

(2016) 08 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 14342 of 2013 with Special Civil Application No. 4059 of 2009 With Special Civil Application No. 14768 of 2003

Krishna Keshav Laboratories Limited

APPELLANT

Vs

Employees Provident Fund Organisation-Ministry of Labour

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, Section 7A

Citation : (2017) 1 CLR 139 : (2017) 153 FLR 479 : (2017) LabLR 280

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Ms. Minoo A. Shah, Advocate, for the Petitioner No. 1; Ms. E. Shailaja, Advocate, for the Respondent No. 1; Rule Served, for the Respondent No. 2

Final Decision : Disposed off

Judgement

Mr. K.M. Thaker, J. (Oral) - The captioned 3 petitions are filed by the establishment upon feeling aggrieved by the orders passed by the respondent Employees Provident Fund Organization (hereinafter referred to as the "provident fund department") and the show-cause-notices issued by the provident fund department as well as demand for damages determined under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") on account delay / default in payment of Provident Fund contributions.

2. One of the major grounds, on strength of which the petitioner establishment has filed petitions, is that during the relevant period i.e. period in respect of which the impugned orders are passed and actions have been initiated, the petitioner establishment was prosecuting reference before the Board for Industrial Financial and Reconstructions ("BIFR" for short) under the Sick Industrial Companies (Special Provisions) Act ("SICA" for short) and

subsequently before appellate board under the said Act, the department initiated action and passed impugned orders and issued impugned notices.

3. On the other hand learned advocate for the provident fund department has opposed the maintainability of the petitions on the ground that the orders passed by the authority under Section 7A of the Act and 14B of the Act are appealable orders and that therefore the petitions do not deserve to be entertained and the petitioner may be relegated to the statutory alternative remedy.

3.1 Learned advocate for the respondent provident fund department would also submit that the issue raised by the petitioner in present proceedings involve disputed facts and determination thereof would require examination of record and reappreciation of documentary and oral evidence and that therefore also petitions do not deserve to be entertained and the petitioner should be relegated to the statutory alternative remedy.

4. I have considered the submissions by learned advocate for the respondent provident fund department and the relief prayed for by the petitioner in captioned 3 petitions.

5. At the outset it is relevant to mention that after taking instructions from the petitioner, the learned advocate for the petitioner submitted that the petitioner is ready to approach learned Appellate Tribunal but the protection which is in operation may be continued for some time and the respondent may not take coercive steps while appeal is pending.

6. From the record it has emerged that the adjudicating authority has, after adjudication of the notices issued under Section 7A of the Act passed impugned order against the petitioner establishment and thereafter consequential orders under Section 14B and other provisions of the Act came to be passed.

6.1 It is not in dispute that against the order passed by the respondent provident fund department statutory alternative remedy by way of appeal under Section 71 of the Act is available.

6.2 Further it is also not in dispute that the petitions involve disputed questions of fact and the issues raised by the petitioner against the findings and conclusions recorded by the adjudicating authority and against the quantification of the alleged dues made by the adjudicating authority as well as against the imposition of damages in exercise of power under the Act, would involve examination and re-appreciation of documentary and oral evidence which are available on record of the proceedings conducted by the adjudicating authority.

6.3 Such process can be effectively undertaken before the authority viz. appellate authority and such process would not be feasible or practicable in present proceedings.

7. Under the circumstances, the Court is inclined to and convinced to accept the respondent's objection against the maintainability of the petitions.

7.1 Further, having regard to such facts even learned advocate for the petitioner has also agreed to approach learned Appellate Tribunal of course with aforesaid clarification and request.

8. For the reasons mentioned above the petitioner deserves to be relegated to the learned tribunal.

9. Therefore, following order is passed:-

(a) In light of the statement by learned advocate for the petitioner that the petitioner shall file appeal within 5 weeks' time, the petitioner is relegated to the alternative statutory remedy available under the provisions of the Act and for the said purpose the petitions are not entertained and are hereby disposed of and not pressed at this stage.

(b) It is clarified that the petitions are disposed of on the said limited ground viz. availability of the alternative statutory remedy and that therefore this Court has not entered into merits of the issues raised by the petitioner.

(c) This Court has not expressed any opinion on merits with regard to the contentions of the petitioner.

(d) Learned Tribunal shall, therefore, consider the matters/appeals on their own merits and in accordance with law without being influenced by the fact that the petitions are not entertained at this stage and the petitioner is relegated to alternative remedy.

(e) Learned tribunal will pass appropriate order in accordance with law after granting opportunity of hearing to the petitioner. Having regard to the fact that interim protection granted by the Court has continued until now and for long period and since the petitioner has agreed to avail alternative remedy and approach learned Tribunal, it is clarified that the interim relief granted by this Court shall continue, in same terms and on same condition, for 5 weeks i.e. till 30.9.2016

With the aforesaid clarifications, the petitions are disposed of. Rule is discharged.

10. At this stage Ms. Shah, learned advocate for the petitioner submitted that actually the petitioner approached this Court against order passed by the adjudicating authority because the respondent provident fund department had initiated coercive actions and even during pendency of the proceedings before this Court, the respondent provident fund department issued notices and took coercive actions for recovering the damages.

In that view of the matter, it is hoped that while the petitioner is prosecuting remedy available under the Act, the respondent authority, before it wants to take any action after 30.9.2016 in pursuance of the impugned orders, will take into account the order which may be passed by learned Tribunal (at the request of present petitioner) and also the fact that the petitioner is availing remedy available under the Act.

Orders accordingly.