

(2022) 04 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Petition (L) No. 6410 Of 2011

M/S. Bilaspur Spinning Mills & Industries Ltd

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Employees' Provident Funds Act, 1952 — Section 1(4), 3, 7A, 7A(1), 7A(I)(b), 7B, 7C, 7I, 14(1), 14(1A), 14(2), 14A, 14B, 14AA

Citation : (2022) 04 CHH CK 0011

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Sourabh Sharma, Sunil Pillai

Final Decision : Dismissed

Judgement

1. The petitioner has filed the present Writ Petition (L) under Article 226 of the Constitution of India challenging legality and validity of the order dated 14.06.2011 (Annexure P/1) passed by respondent No. 5 (Employees Provident Fund Appellate Tribunal) affirming the order dated 29.11.2006 (Annexure P/2) passed by respondents No. 2 & 3 and also the order dated 17.08.2011 (Annexure P/3) passed by respondent No. 5 by which the review petition filed by the petitioner has been rejected.

2. The brief facts as reflected from the record are that on 26.10.1991, the Provident Fund Inspector, Madhya Pradesh has filed 80 criminal complaint (Annexure P/4) before the Judicial Magistrate First Class-cum-Labour Court, Bilaspur complaining for prosecution of petitioner company for commission of offences under Paragraph 76 (d) of the Employees' Provident Funds Scheme, 1952 read with Sections 14 (1), 14(1A), 14(2), 14A & 14AA of the Act, 1952 as they defaulted in making payment of provident fund dues for the period from July, 1986 to January, 1991, as such, liable to be punished under Section 14(1) & 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952

(for short "the Act, 1952"). The petitioner has entered appearance before the Labour Court, wherein, they have requested the Judicial Magistrate First Class that they may be allowed to deposit Rs. 25,000/- per month towards arrears of payment of provident fund dues. Learned Judicial Magistrate First Class vide its order dated 25.03.1996 (Annexure P/5) fixed the installment of Rs. 40,000/- per month and closed the case imposing Rs. 200/- as fine in each case filed by the Provident Fund Inspector.

3. Against that order, the Provident Fund Inspector/Enforcement Officer has filed Criminal Revision No. 741/1996 before High Court of Madhya Pradesh. The petitioner has given undertaking before High Court of Madhya Pradesh to deposit an amount of Rs. 60,000/- per month in place of Rs. 40,000/- per month being deposited for the present, towards the arrears of provident fund, recoverable from the above Company, agreed initial amount whereof was Rs. 27,84,878.15 only. It has been further undertaken to make payment/at the rate of Rs. 60,000/- per month from the month of October, 1998 and the order of Judicial Magistrate First Class was modified to the above extent.

4. On 12.02.2002, respondent No. 2 issued a notice to the petitioner (Annexure P/10) with regard to compliance of order under the Act, 1952, wherein it has been mentioned as under:-

"As you are aware that your company had committed defaults in payment of contribution & other dues under the said Act, 1952. The amount of contribution & other charges on your company is deposited by your company, later on in a number of installments. Now with a view to reconcile the dues a deposits position under the Act, 1952, you are requested to depute a responsible officer of your company alongwith following information/ documents to this office on any working day-

1. Statement of year wise dues payable by your company for the period 1984-1985 & onwards.

2. Statement of remittances with details of cheques/ D.D. Nos., date and amount.

Please note that aforesaid exercise is necessary for making full & final payment to your employees, an early response is desired."

5. In pursuance of the said notice, the petitioner appeared before respondent No. 2 and submitted its reply dated 20.02.2002 (Annexure P/11) wherein the petitioner denied and disputed the legality, validity and propriety of the letter dated 12.02.2002 issued by respondent No. 2 and has submitted that the letter was wrongly addressed to Shri B.K. Nopany, who is not the Managing Director of the company for the last more than 20 years. He is not even the Director of the company and requested to correspond with them only and not to issue any letter in his name and reiterate the fact about monthly depositing of P.F Contributions as mentioned above. It is further submitted that in compliance of the order passed by High Court of Madhya, petitioner is depositing the amount and only

Rs. 4878.75 is only left for payment, as such, requested the Provident Fund Department to reconcile the payment made by them in terms of order of the High Court as per the statement of account handed over by them in December, 2000 to the then Assistant Provident Fund Commissioner.

6. In pursuance of the notice dated 12.02.2002, representatives of the company have appeared before the Provident Fund authority on various dates along with their counsel. Since there was dispute with regard to provident fund contribution to be deposited, the proceeding under Section 7A of the Act, 1952 was initiated and company has represented through its counsel and the workers have also made representation. The Provident Fund Commissioner after going through the records furnished by the establishment has held that the instant issue relates to payment of Provident Fund as per returns furnished by the establishment in Form 3A/6A. As per form 3A/6A, the total dues payable by the petitioner is Rs. 46,88,590/- whereas on reconciliation of the accounts, it is seen that the petitioner has actually paid Rs. 24,95,072.00. It is also held that it is a fact that the establishment has furnished the Annual Returns to the department indicating that they are liable to pay dues to the tune of Rs. 46,88,590/- and they have paid an amount of Rs. 24,95,072/-. Now the balance dues to be paid by the petitioner is Rs. 21,93,518/- which is outstanding towards contribution and other charges payable by the employer in relation to the petitioner's company for the period from February, 1984 to February, 1993. The operative paragraph of the order dated 29.11.2006 (Annexure P/2) is extracted below:-

"Now, in exercise of powers conferred on me under Section 7A(I)(b) of the Act, I hereby determine the contribution & other charges payable by the employer in relation to M/s Bilaspur Spinning Mill Ltd., Bilaspur as follows:

Period 02/84 to 02/93

A/c 1

A/c 10

A/c 21

A/c 2

A/c 22

Total

15,75,359/-

3,61,332/-

1,13,164/-

1,41,395/-

2,268/-

21,93,518/-

I direct the employer to pay the sum within 15 days of the receipt of this order failing which the outstanding amount shall be recovered by invoking Section 8 of the Act.”

7. The petitioner being aggrieved by this order has filed Writ Petition (S) No. 7186/2007 before this Court and this Court vide order dated 05.12.2007 (Annexure P/14) dismissed the petition with liberty to file an appeal as per Section 7-I of the Act, 1952 which provides for statutory appeal to the Tribunal against the order passed by the Central Government or any authority, under the proviso to sub-section (4) of Section I, or Section 3, or sub-section (1) of Section 7A, or Section 7B, or Section 7C, or Section 14B. Thus, the impugned order is appealable before the Tribunal under provisions of Section 7-I of the Act, 1952.

8. In pursuance of the order dated 05.12.2007 (Annexure P/14), the petitioner has preferred an appeal bearing ATA No. 152 (19) 2010 before the Employees' Provident Fund Appellate Tribunal New Delhi. After considering the material placed on record, the Employees' Provident Fund Appellate Tribunal has dismissed the appeal vide order dated 14.06.2011 (Annexure P/1) by recording finding that there is no infirmity in the order passed by the authority and accordingly, the appeal is dismissed.

9. The petitioner has also preferred review application which was also dismissed by learned Tribunal vide order dated 17.08.2011 (Annexure P/3) by recording its finding that since no material is placed on record to review or recall its earlier order, the application for review stands rejected. The petitioner preferred the instant writ petition assailing the order dated 14.06.2011 (Annexure P/1) passed by respondent No. 5 affirming the order dated 29.11.2006 (Annexure P/2) passed by respondents No. 2 & 3 and also against the order dated 17.08.2011 passed by respondent No. 5 rejecting the review petition filed by the petitioner.

10. Learned counsel for the petitioner would submit that the Provident Fund Authority has no power to re-assess the dues which have already been finalized as per Section 7C of the Act, 1952. The reassessment of the dues can be done, if the amount is escaped while assessing the dues as there was no escaped amount as such the authority has no jurisdiction to pass the impugned order on 29.11.2006 (Annexure P/2). He would further submit that Section 7C of the Act, 1952 has come into force with effect from 07.07.1997, wherein the period in question is from 1984 to 1992, therefore, for this period, no proceeding for determination of escaped amount can be done. He would further submit that as per Section 7C of the Act, 1952, the determination of escaped amount can be done within a period of five years from the date of commencement of the order passed under Section 7A of the Act, 1952. The assessment of determination of escaped amount has been done in the year 2006 and the notice was issued in the year 2002 for the period pertains to 1984 to 1996, therefore, it is contrary to the provisions. It is quite vivid that the assessment for the escaped amount

cannot be done in the present facts and circumstances of the case. As such, the authority has committed illegality in doing assessment of dues vide its order dated 29.11.2006, thereafter, the Employees' Provident Fund has committed further illegality in dismissing the appeal and review application, therefore, the orders passed by the authorities are illegal.

11. On the other hand, learned counsel for respondents No. 2 to 4 vehemently objected the submissions made by learned counsel for the petitioner and would submit that the authorities have rightly passed the order and the Appellate Tribunal has also passed the impugned order dated 14.06.2011, which is also in accordance with law. Hence, the writ petition is liable to be rejected by this Court and the interim relief granted by this Court vide order dated 21.10.2011 in favour of the petitioner may kindly be vacated.

12. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

13. Before adverting to the facts and legal aspect of the case, it is expedient for this Court to examine provisions of Section 7C of the Act, 1952, which is as under:-

"7C. Determination of escaped amount.—Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the order—

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer, he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:

Provided that no order re -determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case."

14. From bare perusal of Section 7C of the Act, 1952, it is quite vivid that Section 7C of the Act, 1952 will be applicable in case where an order determining the amount due from an employer under Section 7A or Section 7B of the Act, 1952, there is reason to believe that dues have been escaped by the assessing authority on account of omission or failure on the part of the employer to make

any document or report available, or to disclose, fully and truly, all material facts necessary, which are relevant for determining the correct amount due from the employer, then only provisions of Section 7C can be attracted within a period of five years from the date of communication of the order passed under Section 7A or Section 7B of the Act. If such circumstance is available on record then only Assessing Authority can re-open the case and can pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act.

15. On above factual and legal premises, the point to be determined by this Court is whether Section 7C of the Act, 1952 is applicable to the present facts and circumstances of the case or not.

16. From the facts pleaded and the material placed on record, it is quite clear that the order dated 14.06.2011 (Annexure P/1) and 29.11.2006 (Annexure P/2) have not been passed under Section 7C of the Act, 1952, but the proceeding has been initiated under Section 7A of the Act, 1952. The Provident Fund Commissioner after going through returns furnished by the petitioner in Form 3A/6A total has held that dues payable by the petitioner is Rs. 46,88,590.00 whereas on reconciliation of the accounts, it is seen that the establishment has actually paid Rs. 24,95,072/- as such instant issue relates to less payment of provident fund as per returns furnished by the petitioner in Form 3A/6A to the tune of Rs. 21,93,518/- towards contribution and other charges payable by the employer for the period from February, 1984 to February, 1993 not any amount which has been escaped at the time of passing of order under Section 7 (A) or Section 7 (B) of the Act, 1952. It is also admitted facts that the establishment has furnished the Annual Returns to the department indicating that they are liable to pay dues to the tune of Rs. 46,88,590/- but that they have paid an amount of Rs. 24,95,072/ only. It is pertinent to mention here that even the petitioner has not placed any order under 7 (A) or 7 (B) in which any amount for assessment has been escaped to get attract the provisions of Section 7C of the Act, 1952 before the Employees' Provident Fund Appellate Tribunal, New Delhi or before this Court.

17. Section 7A of the Act, 1952 provides for determination of moneys due from employers, which reads as under:-

"7A. Determination of moneys due from employers.—(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless 5[the employer concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

18. From bare perusal of Section 7A(b) of the Act, 1952, it is quite vivid that if any amount has to be determined, the amount due from any employer under any

provision of this Act, the Scheme or the (Pension) Scheme or the Insurance Scheme, as the case may be and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary. Section 7A does not provide any limitation for any conducting inquiry, but only prescribed that if any amount has to be determined as due from the employer, inquiry has to be initiated wherein opportunity to defend the case to employer has to be given. The authority exercising the power conferred under Section 7A of the Act, 1952 has passed the impugned order which is legal, justified and does not call for any interference by this court.

19. In view of the above, order dated 14.06.2011 (Annexure P/1) passed by respondent No. 5 affirming the order dated 29.11.2006 (Annexure P/2) passed by respondents No. 2 & 3 and also the order dated 17.08.2011 (Annexure P/3) passed by respondent No. 5 are rightly passed, which do not warrant any interference by this Court.

20. Accordingly, the instant writ petition is dismissed.

21. The interim relief granted by this Court vide order dated 21.10.2011 in favour of the petitioner stands vacated.