

(2011) 06 GUJ CK 0026
In the Gujarat High Court

Case No : L.P.A. No. 12 of 2010 in Spl. C.A. No, 3347 of 2009

Employees" Provident Fund Organisation	APPELLANT
Vs	
Rollwell Forge Limited and another	RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 5
Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1,
14(B), 3, 7, 7(A)

Citation : (2011) 131 FLR 525

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Niral R. Mehta for the Appellant No. 1, for the Appellant; Kishor M. Paul for the Respondent No. 1 and Rule Served for for the Respondent No. 2, for the Respondent

Judgement

J.B. Pardiwala, J.—The present Appeal under Clause 15 of the Letters Patent has been preferred by the Employees Provident Fund Organization through Assistant Provident Fund Commissioner, Rajkot, challenging the judgment and order dated 1.5.2009 passed by the learned Single Judge, whereby, the learned Single Judge disposed of the petition issuing certain directions to the appellant (original respondent) in the writ petition.

Brief facts relevant for the purpose of deciding the Appeal can be summarized as under.

2. Vide order dated 30.1.2001 passed u/s 7-A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), the appellant quantified respondents liability towards unpaid provident fund contribution for the period from April, 2001 to January, 2007, By the said order the appellant determined that the total unpaid provident fund contribution came to Rs. 37,13,808/-. A separate order u/s 7(Q) of the Act came to be passed on

11.2.2009 whereby the appellant has claimed Rs. 11,21,385/- towards interest under the provisions of the Act. It is a case of the appellant department that the amount has become payable on account of nonpayment of the provident fund contribution for the period from April, 2001 to January, 2007.

3. The said two orders came to be challenged by the respondent herein before the learned Single Judge by filing Special Civil Application No. 3347 of 2009. It appears from the record that the learned Single Judge was not inclined to entertain the petition in view of the availability of the statutory alternative remedy against the order passed u/s 7 Clause "A" of the Act, but the learned Single Judge found the action of the appellant authorities a bit arbitrary, and therefore, entertained the petition.

4. Record also reveals, particularly, the judgment and order of the learned Single Judge that the respondent herein - Original petitioner diverted the whole issue before the learned Single Judge. Instead of concentrating on the main challenge, so far as the order passed u/s 7(A) is concerned, the original petitioner raised a grievance that the appellant authorities compelled the bankers to remit the account in dispute directly to the department from the original petitioner's account with the bank. A grievance before the learned Single Judge was that after having passed the order dated 30.1.2009, which was dispatched on 11.2.2009 and was received by the original petitioner on 19.2.2009, the appellant authorities addressed a letter dated 23.3.2009 to the bank and asked the bankers to remit the amount quantified by virtue of the aforesaid orders. It appears that upon receipt of the instructions from the appellant authorities, the petitioner's banker remitted the amount lying in the petitioner's account as on 25.3.2009 to the appellant authorities. The amount so remitted was to the tune of Rs. 20,37,041.07p. The petitioner's grievance is that by the said demand, the appellant department compelled the petitioner's bank to bring down its account to zero balance. It also appears from the record that during the pendency of the petition before the learned Single Judge, the original petitioners availed of the remedy of statutory appeal. The original petitioners also preferred stay application before the appellate authority seeking stay of the operation of the impugned orders along with application u/s 7(O) praying for waiver and the condition of pre-deposit.

5. Learned Single Judge took the view that the action of the appellant authorities of compelling the bankers of the assessee to remit the amount before the prescribed period of limitation to file appeal expires, cannot be held as just and proper action. Learned Single Judge also took the view that although the Act may not have expressly provided for any time limit, for which, the adjudicating authority or the recovery officer should refrain from taking coercive action and / or before exercising powers u/s 8(F), it however, flows from the conjoint reading of the provisions in the statute granting remedy of appeal and the provision in the Rules, which prescribe period for filing appeal before the appeal tribunal, that the assessee's right to prefer appeal should not be marginalized and should not

be, in actual effect, frustrated and the appeal should not be rendered infructuous in spirit. by recovering the entire or substantial part of the quantified amount so that the appeal becomes a formality.

6. It appears that only on the above referred ground the petition was entertained and has been disposed of with certain directions without going into the merits of the main order passed by the appellant authority. The record also reveals that the statement was made by the learned Counsel for the appellant that the department is ready and willing to deposit, Without prejudice to the rights and contentions, the amount received from the petitioner's bankers before this High Court until the order is passed by the appellate Tribunal on petitioner's stay application and waiver application under sections 7(1) and 7(O) respectively. It also appears that the statement was made that the amount may be retained in this High Court with the registry until such order is passed by the appellate Tribunal. In light of this statement, learned Single Judge directed the appellant authorities to deposit the entire amount of Rs. 20,37,041.07p, which was received by the department from the petitioner's banker in the registry of the High Court on or before 2.5.2009. Learned Single Judge accordingly disposed of the entire petition.

7. It is this judgment and order passed by the learned Single Judge which has been made the subject-matter of challenge in the present Appeal.

8. We have heard learned Counsel Mr. Niral R. Mehta appearing for the appellant and Mr. Kishore M. Paul, learned Advocate appearing for the respondent.

9. Challenging the judgment and order passed by the learned Single Judge, learned Counsel for the appellant-department would submit that the learned Single Judge, without adjudicating the main controversy and the main challenge in the petition, could not have issued such ancillary directions and ought not to have disposed of the petition.

10. Learned Counsel would also submit that there is no provision in the Act, which prohibits or precludes the authority from taking further action in the matter after orders are passed for recovery of a particular amount till the period of appeal expires. Learned Counsel would submit that the entire interpretation put forward by the learned Single Judge would frustrate the object of enactment of the whole Act. Learned Counsel would also submit that the learned Single Judge has failed to consider the provisions of section 8(B) to 8(G), which provides for the mode of recovery of the amount. He would submit that looking to the scheme of the Act, it is amply clear that the intention of the legislature is to provide speedy recovery of the dues, payable to the employees towards provident fund.

11. Learned Counsel would also submit that the reliance placed by the learned Single Judge on two judgments of Bombay High Court and Karnataka High Court, in the matter of Ocean Driving Center Ltd. Vs. Union of India (UOI), The Commissioner of Customs, The Asstt. Commissioner of Customs and Dena Bank,

Indl. Finance Branch, and Charak Pharmaceuticals Vs. Union of India (UOI), is thoroughly misplaced and are not applicable in the facts and circumstances of the case.

12. Per contra, learned Counsel for the respondent - herein original writ petitioner would submit that the appeal is not maintainable because the learned Single Judge has passed the order based on the statement made by learned Counsel appearing for the department. According to him, it was a concession given by the learned Counsel for the department before the learned Single Judge, and therefore, it is not proper on part of the learned Counsel for the department to now resile from the same and challenge the order by way of an appeal.

13. Learned Counsel would also submit that the authorities cannot proceed further or cannot take any coercive steps until the statutory appeal period expires. It is further submitted that sometimes due to unavoidable circumstances and precarious situation, the assessee would not be in a position to immediately approach the Tribunal by way of an appeal and pray for appropriate relief in the matter, and in such a case during the interregnum period, if the authorities proceed further with recovery proceedings, then it would render the entire object of providing an appeal otiose.

14. Having given our anxious considerations and thoughts to the contentions of the respective Counsels for the parties, we are of the view that the judgment and order passed by the learned Single Judge warrants interference to a certain extent.

15. At the outset we may say that the entire petition ought not to have been disposed of by giving some ancillary relief to the original petitioners without adjudicating the main issue in the petition. It is no doubt true that in the original writ petition, the challenge was to the action of the department not waiting till the appeal period expired, but in our opinion that was ancillary and consequential to the main challenge, which was to the order passed under the provisions of section 7(A) of the Act. Section 7(A) is with regard to the determination of moneys due from employers. Section 7(A), Clause 1 reads as under:

[7-A. Determination of moneys due from employers.--[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,--

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purpose may conduct such inquiry as he may deem

necessary.]

Section 7(B) speaks about review of orders passed u/s 7-A. Section 7(1) provides for Appeals to Tribunal. Section 7(I)(1) reads as under:

[7-1. Appeals to Tribunal.--(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

Section 7(O) is with regard to deposit of amount due, on filing appeal. It reads as under:

[7-O. Deposit of amount due, on filing appeal--No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent, of the amount due from him as determined by an officer referred to in section 7-A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.]

Section 8 of the Act provide for mode of recovery of money due from employer.

16. What can be deduced on plain reading of the entire scheme of the Act, is that, any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7-A, or section 7-B or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order. Section 7(O) makes it a condition precedent before entertaining the appeal preferred by the employer by deposit of 75% of the amount due from the employer as determined by an officer referred to in section 7-A. There is nothing in the entire scheme of the Act, which precludes or debars the authority, to proceed further, after the orders are passed, quantifying the amount to be recovered, until the appeal period of 60 days expires.

17. We are of the view that if the authorities proceeded further for recovery of the amount before the appeal period expired, then no illegality can be said to have been committed by the authorities. Even mere filing of appeal cannot be construed as a prohibition for the authorities of the department to proceed further. We are of the view that even the statement made by learned Counsel for the Appellant authorities showing readiness and willingness to deposit the amount with the registry of the High Court, was unwarranted and without jurisdiction. We do not understand as to why the amount should be retained by the registry of the High Court. At the most, learned Single Judge could have directed the department to keep the amount in a separate no lien interest

bearing account, so that, if ultimately, the assessee succeeds in Appeal, the amount, with interest, can be refunded, or, if the Appeal fails, the department can retain the amount with interest. So far as the contention of the respondent as recorded in paragraph 14 is concerned, in our view, it would be difficult to accept the said contention. It is well-settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether injurious or otherwise by giving effect to the language used nor it is the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, it should presume that the provision was designed to effectuate a particular object or to meet a particular requirement.

18. We are of the view that the order passed u/s 7-A of the Act determining the amount due from any employer under any provision of the Act would be almost in the nature of a money decree. Though the provisions of the CPC may not be applicable so far as the proceedings under the Act is concerned, but some clue can be taken from Order XLI, Rule 5 of Civil Procedure Code, which relates to stay of proceedings and / or execution of judgment and decree. It provides that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree. Order XLI, Rule 5 provides that notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree. So far as the Act is concerned, section 7-O provides that even appeal cannot be entertained by a Tribunal unless 75% of the amount determined u/s 7-A is deposited.

19. We are also of the opinion that the directions which have been issued by the learned Single Judge are not falling within the scope of Article 226. Interim relief can be granted only in aid of and as ancillary to the main relief, which may be available to the party on final determination of his rights in a writ petition or any other proceeding. Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application.

20. Secondly, we are also of the view that once it was brought to the notice of the learned Single Judge that during the pendency of the petition, statutory appeal is already preferred, then no further orders or directions were necessary in the facts and circumstances of the case, and straightway, the original petitioner ought to have been relegated to pursue with the statutory remedy of appeal.

21. However, in view of the fact that the amount is lying deposited with the registry of this High Court to the tune of Rs. 20,37,041.07p, we deem it fit and

proper to direct the registry of this High Court to refund the entire amount to the appellant authority. On receipt of the amount, the appellant authority shall deposit the amount in a separate no lien interest bearing account, and keep the same till the final disposal of the appeal, preferred by the original petitioner - assessee.

22. In view of the aforesaid discussion, our final conclusions can be summarized as under:

(i) In the absence of any specific provision in the Act prohibiting or restraining the authorities from taking any further action of recovery of the amount due and payable by the employer, it is always permissible for the authorities to proceed ahead without waiting for the expiry of the statutory time period of appeal as provided u/s 7-I of the Act. Any other interpretation in this regard would render provisions and the object of the Act otiose.

(ii) Even mere filing of the appeal without obtaining any relief from the Appellate authority shall not preclude or prohibit the authorities to proceed further in the matter for recovery of the amount.

(iii) We deprecate the practice of Courts directing the respective parties in a given case to deposit the requisite amount with the registry of the High Court. In such cases, registry of the High Court cannot be a custodian of such amount deposited. If at all, any orders are necessary to be passed for deposit of the same, then directions can be issued to get the amount deposited in a separate no lien interest bearing account, which may be opened for the same.

(iv) It is settled law that Article 226 cannot be used for the purpose of giving interim relief as the only and final relief in application. An interim relief can be granted only in aid and as ancillary to the main relief, which may be available to the authority on final determination of his rights in a petition or any other proceedings.

23. With the above observations and findings, we dispose of this Appeal directing the registry of the High Court to refund the amount of Rs. 20,37,041.07p deposited by the appellant authority pursuant to the order passed by the learned Single Judge dated 1.5.2009 in Special Civil Application No. 3347 of 2009, and on receipt of the said amount, the appellant authority shall deposit the amount in a separate no lien interest bearing account till the final disposal of the statutory appeal, preferred by the original petitioner. Appeal stands disposed of accordingly with no order as to costs.