(2012) 07 CAL CK 0218

In the Calcutta High Court

Case No : Writ Petition No. 23349 (W) of 2010

M/s. Bharat Battery Manufacturing Co. Private Ltd. and Another — APPELLANT

Vs

The Regional Provident Fund Commissioner-II etc. and Others — RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 17(1)(a), 7Q

Citation : (2012) 07 CAL CK 0218

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Sardar Amzad Ali and Mr. Gautam Paul, for the Appellant;Mihir Kundu, for the P.F. Authority, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Mr. Justice Jayanta Kumar Biswas

1. The petitioners in this WP under art.226 dated November 19, 2010 are questioning an order of the Regional Provident Fund Commissioner-II dated October 6, 2010(WP p.58) withdrawing the relaxation granted under para.79 of the Employees'' Provident Funds Scheme, 1952. In para.4 of the WP it has been stated that since the benefits under its own rules were more beneficial, the establishment was granted relaxation under para.79 of the Scheme in 1952. In para.5 of the WP it has been stated that an application for final exemption under s.17(1)(a) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 was submitted on July 20, 2007.

2. Paragraph 79 of the Scheme is as follows:-

79.Special provisions relating to factories and other establishments in respect of which applications for exemption are received.-Notwithstanding anything contained in this Scheme, the Commissioner may, in relation to a factory or other establishment in respect of which an application for exemption u/s 17 of the Act has been received, relax pending the disposal of the application the provisions of this Scheme in such manner as he may direct.

3. An Affidavit-in-Opposition (in short AO) dated May 3, 2011 has been filed by an Assistant Provident Fund Commissioner. No material has been produced therewith. Neither the petitioners nor the respondents have produced the application filed by the establishment seeking exemption under s.17(1)(a) of the Act, the application seeking relaxation under para.79 of the Scheme, and the order of relaxation.

4. Mr. Ali appearing for the petitioners has strenuously argued that it was for the Commissioner alleging breach of the terms and conditions of the relaxation to produce the order of relaxation and show which term or condition the petitioners violated.

5. Under para.79 of the Scheme the Commissioner could relax the provisions of the Scheme in the specified manner in relation to the establishment in question only if in respect of it an application for exemption under s.17 of the Act had been received. When the petitioners'' own case is that the application for exemption under s.17 was submitted on July 20, 2007, in view of the provisions of para.79, the Commissioner could relax the provisions of the Scheme to the establishment only after July 20, 2007.

6. Be that as it may, the admitted position is that relaxation under para. 79 was granted to the establishment.

7. From the document at p.26 of the WP it appears that under directions of the higher authority an enforcement squad examined the trust fund maintained by the establishment. The document is a letter of an Enforcement Officer of the Provident Fund Organisation dated January 5, 2010 to the Managing Director of the first petitioner alleging seventeen breaches of the conditions of relaxation and asking the Managing Director to submit a compliance report.

8. In response to the letter the Chairman and the Secretary of the first petitioner''s Provident Fund Institution wrote a letter dated January 12,2010(WP p.29). They gave explanation to all the seventeen allegations mentioned in the letter of the Enforcement Officer dated January 5, 2010. Thereupon, an Assistant Provident Fund Commissioner (Ex.) issued a show cause notice dated April 1, 2010(WP p.54).

9. The allegations in the show cause notice were as follows:-

AND whereas Cash & Bank Balances as on: 31-03-09 of Rs. 8,33,354= 79 keeping uninvested.

AND whereas one Security in the name & style MKVDC-SR-01A has been redeem prematurely on 16-5-09 for Rs. 4,00,000/- without approval of RPFC.

AND whereas Tata Mutual Fund for Rs. 6,00,000/- & HDFC Mutual Fund for Rs. 1,90,000/- are in physical custody.

AND whereas Short Payment of Rs. 11,542/- has been made.

AND whereas the monthly/yearly returns in Appendix ''A'' & Appendix ''B'' respectively submitted belatedly.

AND whereas the F/7(PS)/F/8(PS) submitted belatedly on 17-11-09.

AND whereas P.F. benefit have not been extended to some employees.

AND whereas statutory dues for the period from 04/08 to 09/08 paid belatedly.

AND whereas Investments are not made within Two weeks from received of money by the BOT.

AND whereas Simple Interest U/s 7Q has not been deposited upon shortfall amount of Rs. 1,43,705=00.

10. The Chairman and the Secretary of the first petitioner''s Provident Fund Institution and a Director of the first petitioner jointly showed cause in writing dated April 16, 2010 (WP p.55). They admitted some of the allegations and denied the others. With respect to the allegations that they admitted they requested the Assistant Provident Fund Commissioner who issued the show cause notice to condone the breaches.

11. Thereupon the Commissioner issued the impugned order relevant parts whereof are quoted below:-

AND Whereas the monthly/yearly return in Appendix-A & B respectively submitted belatedly.

AND Whereas the F-7(PS)/F-8(PS) submitted belatedly.

AND Whereas statutory dues for the period from 4/2008 to 9/2008 paid belatedly.

AND Whereas there was short payment in 2008-09 which was paid belatedly.

AND Whereas BOT retained un-invested Cash and Bank balance as on 31.03.2009 of Rs. 8,33,354.79.

AND Whereas PF benefit have not been extended to some employees

AND Whereas investments are not made within two weeks from receipt of money by the BOT.

12. The allegation that Rs. 8,33,354.79 was kept uninvested was dealt with in the reply to the show cause notice in the following manner:-

Regarding Cash & Bank Balance:

The Cash & Bank balance of Rs. 8,33,354.79 as on 31.03.2009 was locked up and remained un-invested for settleing pending applications of senior members of the fund towards Permanent withdrawals, final settlement and loans to others. Because of smallness of monthly contributions we are left with no option but keep some fund to meet such exigencies.

The temporary locking up of the above fund being neither intentional nor willful but for compelling situations may kindly be condoned.

13. The allegation that the establishment was in default on contribution, etc. for April 2008 - September 2008 was dealt with in the reply to the show cause notice in the following manner:-

Regarding Late payment of Statutory dues:

Because of illness of our Shree B.K. Saha who was irregular for attending the office for his ill health there has been some delay in depositing the money for the month of April'' 2008, September'' 2008 and March'' 2009.

This being a compelling situation we request you to kindly Condone the delay and assure you that there will be no such delay in future.

14. The allegation that investments were not made within two weeks from the date the BOT received the money was dealt with in the reply to the show cause notice in the following manner:-

Regarding Investment within Two weeks from receipt of money by the B.O.T:

We submit that due to smallness of our monthly contributions, some times we are compelled to with hold the funds to enable us to invest in more remunerative investment plan. However we assure you to take appropriate care in future so that the available fund are invested at earliest opportunity.

15. It is evident that most of the allegations made in the show cause notice were correct, and that the persons responsible admitted that the things were not done according to the manner they were to be done. It is on the basis of such admitted position that the Commissioner passed the order dated October 6,2010 withdrawing the relaxation.

16. Mr. Ali has submitted as follows. A roving investigation was made with a pre-determination to withdraw the relaxation. The fact that after the reply to the Enforcement Officer''s letter dated January 5, 2010 as many as ten allegations made therein disappeared is evident from the show cause notice dated April 1, 2010. The Commissioner withdrew the privilege arbitrarily; for he did not say why the explanations were not acceptable, when he was under an obligation to say so.

17. Mr. Ali''s further submissions are these. It was not said which relaxation term or condition was violated. The establishment was mindlessly asked to comply with the law as an unexempted establishment, as if it had been granted exemption and the exemption was cancelled. The Commissioner wrongfully asked the company to transfer the past accumulations, when the company had

nothing to do and para.28 of the Scheme had no manner of application to the case.

18. The Provident Fund Organisation was under an obligation to ensure strict compliance with the provisions of the Act and the conditions of the relaxation by all concerned. The enforcement squad making the investigation performed a statutory duty. The investigation revealed the breaches of the conditions of the relaxation. Simply because some of the allegations were acceptably explained, it cannot be concluded that the investigation revealing the breaches was made mala fide.

19. It is wrong to say that it was for the Commissioner to produce the order of relaxation. Most of the allegations made in the show cause notice were admitted in the reply thereto. The breaches of the conditions of relaxation have been noted hereinbefore; they were serious. The Act is a piece of social welfare legislation. In ordinary course compliance with the provisions thereof and the Schemes made thereunder is by deposit of contributions, etc. to the statutory fund.

20. The establishment, the employer and the trustees for the trust not complying with the statutory requirements and the conditions of the relaxation acted against the interests of the beneficiaries. The relaxation was not granted for the benefit of the establishment, the employer or the trustees for the trust. It is wrong to say that a privilege was granted to the establishment or to the employer. They all were under an obligation to work for the benefit of the members of the fund.

21. The effect of the relaxation was that during pendency of its exemption application the establishment was to comply with the law as if it were an exempted establishment. Hence once the relaxation was withdrawn, all concerned incurred an obligation to comply with the law as an unexempted establishment and also to transfer the past accumulations to the statutory fund. Hence the Commissioner did not commit any wrong by giving the consequential directions. For these reasons, the WP is dismissed. No costs. Certified xerox.