

(2006) 12 DEL CK 0077

In the Delhi High Court

Case No : Writ Petition (C) No. 1110 of 2000

Greenfields Public School Employees' Provident Fund Trust
and Mr. B. Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1)

Citation : (2006) 12 DEL CK 0077

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Rakesh Tikkoo and Puneet Aggarwal, for the Appellant; R.C. Chawla and Monika Garg, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the action of the Regional Provident Fund Commissioner of withdrawing the relaxation granted to the petitioner trust in terms of the Employees Provident Fund and Miscellaneous Provision Act 1952 (hereinafter called "the Act") and prayed for issuance of a writ quashing the order dated 4.9.1998 withdrawing the relaxation being enjoyed by the relaxation which was given to the trust and also for quashing of Non Bailable Warrants issued by the respondent No. 3. A further prayer was made for directing the respondent No. 1, UOI to grant exemption to it u/s 17(1)(a) of the Act.

2. Briefly, the facts relevant for the purpose of deciding this writ petition are that the petitioner trust seems to have been constituted to manage the provident fund of the employees of the Greenfield Public School. It appears that the trust applied for exemption u/s 17(1)(a) of the Act on the ground that the benefits being granted by the petitioner trust were not less favorable than the benefits as provided under the Act. Pending considerations of this application Regional

Provident Fund Commissioner, in exercise of powers under Para 79 of the (Employees Provident Fund) Scheme, granted relaxation to the petitioner Trust from the provisions of the Act w.e.f. 1.7.1990 subject to certain conditions. One of the conditions was that a copy of audited annual provident fund accounts together with the audited balance sheet of the establishment of each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of financial year. The financial year was to be from 1st of April to 31st of March. Some complaints were made by the staff of the school to RPFC regarding operation of the provident fund about which enquiry was conducted and it was found that the petitioner Trust was not complying with the terms and conditions of grant of relaxation. The relaxation was withdrawn by the impugned order hence the writ petition.

3. After filing of the writ petition, the petitioner was directed to file audited accounts in the Court and it transpired that the petitioner had not got its accounts audited as per the terms and conditions of the relaxation. The last audited accounts available with the petitioner were for the year 1996- 97 in the year 2004 as has been observed by this Court in order dated 27.5.2004 while petitioner was supposed to get its account audited every year regularly and file the same with Regional Provident Fund Commissioner. This Court vide order dated 30.7.2004 directed the petitioner to deposit a sum of Rs. 2 lacs with the Registry for auditing all its 8 years accounts and appointed M/s S.R.Dinodia and Company, K-39, Connaught Circus, Opposite Plaza Cinema, New Delhi as the auditors to audit the account after 31st March, 1996. This Court directed the petitioner to handover the last audited accounts to the above company along with the books of accounts from 1st April, 1996 onwards till 31st March, 2004 vide order dated 26th August, 2004 M/s Dinodia and Company was requested to audit the accounts of the petitioner and file the audit report in the Court with copy to parties. The counsel for the petitioner had informed that accounts had also been audited by M/s Chander Prakash and Company, C.A. of the petitioner. The Court directed the petitioner to file this audited accounts with M/s Dinodia and Company, who was directed to verify the same. Vide order dated 1.3.2005 the petitioner was directed to file affidavit to the fact whether compliance of Clause 10 and 11 of the letter of exemption has been done or not. M/s Dinodia and Company submitted an interim audit report dated 7th March, 2005 with the Court and stated that final audit report can be given only on the receipt of complete information from the petitioner which was not supplied so far. M/s Dinodia and Company stated that the proof of investment to the following extent was not made available to it for verification:

S. No.	Particulars	Amount (Rs.)	Year	1996-97	1	Tourism	FIN	15.75%	yearly
		3,00,000			2	GOI	10.75%	2,00,000	
					3	IFCI-96	14.4%	3,00,000	
					4	MTNL-12	series		
		5,00,000			5	NECLER-16	25%	2,00,000	
						Year 2001-02			
					6	DH-2	GOI	12.5%	80,000
					7	GOI	10.25%	1,09,300	
					8	IFCI	96	14.4%	3,00,000

4. There were discrepancies in the opening and closing balance as on 31.3.1997

in respect of accounts under different heads. M/s Dinodia and Company also pointed out that there was no Explanation and details available for verification in respect of following terms:

S. No. Particulars Amount (Rs.) 1 Receivable From PF office Account 3,63,722 2 Payable to PF office 6,14,324 3 Provision for Unclaimed amount 1,76,174 4 Commission Received 3000 5 Retention Money with PF Office 1699 Year 1997-98 6 Employee's subscription Unclaimed 6,114 7 Employer's Contribution Unclaimed 4735 8 Commission Received 4000 9 Interest accrued on special deposit 3,62,760 10 Interest accrued on Govt. Securities 4,32,629

5. M/s Dinodia and Company also pointed out that in the following case the monthly contribution to the EPF Account was not deposited by the trust:

S. No. Particulars Amount (Rs.) Year 1996-97 1 Chander Nagar Branch 14067 2 Navin Shahdra Branch 1,01,718 Year 1997-98 3 Chander Nagar Branch 2,27,761 4 Navin Shahdra Branch 1,47,837 Year 1998-99 5 Chander Nagar Branch 6,02,838 6 Navin Shahdra Branch 3,39,296 7 Vivek Vihar Branch 13921 Year 1999-00 8 Chander Nagar Branch 7,89,120 9 Navin Shahdra Branch 4,45,470 10 Vivek Vihar Branch 19934 Year 2000-01 11 Chander Nagar Branch 1,85,570 12 Navin Shahdra Branch 2,14,843 13 Vivek Vihar Branch 1176 Year 2001-02 14 Chander Nagar Branch 2,31,494 15 Navin Shahdra Branch 2,67,579

It is also stated in the report that the investment pattern of 25% in Central Government Securities, 15% in State Government Securities and 60% in other securities and bonds has not been followed by the Trust, in any of the years. Though copies of these reports were sent to Chander Prakash and Company, CA of the petitioner, to the petitioner's advocate and Mr. B. Kumar, Chairman of the trust in March, 2005 itself but this report was not placed by the petitioner on record. This was sent to the Registrar General but, it was not placed on the record by the Registry as well. After the receipt of this report the Counsel for the respondent submitted that the violation of the terms and conditions of relaxation was evident from the audit report. The trust was not being managed properly in the interest of the employees and withdrawal of relaxation was proper and justified. On the other hand the Counsel for the petitioner argued that the application was made by the petitioner to the appropriate Government in terms of Section 17(1)(a) for grant of exemption from the application of the Act. The application has not been decided since long. The exemption was granted by the Regional Provident Fund Commissioner only after taking a prima facie view of the scheme of the petitioner. The Regional Provident Fund Commissioner was not the authority to grant or refuse exemption. The exemption was to be granted or denied by the Government and not by the Regional Provident Fund Commissioner. The counsel for Union of India submitted that no application of the petitioner was pending disposal as per the records of the Government. Moreover the report of Regional Provident Fund Commissioner showed that the petitioner Trust was not complying with the terms and conditions of provisional exemption and the petitioner trust was not functioning properly. The elections

were not held in accordance with the rules and complaints were being received from the employees. The question of exemption Therefore, does not arise. The counsel for RPFC submitted that since it has come on record that no application was pending with the Government for the exemption, the interim relaxation granted by the RPFC being merely an interim measure has to be withdrawn. It was also submitted that the copy of application made by the petitioner to the appropriate Government has not been placed on record by the petitioner despite several opportunities given by this Court to produce the same. Therefore, the presumption is that the petitioner made no application for grant of exemption u/s 17 of the Act.

6. On the other hand the Counsel for the petitioner argued that the provisional/ interim exemption letter issued by RPFC, on record, shows that the petitioner did make an application u/s 17(1)(a) and that was the only reason for the RPFC to grant interim exemption. The letter of RPFC itself speaks about the making of application by the petitioner. The Government now cannot take the stand that no application was made. The non-availability of copy of the application with the petitioner was of no consequence since, the correspondence between the petitioner and RPFC would show that the request was made by an application and not otherwise.

7. Looking into the fact that the application of the petitioner for grant of exemption has neither been rejected nor allowed, rather the application seems to have been misplaced and Therefore, does not seem to have been considered by the appropriate Government, I consider that the petitioner should be permitted to make a fresh application for grant of exemption by the appropriate Government and the appropriate Government should decide this application within a period of three months after hearing the petitioner and the RPFC. The exemption which was granted by the RPFC as an interim measure cannot be allowed to continue in view of the interim audit report. However, RPFC in the meantime may scrutinize the record of Trust, but should not take any coercive measure. Once the application is decided by the appropriate Government, the RPFC would be free to act in accordance with law keeping in view the result of the application. The past conduct of the petitioner in maintaining the trust, the audit reports, and the report of M/s Dinodia and Company etc. are the factors which may be considered by the appropriate Government. It would not be appropriate for this Court to make any observation in respect of these. I, Therefore, direct that the petitioner shall make a fresh application to the appropriate Government within ten days from today, the appropriate Government shall dispose of the application of the petitioner after giving hearing to the petitioner, within a period of three months of making the application.

8. With the above directions, the writ petition is disposed of.