
(2020) 01 JH CK 0258

In the Jharkhand High Court

Case No : Writ Petition (C) No. 62 Of 2020

Heavy Engineering Corporation Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 18-01-2020

Acts Referred:

Employees Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7Q, 14B

Citation : (2020) 01 JH CK 0258

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Jyoti Prasad Sinha, D.K.Malityar

Judgement

The present writ petition has been filed for issuance of direction upon the respondent no. 4- the Regional Provident Fund Commissioner (Recovery) through its Recovery Officer, Employees Provident Fund Organization (EPFO), an Authority under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short "the Act, 1952") not to proceed in a hasty and arbitrary manner with the order bearing no. JH/RO/RNC/RECOVERY/1465/2019/1397/34379 dated 23.12.2019 (Annexure- P-1 to the writ petition) issued to the respondent no. 5- the Branch Manager, State Bank of India, Hatia, Dhurwa, Ranchi and another order bearing no. JH/RO/RNC/RECOVERY/1465/2019/ 1398/34380 dated 23.12.2019 (Annexure-P-1A to the writ petition) issued to the respondent no. 6- the Branch Manager, Canara Bank, Dhurwa, Ranchi for attachment of the Bank account of the petitioner despite the fact that the petitioner has recently got revived/rehabilitated on 13.11.2009 under the Sick Industrial Companies (Special Provisions) Act, 1985 and had already deposited/paid an amount of Rs.13,09,51,974/- under Section 7Q of the Act, 1952 way back in the year 2005.

Mr. Anil Kumar Sinha, learned Senior Counsel for the petitioner, submits that irrespective of the issue of payment of damages under Section 14B of the Act, 1952, the case of the petitioner is that it being one of the oldest companies in

India had passed through a bad phase and was referred to BIFR in 1992. After a long litigation relating to winding up the petitioner company, the said issue ended in passing of order dated 13.11.2009 by a Bench of this Court in C.P. No. 05 of 2004 with W.P.(C) No. 4513 of 2004 by reasons of which the winding up proceeding against the petitioner company was disposed of and it was set free from winding up proceeding. The present attachment orders pertain to non-payment of damages by the petitioner company under Section 14B of the Act, 1952 for the period 1976 to 1999 during which it faced the sickness. Though the petitioner has taken recourse against the order dated 01.06.2010 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 842(3) 2003 and the order dated 12.11.2010 passed by the Chairman, Central Board of Trustees Employees Provident Fund Organization, New Delhi by filing different writ petitions which are pending before this Court, yet the steps are being taken by the Ministry of Heavy Industries and Public Enterprises and Department of Heavy Industry, Government of India, New Delhi to resolve the issue of waiver of the damages imposed upon the petitioner company relating to the period of its sickness. Learned Senior Counsel appearing on behalf of the petitioner company while producing a copy of D.O. letter dated 14.01.2020 issued by the Joint Secretary of the Ministry of Heavy Industries and Public Enterprises, Department of Heavy Industry, New Delhi written to the Central Provident Fund Commissioner, New Delhi, submits that vide said letter, the Central Provident Fund Commissioner has been apprised of the fact that the petitioner company is incurring operating losses since 2014-15 and it is not financially possible for company to make payment of such a huge amount. The attachment of the Bank account at the instance of the Regional Provident Fund Commission, Ranchi would lead to complete shutdown and closure of the company. Accordingly in the said circumstance, the Central Provident Fund Commissioner has been requested to intervene in the matter and reconsider the issue of waiver and damages of Rs.95.02 crore imposed by the EPFO and also for withdrawal of the prohibitory/ attachments orders issued to various Banks. It is further submitted that prior to approaching this Court, the petitioner had filed a writ petition before the High Court of Delhi being W.P.(C) No. 38 of 2020 which was dismissed as withdrawn vide order dated 06.01.2020 with liberty to the petitioner to approach the competent court. It was further observed in the said order that the respondents would remain bound by their statements and would not take any further coercive action against the petitioner till 14.01.2020.

Learned Senior Counsel for the petitioner thus submits that the impugned attachment orders may be stayed so that in the meantime, the aforesaid issue can be taken up at the highest level of the EPFO and the Ministry of Heavy Industries and Public Enterprises, Government of India.

Learned counsel appearing on behalf of the respondent- EPFO submits that the aforesaid amount imposed against the petitioner company under Section 14B of the Act, 1952 is completely justified and payable by it. The said amount has remained unpaid by the petitioner company for long and as such, the EPFO has

taken steps for recovery of the said amount by issuing Bank account attachment orders. He however, prays for four weeks' time to seek instruction and file a detailed counter affidavit in this regard.

In view of the said prayer, put up this case on 26.02.2020 under the heading "For Admission".

keeping in view that the matter regarding waiver of the damages imposed against the petitioner under Section 14B of the Act, 1952 is being taken up by the Ministry of Heavy Industries and Public Enterprises, Government of India, New Delhi with the Chairman, Employees Provident Fund Organization, the prohibitory/attachment orders bearing nos. JH/RO/RNC/RECOVERY/1465/2019/1397/34379 dated 23.12.2019 and JH/ RO/ RNC/ RECOVERY/ 1465/ 2019/ 1398/ 34380 dated 23.12.2019 are ordered to be stayed till the next fixed.