(2010) 07 CAL CK 0050

In the Calcutta High Court

Case No : C.R. R. No. 2531 of 2008 and C.R.A.N. No. 750 of 2009, C.R. R. No. 2532 of 2008 and C.R.A.N. No. 751 of 2009, C.R. R. No. 2533 of 2008 and C.R.A.N. No. 752 of 2009, C.R. R. No. 2534 of 2008 and C.R.A.N. No. 753 of 2009, C.R. R. No. 2535 of 2008 and C.R.A.

Kartick Ch. Das and Another APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(2), 7A, 7Q

Citation : (2010) 4 CALLT 267

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Dinabandhu Chowdhury, for the Appellant;S.C. Prasad, for the opposite party No. 2 and 3 and Krishna Ghosh, for the opposite party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—These applications are at the instance of the accused persons and are directed against the proceedings being complaint case Nos. 974 C/2007, 975 C/2007, 976 C/2007, 977 C/2007, 978 C/2007 and 979 C/2007. All the six applications are disposed of by this common judgment as the common question of law is involved in the matters.

2. The applicants have preferred these applications for quashing the proceedings lodged against them u/s 14(2) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 for non-filing of monthly and yearly Returns for the period mentioned in the respective proceedings. The applicants have contended that they submitted the said Returns from time to time but an ex parte order was passed against them u/s 7A of the said Act. Thereafter the applicants preferred review and they were given a chance of hearing and then they complied accordingly. Ultimately, on the basis of the statements available on

the record, the concerned Regional Provident Fund Commissioner passed orders u/s 7A of the said Act. One Samiran Mukherjee, opposite party No. 3 herein, came to the house of the applicant No. 1 and demanded Rs. 10,000/- as bribe and for non-payment of such amount by the applicants, so much criminal proceedings were lodged against them only for harassment. When an order u/s 7A of the said Act was passed, there was no need of filing any Return as called for because after passing of the order u/s 7A of the said Act, the filing of the Return would not serve any purpose at all. Moreover, from the order u/s 7A of the Act it would appear that the applicants had paid all the dues and filed pay statements. Even after attachment of a sum of Rs. 2,07,134/- from the bank account of the applicants an excess payment had been recovered.

3. Under the circumstances, the applicants preferred one revisional application bearing C.R.R. No. 4220 of 2007 before the Hon''ble Court for quashing the proceedings bearing the complaint case Nos. 974 C/2007, 975 C/2007, 976 C/2007, 977 C/2007, 978 C/2007 and 979 C/2007 and thereafter as per observation of the Hon''ble Court, the applicants withdrew that revisional application and filed these six applications upon taking permission from the Hon''ble Court. Now, they have prayed for quashing of the said six criminal proceedings by these applications.

4. Mr. Chowdhury, appearing on behalf of the applicants, submitted that it is an admitted position that the proceedings u/s 7A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 were started against the applicants for non-submission of monthly and yearly Returns for the period from March, 1999 to March, 2007. Admittedly, the initial proceedings u/s 7A were for the period from March, 1999 to June, 2005. Mr. Chowdhury contended that as per observations of the Regional Provident Fund Commissioner and the records it revealed that wages and dues and pay statements from March, 1999 to June, 2005, had already been filed and those are available with the record. It was also observed that at the time of passing the final order, the Returns became due for the subsequent periods and dues were assessed up to March, 2007 and those were included in the order u/s 7A. According to such statement, the net dues appeared to be of Rs. 3,51,474/-. Thereafter certain amount was paid and there were still some dues and then an amount of Rs. 2,07,134/- was attached from the bank account of the applicants. So, after such attachment, an excess amount had been recovered and this would also appear from the materials on record (vide Annexure C). Mr. Chowdhury also contended that when there were no dues, the Regional Provident Fund Commissioner started the proceedings u/s 7Q of the said Act in the said proceedings u/s 7A of the Act and found further dues. So the steps taken by the concerned Regional Provident Fund Commissioner clearly indicate that they had adopted a mala fide attitude when the illegal demand of bribe made by Sri Samiran Mukherjee was not fulfilled.

5. On the other hand, Mr. Prasad, appearing on behalf of the opposite party No. 2 & 3 submitted that whenever the applicants failed to submit Returns as required

under the provisions of the Act, the Regional Provident Fund Commissioner would be at liberty to lodge appropriate proceedings and that was done in this case and there was no question of harassment at all. The allegation for demand of bribe by an officer, namely, Sri Samiran Mukherjee, is totally baseless. As Returns were not submitted, the Regional Provident Fund Commissioner was at liberty to take appropriate steps under the provisions of the Act and such steps were actually taken. Previously, the applicants preferred one application for quashing the proceedings and that application was withdrawn by the applicants. The Returns filed by the applicants clearly indicate that such Returns were filed on 10.12.2007 whereas the proceedings u/s 7A was completed on 20.09.2007. Even the steps for initiation of criminal proceedings were taken earlier than the date of passing of the order u/s 7A of the act on 20.09.2007. In fact, proposal was given for lodging the criminal proceedings in August, 2007. Previously, the applicants filed another writ application being W.P. No. 27415(W) of 2007 and that application was disposed of by Justice D. Kar Gupta by an order dated 28.01.2008 thereby directing to give the applicants an opportunity of hearing and then to dispose of the matter within a specified period. The learned Single Judge did not go into the merit of the writ application. So the Regional Provident Fund Commissioner was within his right to file the cases and it was done in accordance with law. So, the application is not maintainable. Therefore, the applications should be dismissed.

6. Mrs. Krishna Ghosh, appearing on behalf of the State, submitted that the Court should pass appropriate orders as it thought fit and proper.

7. After considering the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that admittedly, a proceeding u/s 7A of the said Act was initiated against the applicants initially for non-submission of Return for the period commencing from March, 1999 to June, 2005. During pendency of that proceeding the applicants made certain payments. Thereafter the concerned Regional Provident Fund Commissioner passed orders observing that wages, dues and deposit statements for the period from March, 1999 to June, 2005 are already on record. Subsequently, the authority u/s 7A of the Act decided to extend the period with regard to the notice u/s 7A of the Act up to March, 2007. Thereafter the net dues was calculated up to March, 2007 amounting to Rs. 3,51,474/-. After payment by the applicants and by an order of attachment of the bank account of the applicants, the dues had been liquidated and even an excess amount of Rs. 62,983/- had been recovered (vide Annexure C to the applicants). Then and thereafter the authority u/s 7A of the Act calculated the interest to be payable over the dues u/s 7Q. It is pertinent to mention that such findings were concluded on 20.09.2007.

8. It is interesting to note that the petition of complaint u/s 14(2) of the said Act lodged on 19.10.2007, that is, after passing of the order u/s 7A of the Act, on 20.09.2007. When the proceeding u/s 7A was concluded on the basis of the dues, payments and deposit statements filed by the applicants, the question of

filing subsequent Returns after 20.09.2007 was practically meaningless. But the authority u/s 7A of the Act included the steps u/s 7Q in the said proceedings u/s 7A only to show that the applicants were to make further payment. So, such conduct of the Fund Authority clearly shows that the authority u/s 7A of the Act tried to harass the applicants.

9. Mr. Prasad contended that the employer, the applicant No. 1 herein, had deducted the dues from the employees but the same was not deposited with the concerned authority and as such an FIR under Sections 406 & 409 was lodged in May, 2007 and that case is pending. Such fact indicates violation of the provisions of the Act. In this respect, upon due consideration of the materials on record, I am of the opinion that if any criminal case for mischief is filed it shall be decided in accordance with law and the present applications are concerned with non-filing of monthly and yearly Returns. So, we should limit our observations to that respect only.

10. In fact, after passing of the order by a learned Single Bench dated 28.01.2008 in the W.P. No. 27415(W) of 2007, the authority u/s 7A gave opportunity to the applicants to place the materials in support of their contention that they had submitted Returns. On the basis of that situation and upon consideration of the materials placed by the authority u/s 7A of the Act, the Regional Provident Fund Commissioner came to the conclusion that there were no dues and that after attachment, an excess amount of Rs. 62,983.00 had been recovered. Therefore, after conclusion of the proceeding u/s 7A and subsequent payment and attachment, there is no justification to proceed with the criminal proceedings.

11. The contention of Mr. Prasad to the effect that proposal for filing the complaint cases had been adopted before the completion of proceedings under the Section 7A read with 7Q proceedings, cannot be accepted because of the fact that the proceedings u/s 7A were concluded on 20.09.2007 whereas from the petitions of complaint were initiated on 19.10.2007, that is, after conclusion of the proceedings u/s 7A of the Act. Several cases were lodged against the applicants for different periods covering from 1999 to 2007. I find that the applicants submitted Returns on 10.12.2007. It is the specific contention of the applicants that previously they had filed Returns and when the Authority demanded Returns again, they submitted the same on 10.12.2007. The fact that the applicants filed Returns earlier is also evident from the 7A proceedings.

12. Since the applicants filed one combined application for quashing all the six complaint cases by one revisional application previously and it was withdrawn by the applicants with the leave of the Court to file fresh applications separately against each of the complaint cases, I am of the view that these applications are quite maintainable.

13. Above all, there is no denial on the part of the opposite party Nos. 2 & 3 that the applicant had lodged a complaint with the vigilance commission over the

demand of bribe of Rs. 10,000/- by the respondent No. 3 and that said case is still pending. It is the simple denial on the part of the respondent Nos. 2 & 3 that no bribe was demanded. The concerned cinema hall had been closed down with effect from 01.06.2007, i.e., before the date of filing of the petitions of complaints. All the dues of the employees were released in favour of the employees. The employer submitted revised Form Nos. 3A and 6A and such Forms had been accepted by the Authority under the Act. Pensions had been released in favour of the employees (vide Annexure to the reply filed by the applicants). So, it is meaningless to chase for the Returns.

14. This being the position, I am of the view that if the proceedings are allowed to continue, it would be nothing but harassment to the applicants and it would also tantamount to misuse of the judicial process of the Court.

15. All the applications, therefore, succeed. They are allowed. Accordingly, the proceedings being complaint case Nos. 974 C/2007, 975 C/2007, 976 C/2007, 977 C/2007, 978 C/2007 and 979 C/2007 stand quashed and set aside.

16. Consequently, the CRAN applications in the respective applications have become infructuous and these are dismissed.

17. Considering the circumstances, there will be no order as to costs.

18. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.