

(2004) 11 DEL CK 0084
In the Delhi High Court
Case No : WPC 16637 of 2004

Greysham (International) Pvt. Ltd.

APPELLANT

Vs

The Commissioner, Employees Provident Fund Organisation

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7A

Citation : (2004) 11 DEL CK 0084

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Rajiv Shukla and Mrinal Bharti, for the Appellant; Sidharth Mridul, Advocate for the Respondent No. 1 and R.C. Chawla, for the Respondent

Judgement

Swatanter Kumar, J.

1. Petitioner Greysham International Private Limited has filed this petition under Article 226-227 of the Constitution of India praying for issuance of a direction to the respondents and particularly the Provident Fund Appellate Tribunal, New Delhi, to hear the appeal and further that the recovery proceedings taken by the respondent in furtherance to the notice dated 10th March, 2004 and 13th April, 2004 be stayed till the disposal of the appeal, or further orders.

2. The basic reasons for making such a prayer before this Court is that Union of India has not appointed the Presiding Officer of The Employees Provident Fund Appellate Tribunal. Despite the fact that the petitioner has filed an appeal within limitation in the office of the said authority, the appeal has not been heard causing serious prejudice to the petitioner.

3. The petitioner is a private limited company duly registered under the Companies Act, 1956 and has been running its unit in the industrial area in the state of Uttar Pradesh at Meerut. Due to deficiency and curtailment in the orders from the customers and also due to financial constraints, the petitioner was

compelled to close down their unit in August'01. Proceedings u/s 7-A of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as "the Act") were initiated by the authorities on 10th March, 2004. Despite the fact that petitioners claimed to have paid the entire amount of Rs.69,35,636/-, the authorities arbitrarily issued a demand for a sum of Rs. 17,65,022/-. In furtherance to this demand, summons were issued by the recovering authority on 13th April, 2004 in terms of Section 14-B of the Act. Against the order dated 10th March, 2004 the petitioner filed an appeal in the office of the Appellate Tribunal which has not been heard till date. In these circumstances, the petitioner have been compelled to file the present petition. The appeal was filed in furtherance to the observations of the Court made in the writ petition earlier filed by the petitioner being Civil Writ No. 13625/2004. According to the petitioner their right to file a statutory appeal is being frustrated by the respondents for no fault of the petitioner. On the one hand, they are not hearing the appeal while on the other they are enforcing the recovery in furtherance to the order dated 10th March, 2004 which has been passed in an arbitrary manner and without proper adjudication. This has caused serious prejudice to the rights of the petitioner which are provided under the statute itself. On 13.04.2004, 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 226-227 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.

4. After passing of the above order number of writ petitions have been filed with the same grievance. Reference can be made to the present writ petition which is listed amongst other writ petitions which are being listed day to day before this Court. It is a matter of concern, but no different order is required to be passed in the present case than the order passed by this Court in another writ petition being WPC No.13245/2004 decided on 4.11.2004

5. For the reasons aforesaid, this writ petition is partially allowed with a direction to the Presiding Officer, Appellate Tribunal, to hear the appeal and interim application for stay as expeditiously as possible. The respondent shall not take any coercive steps for recovery of the demands in dispute, provided the petitioner deposits a sum of Rs.1,00,000/- with the respondents within a period of two weeks from the date of pronouncement of this order.

6. The writ petition is, accordingly, disposed of in the above terms while leaving the parties to bear their own costs.