

(2005) 06 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 6469 of 2005

Hindustan Casting and Engineering Co. and Another	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7I, 7O

Citation : (2006) 110 FLR 969 : (2006) 3 LLJ 43

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Swamp Pal, for the Appellant; A.K. Gupta, for the Respondent

Judgement

Soumitra Pal, J.—In the writ petition, the Petitioners have prayed for several reliefs. The relevant prayers are as under:

(a) issue a writ or in the nature of certiorari commanding the respondent, their men or agent to certify and transmit all the records had before it in relating to the instant case for the purpose of careful scrutiny by this Hon"ble Court and by rendering conscionable justice to the Petitioner by restraining the Respondent Authorities not to take any action and or actions till disposal of the appeal pending before the learned Appellate Tribunal.

(b) A writ or in the nature of mandamus directing the Respondent Provident Fund Authorities not to take any action on the basis of Order dated February 25, 2003 till disposal of the appeal pending before the learned Appellate Tribunal.

(c) A writ in the nature of mandamus commanding the Respondent Provident Fund Authorities to cancel, rescind, withdraw and or quash the impugned notice dated May 6, 2003 and December 27, 2004 being Annexure P-11 and P-14 to this Writ petition.

2. The grievance of the Petitioners is not with standing the fact that an appeal has been preferred u/s 7-I of the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952 (for short "the Act") against an order dated February 25, 2003 passed by the Regional Provident Fund Commissioner, Howrah and although an application has also been filed before the learned Tribunal for waiving and/or reducing the amount of deposit, yet the Provident Fund authorities by letters dated May 6, 2003 and December 27, 2004 have requested for payment of the amount due. It is submitted that the learned Tribunal should be directed to dispose of the application for waiver and/or reduction of deposit pending disposal of the application, the Respondents should be directed not to initiate proceedings for recovery.

3. Mr. Gupta submits that the Petitioners should be directed to deposit a part of the amount due since determined by the authorities.

Heard the learned advocates for parties. Section 7-O of the Act is 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.

4. Section 7-O of the Act, thus, postulates that seventy five per cent of the amount due as determined by an officer has to be deposited by the employer while filing an appeal. However, it is significant that the proviso to the Section confers power upon the Tribunal to waive or reduce such deposit.

5. In my view as the Tribunal has been given the power to waive or reduce the deposit under the proviso to Section 7-O of the Act, if an application for waiver for reduction of such deposit is filed during the pendency of an appeal, it is not proper on the part of the authorities to demand payment of the dues. Any step taken by the authorities for recovery during the pendency of application for waiver or reduction of deposit is contrary to proviso to Section 7-O of the Act, as thereby, filing of an application for waiver or reduction of deposit shall be an exercise in futility.

6. In the instant case, an appeal u/s 7-I of the Act has been filed before the Tribunal in 2003. An application for waiver and/or reduction of the amount of deposit has also been filed. Since the application is pending, it was unjust and improper on the part of the authorities in issuing the letters dated May 6, 2003 and December 27, 2004 seeking deposit of the amount due from the employer as determined by the authorities.

7. I, therefore, dispose of the writ petition by directing the learned Tribunal to take up the application for waiver and/or reduction of deposit filed by the petitioner as expeditiously as possible, preferably within a period of six months from the date of communication of this order. Till such application is disposed of the respondent authorities are restrained from taking any coercive action.

8. I make it clear that I have not gone into the merits of the case and all the points are kept open to be decided by the learned Tribunal.
9. Since the Respondents were not called upon to file any affidavit in opposition controverting the allegations made in the writ petition, the allegations are deemed to have been denied by the respondents.
10. Urgent xerox certified copy of this order be given to the appearing parties, if applied for, on priority basis.