(2004) 07 CAL CK 0034

In the Calcutta High Court

Case No : C.R.R. No. 2142 of 2003

Howrah Motor Company Limited and Others	APPELLANT
Vs	
Samir Kumar Das	RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(2A), 14A(2)

Citation : (2004) 4 CHN 291

Hon'ble Judges : Pranab Kumar Deb, J

Bench : Single Bench

Advocate : Sekhar Basu and Soubhik Mitter, for the Appellant;None, for the Respondent

Judgement

Pranab Kumar Deb, J.—This instant application is for quashing of the proceeding being C/1853/2000 pending in the Court of the learned Metropolitan Magistrate, 6th Court, Calcutta.

2. A complaint u/s 14(2A) read with Section 14A(2) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 was lodged against the petitioners by the Inspector of Employees'' Provident Fund Miscellaneous Provisions Act, 1952. It was alleged that the petitioners being employers failed to comply with certain requirements in respect of the said establishment:- (a) to transfer monthly Provident Fund contributions amounting to Rs. 1,56,994/- (Employee''s Share) and Rs. 1,08,547/- (Employer''s Share) and Rs. 17,19,794/- to the Board of Trustees for the months of November, 1998 to January, 1999 in contravention of the relevant conditions and exemption read with Government of India Notification issued under subsection (3) of Section 17 of the said Act and (b) to pay Inspection charges amounting to Rs. 778/- for the month of January, 1999 in contravention of the provision of Clause (a) of Sub-section (3) of Section 17 of the said Act read with the relevant Government of India Notification issued in this regard.

3. Challenging the maintainability of the case, the petitioners made an application before the learned Metropolitan Magistrate with a prayer for dropping of the proceeding. It was contended before the Court below that the petitioners were restrained from depositing Employees'' Provident Fund dues in view of the order of restraint passed by the Hon''ble Court in connection with C. S. No. 384/98. It was also contended that they approached the Employees Provident Fund Authorities for permission to pay the dues by instalments. On such prayer for depositing the dues in instalments being granted by the Provident Fund Authorities, the entire dues were deposited by them. In view of the payment of the entire dues, the petitioners prayed for dropping of the proceeding. The prayer for dropping of the proceeding, however, was challenged by the State.

4. Learned Magistrate vide his order dated 10.06.2003 duly recorded the fact that payment of the entire dues had been made by instalments. However, considering that there was a delay in payment of the dues, learned Magistrate viewed that it was too early to form any opinion as to the maintainability of the case.

5. Aggrieved by the aforesaid order, the petitioners have filed the instant revisional application for quashing of the entire proceeding.

6. Appearing on behalf of the petitioners Mr. Sekhar Basu, Senior Advocate, has submitted that in view of the payment of the entire dues by the petitioners, the proceeding against them for non-payment of the Provident Fund dues should have been dropped. It is contended that the Court below ought to have taken into consideration that circumstances prevented the petitioners from depositing the dues. In the wake of the order of injunction passed by the Hon''ble Court, the petitioners were restrained from handling the bank accounts. It was only after the engagement of the Special Officer in terms of the order of the Hon''ble Court that the difficulties in payment of dues were sorted out. In support of his contention that the proceeding has now become meaningless and unwarranted. Mr. Basu has referred to the ruling of Jasoda Glass & Silicate & Others vs. Regional Provident Fund Commissioner & Others, reported in 2002(2) CHN 407. In the aforesaid case, it was viewed that in view of the payment of the outstanding dues, the proceeding should be dropped.

7. Admittedly, more than 17 lakhs of rupees had fallen due because of non-payment of the Employees'' Provident Fund dues in time. It appears from the copy of the order passed in C. S. 384/98 that a Special Officer was appointed for disbursement of the salary and other dues of the employees. It, however, transpires from the copy of the order passed in aforesaid case being T1161/98 (C.S. 384/98) that the respondents were restrained from withdrawing the amount from the banks. Copies of the challans furnished before the Court do indicate that the entire dues amounting to Rs. 17 lakhs and odd were duly paid by instalments. It further appears from the copy of the order as listed in Annexure ''H'' to the petition that in view of the payment made by the Establishment and its intention to liquidate the remaining dues as early as

possible, permission was accorded to liquidate remaining dues by six monthly instalments. Consequently; the warrant of arrest issued against petitioner called Raghunath De was withdrawn.

8. There was, no doubt, delay in payment of provident-fund dues. Things, however, were not within the effective control of the petitioners either. Since there was an order of injunction restraining the petitioners from withdrawing the amount from bank followed by the order of appointment of a Special Officer, the petitioners were duly prevented from clearing their dues earlier. The problem was eventually sorted out with the appointment of a Special Officer overseeing the disbursement of salary and other dues of the employees. Meanwhile, the Provident Fund Authorities also accorded permission to the petitioners to pay the dues by instalments. The entire amounts having been paid in instalments as evidenced by the copy of the challans, there cannot be any justification for further continuation of the proceeding against them. With the payment of the entire dues nothing remains outstanding, Further continuation of the proceeding will be sheer wastage of time and money. In fact in Adoni Cotton Mills Limited vs. Regional Provident Fund Commissioner & Others, reported in 1995 Suppl(4) SCC 550, the Hon''ble Supreme Court quashed the proceeding in view of the payment of the dues being partly deposited and partly secured.

9. Judging all the facts and circumstances and having regard to the fact that the entire dues have been paid by the petitioners in terms of the order of the Regional Provident Fund Authorities, there should not be any justification for further continuation of the proceeding. Accordingly, the Order dated 10.6.2003 whereby the learned Magistrate rejected the application for dropping of the proceeding is set aside and consequently, the entire proceeding being C/1883-2000 is hereby quashed.

10. The revisional application is accordingly disposed of.

11. Let urgent xerox certified copy of this order be given to the petitioners.

