

(2007) 12 OHC CK 0046

In the Orissa High Court

Case No : Writ Petition (C) No. 15497 of 2007

Indira English Medium School and Another

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2008) 1 OLR 375 Supp

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : A.K. Patnaik, P.K. Patnaik, S. Patnaik, B. Mohanty, N. Senapati, R.P. Sahu and S.K. Dash, for the Appellant; S.K. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—When this matter was taken up, in the first hour Mr. A. Patnaik, learned Counsel for the Petitioner was directed to serve a copy of the writ petition on Mr. S.K. Patnaik, learned Counsel, who usually appears on behalf of the opposite parties and inform him to remain present in the Court in the second hour, when the matter shall be taken up.

2. The Petitioner, who was also the Petitioner in O.J.C. No. 3230 of 2000, has filed this writ petition for a direction to the opposite parties "to show cause as to why the order under Annexures 3 and 6 and the summon dated 17.09.2007 issued by opposite party No. 1/Regional Provident Fund Commissioner shall not be declared as illegal, arbitrary and the same be quashed".

3. Heard Mr. A. Patnaik, learned Counsel for the Petitioner and Mr. S.K. Patnaik, learned Counsel for the opposite parties.

4. Mr. Patnaik, learned Counsel appearing on behalf of the Petitioner submits that earlier, the Petitioner had approached this Court in O.J.C. No. 3230 of 2000 challenging the selfsame orders dated 27.01.2000 and 28.03.2000 under

Annexure-3 and 6, which were passed by opposite party No. 1 in a proceeding u/s 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") and in an application u/s 7-B of the Act which was filed for review of the order passed in the proceeding u/s 7-A of the Act. When the matter (O.J.C. No. 3230 of 2000) was taken up for hearing on 08.08.2007, Mr. J. Patnaik, learned Senior Advocate appearing on behalf of the Petitioner submitted that "the Petitioner is no more interested to proceed with the case and wants to withdraw the same". Learned Counsel also filed a memorandum to that effect in the Court on that day. Mr. Samal, learned Counsel appearing on behalf of the opposite party No. 1 did not object to the above submissions, made by Mr. Patnaik, learned Senior Advocate, with regard to the withdrawal of the writ petition. Accordingly, O.J.C. No. 3230 of 2000 was dismissed as withdrawn vide order dated 08.08.2007.

5. As it appears from the contents of this writ petition, the Petitioner while challenging the orders under Annexures-3 and 6 once again, which were earlier challenged by him in O.J.C. No. 3230 of 2000, has also challenged the "summon in Para-83 of the second Schedule of the Income Tax Act, 1961 dated 17.09.2007" issued by Recovery Officer in the Office of the Employees Provident Fund Organization.

6. Mr. A. Patnaik, learned Counsel during the course of hearing brought to my notice of the order sheets of O.J.C. 3230 of 2000 and submits that the submissions made by Mr. J. Patnaik, learned Senior Advocate on 08.08.2007 was due to miscommunication between the party (Petitioner) and his lawyer. In that view of the matter, this Court can entertain this writ petition, which has been filed under Articles 226 and 227 of the Constitution of India, keeping in view of the fact that due to the mistake committed by a lawyer the aggrieved party should not suffer. Mr. Patnaik, learned Counsel further submits that since the Petitioner was not given a chance of hearing and the representative of the Petitioner, who was present at the time of hearing of the proceeding u/s 7-A of the Act, was not allowed to participate in the proceeding, even though earlier writ petition was disposed of on the submission of Mr. J. Patnaik, learned Senior Advocate, on instruction from the Petitioner to withdraw the writ petition, the self same order can be challenged once again and accordingly this writ petition has been filed challenging the earlier orders passed in the proceeding u/s 7-A as well as in the proceeding for review of the order u/s 7-B of the Act, while challenging the summon issued in the Recovery proceeding.

7. Mr. S.K. Patnaik, learned Counsel appearing on behalf of the opposite parties submits that once a writ petition was filed challenging the order passed in the proceedings u/s 7-A as well as 7-B and the said case was dismissed as withdrawn on the basis of the submissions made by Mr. J. Patnaik, learned Senior Advocate appearing on behalf of the Petitioner, on instruction of the Petitioner, at that stage, those two orders have become final and binding for the parties in all respect and this writ petition which has been filed for the selfsame relief as has

been claimed by the Petitioner in the earlier writ petition, is not maintainable in the eye of law. The present summon served on the Petitioner in the Recovery proceeding which is also under challenge in this writ petition, is a consequence of those two orders and since both the orders have become final in all respect, the consequential proceeding for recovery automatically follows. In that view of the matter, his Court can no more pass any order relating to the said proceeding for recovery.

8. Considering the submissions made by the learned Counsel for both the parties and after going through the entire order sheets of O.J.C. No. 3230 of 2000 as well as the facts and circumstances narrated in the present writ petition, I am of the considered view that the order dated 27.01.2000 passed by the Regional Provident Fund Commissioner, Orissa in a proceeding initiated against the present Petitioner u/s 7-A of the Act (Annexure-3) and the order dated 28.03.2000 passed by the said authority on an application filed by the present Petitioner for review of the said order dated 27.01.2000 u/s 7-B of the Act have become final for all practical purposes and binding for the parties on withdrawal of O.J.C. No. 3230 of 2000 filed by the Petitioner challenging the above said two orders.

9. Once both the above orders have become final for all practical purpose, the consequential result is the issuance of summon by the Recovery Officer in the recovery proceeding. As such this Court cannot also interfere with the same.

10. In view of the above, I am not inclined to entertain this writ petition since the same is devoid of any merit and is accordingly dismissed.

11. At this stage, Mr. Patnaik, learned Counsel for the Petitioner submits that the Petitioner may be given a chance to approach the appellate authority for redressal of his grievance in accordance with law.

12. Keeping in view the above facts and circumstances of the case, this Court is not in a position to grant such relief to the Petitioner, as is being prayed for by the learned Counsel. However, this order shall not be a bar for the Petitioner to approach the appropriate forum for redressal of his grievance in accordance with law, if so advised, for which this Court expresses no opinion.