

(2023) 03 SHI CK 0077

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.654 Of 2023

M/S Bio Veda Action Research Company

APPELLANT

Vs

Regional Provident Fund Commissioner-II, Shimla

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 03 SHI CK 0077

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : B. C. Negi, Nitin Thakur, Navlesh Verma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

"i) The impugned order dated 23 January, 2023 passed under Section 7-O of the EPF Act, 1952, to the extent that it directs the petitioner herein to deposit 50% of the amount assessed by the Regional Provident Fund Commissioner-

II, Shimla under Section 7A of the EPF Act, may kindly be set-aside and quashed.

ii) Alternatively, the impugned order dated 23 January, 2023 passed under Section 7-O of the EPF Act, 1952, to the extent that it directs the petitioner herein to deposit 50% of the amount assessed by the Regional Provident Fund Commissioner-II, Shimla under Section 7A of the EPF Act, may kindly be modified to require the petitioner to deposit a token amount, as may be deemed appropriate in facts and circumstances of the case.

iii) Alternatively, the impugned order dated 23 January, 2023 passed under Section 7-O of the EPF Act, 1952 to the extent that it directs the petitioner herein to deposit 50% of the amount assessed by the Regional Provident Fund

Commissioner-II, Shimla under Section 7A of the EPF Act may kindly be modified to require the petitioner to deposit the said amount in an FDR by marking a lien on the said FDR in favour of the learned CGIT instead of requiring the said amount to be deposited with the learned CGIT.”

2. The respondent conducted an inquiry under sub-Section (1) of Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (for short, “The Act”) against the petitioner and vide order dated 30.07.2022 held a total sum of Rs.23,18,06,900/- due from the petitioner for the period January, 2016 to December, 2018 on account of the liability towards employees’ provident fund. A sum of Rs.13,60,44,861/- has been adjudged towards Employees’ Provident Fund of identified employees and a sum of Rs.9,57,62,039/- has been held payable for unidentified employees.

3. Aggrieved against the order dated 30.07.2022 passed by the respondent, petitioner has preferred an appeal under Section 7-I of the Act, before the Tribunal. Petitioner also approached the Tribunal for waiver to deposit the amount due from him as determined by the respondent under Section 7A. Initially, the Tribunal vide order dated 13.10.2022, allowed a waiver of 25% of the amount required to be deposited by the petitioner as a pre-condition to file appeal. Petitioner assailed the said order before this Court by way of CWP No. 7776 of 2022. A Division Bench of this Court allowed the petition of the petitioner in following terms:

“In view of the above, we find that in the facts and circumstances of the case, the impugned order dated 13.10.2022, directing the petitioner to deposit 50% of the amount assessed by the RPFC-II, Himachal Pradesh, is non-speaking and unreasoned. The impugned order dated 13.10.2022 is accordingly set-aside. The matter is remanded to the learned CGIT, Chandigarh to pass fresh, reasoned and speaking order in petitioner’s application moved under Section 7-O of the Act, after hearing learned counsel for the parties on both sides in accordance with law. Parties, through their learned counsel, are directed to appear before the learned CGIT, Chandigarh on 24.11.2022.”

4. The learned Tribunal has again passed an order on 23.01.2023 deciding the application of the petitioner under Section 7-O of the Act for waiver to deposit the amount. The Tribunal has again allowed the waiver to the extent of 25% only. Petitioner has been directed to deposit 50% of the assessed dues with the respondent-authority within three weeks.

5. Aggrieved against the order dated 23.01.2023 passed by the Tribunal in EPF No.13/2022, petitioner has again approached this Court on the grounds that petitioner had been able to demonstrate existence of a prima-facie case for enabling it to claim complete waiver under proviso attached to section 7-O of the Act. It had shown that the order passed by the respondent, as impugned before the learned Tribunal, was on the face of it wrong, illegal as the same had been passed without any legal basis. The proceedings were initiated by the respondent

under Section 7A of the Act on the basis of a vague, anonymous complaint. The allegations in the complaint remained unsubstantiated. Further, the order passed by respondent was illegal in as much as said respondent had relied upon the report submitted by an investigating team without application of independent mind, which amounted to abdication of powers. There was no material on record to prove the existence of relationship of employer and employee between petitioner and the beauty advisors, who work independently and are paid the commission only and lastly, the liability worked out in respect of unidentified employees is purely hypothetical without any legal basis.

6. As regards irreparable loss and injury, it has been submitted that the petitioner will have to deposit a huge amount of more than Rs.11.50 crores approximately, which will adversely affect the business activity of the petitioner besides prejudicially affecting the genuine employees of the petitioner. Petitioner is stated to have already been severely affected by the conditions created by COVID-19 pandemic.

7. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. Section 7-O of the Act puts an embargo in entertainment of the appeal by the Tribunal unless the employer deposits 75% of the amount due from him as determined by the Officer referred to in Section 7A. However, the Tribunal has been vested with discretionary jurisdiction to waive or reduce the amount to be deposited under Section 7-O of the Act.

The Tribunal is, however, mandated to assign reasons in writing for exercising such discretionary jurisdiction to grant waiver or reduction in the amount to be deposited.

9. Thus, as a matter of rule, without deposit of 75% of the amount held due from the employer, by an authority under Section 7A of the Act, the appeal of employer cannot be entertained by the Tribunal. The Tribunal, however, in cases of exception can waive or reduce the amount required to be deposited. The mandate for the Tribunal, to exercise such jurisdiction, is to record reasons in writing. This clearly reflects the legislative intent that before exercising such jurisdiction, the Tribunal has to satisfy itself regarding existence of circumstances warranting such exercise. In this view of the matter, the Tribunal cannot allow waiver or reduction in amount required to be deposited, as a matter of routine.

10. To avail the benefit of proviso attached to Section 7-O of the Act, the employer has to satisfy the Tribunal of the reasons to claim waiver or reduction in deposit of amount. In the given facts of the case, petitioner laid entire emphasis on the fragilities in the order passed by respondent No.1. As per petitioner, the order sought to be impugned before the Tribunal, on the face of it, was illegal and liable to be set-aside. Such order was alleged to have been passed on the basis of an anonymous complaint, the allegations of which remained completely unsubstantiated and also that the respondent without

application of independent mind, had passed the order on the basis of report of an investigating team.

11. Petitioner further alleged before the Tribunal that the report of investigating team in respect of identified employees could not have been taken into consideration for the reason that no evidence was available with the investigating team to come to such conclusion especially when the status of beauty advisors working for the petitioner was proved to be of an independent agent working on commission basis. As regards unidentified employees, the petitioner raised the plea before the Tribunal that the liability so worked out was absolutely whimsical having no legal basis.

12. The Tribunal after taking notice of all the pleas raised on behalf of the petitioner, has allowed the waiver of only 25%. The Tribunal has held that the question whether the beauty advisors were the employees of petitioner, so as to bring them within the coverage of the Act, has to be decided while adjudicating the appeal of petitioner finally. The Tribunal has taken into consideration the fact that the definition of basic wage under the Act includes "all emoluments". Thereafter, the Tribunal proceeded to grant waiver of 25% of statutory requirement of deposit to the petitioner by considering the fact that a sum of Rs.9,57,62,039/- had been assessed to be the dues in respect of unidentified employees.

13. The order of learned Tribunal, impugned by way of instant petition, thus, records the reasons for allowing the prayer of petitioner to waive the requirement of statutory deposit to the extent of 25% only.

14. This Court while adjudicating upon the order passed by a statutory authority, can interfere only in cases where the order impugned is shown either to be without jurisdiction or palpably illegal. We do not find existence of any of such vices in the impugned order.

15. The Tribunal has passed a reasoned order and this Court will not adjudicate upon sufficiently or otherwise of the material behind such reasons unless the reasons are perverse. In exercise of its jurisdiction under Article 226 of the Constitution, this Court will not substitute its own reasons for the reasons provide by the statutory Tribunal.

16. The impugned order in no manner finally adjudicates upon the rights of the parties. The contention raised by the petitioner in appeal are subject to adjudication by the Tribunal. Noticeably, the petitioner had not made out any case of its incapacity or inability to deposit the statutorily required amount as ordered by the Tribunal. It is only by way of a ground raised in the present petition that petitioner has raised a plea of financial constraint, that too, without any tangible material to substantiate the same. The petitioner by way of an alternative relief sought by way of instant petition has sought modification of impugned order by allowing the petitioner to deposit the amount ordered by the Tribunal in the shape of Fixed Deposit Receipt by marking a lien on the said

receipt in favour of the Tribunal. It clearly means that the petitioner has the capacity to deposit the amount as required in the impugned order. The Fixed Deposit Receipt can be procured only against a deposit of the equivalent amount.

17. In view of the above discussion, we find no reasons to interfere with the impugned order passed by the Tribunal. Accordingly, the petition is dismissed, so also the pending miscellaneous application(s), if any.