointment of the Presiding Officer of the Appellate Tribunal and Regional Provident Fund Commissioner exercising jurisdiction over Punjab and Haryana would not compel the people to approach the Court. Such litigation, obviously, is avoidable by timely action on the part of the official respondents. We expect that State of Haryana, State of Punjab which also exercises powers over Union Territory of Chandigarh would take due notice of this order and take appropriate measures at their own level to achieve the public purpose to avoid unnecessary litigation. Obvious result thereof would be less burden on the State exchequer which the State would incur in filing and defending avoidable litigation. All these writ petitions are accordingly disposed of with the above directions.""

It appears that the request of the Court made in the above order was not

sufficient indication for the authorities to act expeditiously as even now and undisputedly the file for appointment to these posts is shuffling from one department to another. The Court is unable to appreciate such an approach.

At this stage I would refrain from commenting any further in this regard or from taking serious view of the inaction on the part of the authorities concerned. I express pious hope that authorities would act now at least with a specific direction to the Secretary, Ministry of Labour and Employment; Secretary, Department of Personnel and Secretary, in charge of Appointment Committee of Cabinet, to ensure that the matter in relation to appointment of Presiding Officer of the Tribunal is finalised as expeditiously as possible, and in any case not later than 45 days from the date of this order. Mr. Pati shall submit a compliance report to the Court before the next date of hearing. The above case is fixed on 25.11.2004 for directions. ""

5. After passing of the above order number of other writ petitions have been filed with the same grievance in the Registry of this Court. In this regard, reference can be made to the writ petition in hand amongst number of other writ petitions which are being listed before the Court day after day. It is a matter of concern, but still no different order is called for in the present case than the one passed by the Court in another writ petition bearing no. W.P.(C) No. 13245/2004 decided on 4.11.2004 In comity to the different orders passed by various Benches of this Court and to avoid unnecessary prejudice to the petitioners resulting from the inaction on the part of the Union for such a considerable period, it is in the interest of justice to restrain the respondents from taking any coercive steps to recover the amount which is the subject matter of these two writ petitions. The amount claimed by the Department in these two writ petitions is nearly Rs.60 lakhs. According to the petitioners they have already paid a sum of Rs. 41 lakhs out of this demanded amount. This fact is not admitted by the learned Counsel appearing for the Department who claims that still a sum of Rs.37 lakhs is due to the Department.

6. As the very computation has been challenged, in my opinion, ends of justice would be met if the petitioners are directed to deposit a sum of Rs.3 lakhs in addition to the amount which they have already deposited with the respondent within a period of three weeks from the date of pronouncement of this order. The interim order shall continue till the time the application of the petitioners for grant of stay/ waiver is considered and appropriate orders passed by the Presiding Officer.

7. With these directions the writ petitions are disposed of, accordingly, while leaving the parties to bear their own costs.