

(2015) 12 DEL CK 0150

In the Delhi High Court

Case No : LPA 880, 762, 848 and 868/2015

Jai Balaji Security Services (Regd.) and Others

APPELLANT

Vs

A.P.F.C. Delhi (North) and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Citation : (2016) 154 DRJ 110 : (2016) 148 FLR 644 : (2016) LLR 118

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Manish Malhotra, Advocate, for the Appellant; Keshav Mohan and Anindita Barman, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 29072/2015 in LPA No. 868/2015

For the reasons stated in the application delay of 24 days in filing the appeal is condoned. LPA Nos. 880/2015, 762/2015, 848/2015 & 868/2015

1. The above captioned four appeals are being disposed of by a composite order because a common question of law arises for consideration in the appeals. The appellants of LPA No. 880/2015 had challenged an order passed under Section 14-B and Section 7-Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) before the Employees Provident Fund Appellate Tribunal. The order levied damages for late deposit of the provident fund dues and raised a demand towards interest. On an application filed for stay of the impugned demand, vide order dated September 21, 2015 the Appellate Tribunal directed that not more than 50% of the amount can be recovered. Said order was challenged by way of a writ petition which has been dismissed vide impugned order dated October 15, 2015.

2. Challenge in LPA No. 762/2015 by the Central Board of Trustees is to an order

dated September 07, 2015 passed by the learned Single Judge in a writ petition filed by the respondent of said appeal, laying a challenge to an order dated August 18, 2015 passed by the Employees Provident Fund Appellate Tribunal staying operation of an order levying damages under Section 14-B of the Act upon 50% of the amount raised in the demand being deposited. The learned Single Judge has held that the appeal had to be heard without insisting on any deposit because the embargo put by Section 7-O of the Act to an appeal being entertained only after 75% of the demand raised was deposited was confined to orders passed under Section 7-A of the Act.

3. Challenge by the appellant of LPA No. 848/2015 is to an order dated October 14, 2015 passed by the learned Single Judge restraining the respondent of the appeal to recover more than 30% of the amount assessed under Section 14-B and Section 7-Q of the Act. We note that vide order dated October 08, 2015, the Employees Provident Fund Appellate Tribunal had restrained the respondent of the said appeal to recover more than 30% of the assessed amount.

4. Challenge in LPA No. 868/2015 is to an order dated August 28, 2015 passed by the learned Single Judge setting aside the order dated July 22, 2015 passed by the Employees Provident Fund Appellate Tribunal directing 40% of the amount assessed under Section 14-B of the Act to be deposited as a condition precedent for stay of the demand raised.

5. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is an Act providing for the institution of Provident Funds, Pension Funds and Deposit - Linked Insurance Fund for employees in factories and other establishments.

6. As per Section 5 of the Act the Central Government is empowered to frame a scheme to be called the Employees Provident Fund Scheme for the establishment of provision funds under the Act for employees covered by the Act. The said fund is administered by a Central Board constituted as per Section 5-A. As per Section 5-D, the Central Government is empowered to appoint a Central Provident Fund Commissioner who acts as the Chief Executive Officer of the Central Board. As per Section 7-A of the Act the Central Provident Fund Commissioner or any Additional Central Provident Fund Commissioner or the Deputy Provident Fund Commissioner or the Regional Provident Fund Commissioner or the Assistant Provident Fund Commissioner may by order decide disputes regarding the applicability of the Act to any establishment and determine the amount due from any employer under the provisions of the Act after conducting such inquiry as may be necessary.

7. An Employee Provident Fund Appellate Tribunal is constituted under Section 7-D of the Act to exercise the powers and discharge the functions conferred on the Tribunal by the Act.

8. The authorities under the Act are competent to pass orders under Section 7-A of the Act i.e. to determine money due from the employers under the Act. As per Section 7-Q interest on the amount which has become due can be assessed by

the authorities under the Act. Damages by way of penalties can be assessed by the Competent Authority under Section 14-B Act.

9. As per Section 7-I an appeal lies to the Tribunal against, inter-alia, orders passed under Section 7-A, Section 7-B, Section 7-C, Section 7-Q and Section 14-B of the Act. Section 7-I reads as under:--

"7-I Appeals to Tribunal -

(2) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to Sub-section (3), or sub-Section (4) of Section 1, or Section 3, or sub-Section (1) of Section 7-A, or Section 7-B except an order rejecting an application for review referred to in sub-Section (5) thereof or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-Section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

10. Section 7-O of the Act reads 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."

11. A perusal of Section 7-O reveals that the embargo on the entertainment of an appeal by the Appellate Tribunal concerning pre-deposit of 75% of the amount due as determined by an officer referred to in Section 7-A is restricted to said Section and does not embrace Section 7-Q or Section 14-B of the Act.

12. The contention advanced by Sh. R.C. Chawla learned counsel for the Employees Provident Fund Commissioner that under Section 7-A(1)(b) of the Act the order contemplated is one which determines the amount due from an employer and thus every order passed would be in exercise of the power under Section 7-A of the Act is noted and rejected for the reason Section 7-I itself treats orders passed under Section 7-A, Section 7-B, Section 7-C and Section 14-B of the Act as separate and independent orders. There is a legislative omission in not amending Section 7-I when on July 01, 1997 Section 7-Q was inserted in the Act. One would have expected an amendment to be made in Section 7-I to make a reference to an order passed under Section 7-Q of the Act, but we find that under Section 7-Q of the Act interest can be levied and thus the order under Section 7-Q would not be an independent order as it would be inherently linked to an order passed either under Section 7-A or Section 14-B of the Act. Said view has been taken by the Supreme Court in the decision dated April 05, 2010 in CA NO.3001/2010 M/s. Shiva Herbal Research Laboratory v. Assistant P.F.

Commercial.

13. We therefore hardly see any scope for an argument that Section 7-O creates an embargo to the entertainment of an appeal by the Tribunal unless 75% of the amount due as determined by an officer under Section 7-Q and Section 14-B is deposited, subject to the Appellate Tribunal passing an order as per the Proviso to Section 7-O of the Act.

14. Notwithstanding that, to remove the doubt in the mind of a doubting Thomas Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 gives clarity by stipulating as under:--

"7. Fee, time for filing appeal, deposit of amount due on filing appeal -

(1) Every appeal filed with the Registrar shall be accompanied by a free of Rupees Five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order prefer an appeal to the Tribunal :

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days :

Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7A :

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O."

15. But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7-Q and Section 14-B of the Act, but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order

concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders.

16. There is no confusion on the legal provisions and their interpretation. Thus, the order dated September 21, 2015 passed by the Appellate Tribunal which has been challenged by the appellant of LPA No. 880/2015 is a legal and valid order because it has been passed by the Appellate Tribunal not with respect to its powers under the proviso to Section 7-O of the Act. The order has been passed on an application filed by the appellant of the appeal praying for a stay of the demand raised under Section 7-Q and Section 14-B of the Act.

17. As regards LPA No. 762/2015 we note that vide order dated August 18, 2015 passed by the Appellate Tribunal, it has exercised power with respect to an application filed by the respondent of the said appeal praying for an interim order staying the demand raised under Section 14-B of the Act. The Appellate Tribunal has not exercised power under the Proviso to Section 7-O of the Act. We note that the appellant of LPA No. 762/2015 had argued before the Appellate Tribunal that in view of Section 7-O of the Act it could not entertain the appeal unless 75% of the demand raised was deposited. The Appellate Tribunal has noted the argument, but has not passed the order with respect to the power vested in it under the Proviso to Section 7-O. The impugned order dated September 07, 2015 passed by the learned Single Judge is totally misdirected inasmuch as the learned Single Judge has proceeded as if the order impugned before him was passed with reference to Section 7-O of the Act.

18. As noted above in LPA No. 848/2015 the challenged impugned order dated October 14, 2015 passed by the learned Single Judge is in a writ petition filed by the appellant to an order dated October 08, 2015 passed by the Appellate Tribunal directing 30% of the amount assessed under Section 7-Q and Section 14-B of the Act to be deposited as a condition of stay of the demand. The order passed by the Appellate Tribunal is not with reference to its powers under the Proviso to Section 7-O of the Act. As regards LPA No. 868/2015 we find that the learned Single Judge in passing the impugned order dated August 28, 2015 has been misled to understand the order dated July 22, 2015 passed by the Appellate Tribunal which stayed 60% of the demand on 40% being deposited concerning an order passed under Section 14-B Act.

19. We reiterate once again. Section 7-O of the Act would apply only to orders passed under Section 7-A of the Act and condition of pre-deposit of 75% of the amount assessed would be a condition for entertaining the appeal by the Appellate Tribunal subject to the Tribunal passing an order under the Proviso to the said Section. The said order is distinct from an order passed by the Appellate Tribunal in an application seeking interim directions where demands raised under Section 7-Q and Section 14-B of the Act are challenged. Said orders are not passed in exercise of the power under the Proviso to Section 7-O of the Act.

20. Thus, LPA No. 880/2015 and LPA No. 848/2015 are dismissed. LPA No.

868/2015 and LPA No. 762/2015 are allowed. The orders passed by the Appellate Authority which have been set aside by the learned Single Judge concerning orders passed in said two appeals are restored. Compliance would be made with said orders now within four weeks.

CM No. 29723/2015 in LPA No. 880/2015

CM No. 24849/2015 in LPA No. 762/2015

CM No. 28190/2015 in LPA No. 848/2015

CM No. 29070/2015 in LPA No. 868/2015

Dismissed as infructuous.