

(2016) 01 OHC CK 0066
In the Orissa High Court
Case No : W.P. (C) No. 13176 of 2004

M/s. Odyssey Pickles Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Citation : (2016) 151 FLR 197 : (2017) LabLR 406 : (2016) LabLR 1278 :
(2016) 3 LLJ 405 : (2017) 1 LLN 263

Hon'ble Judges : Shri S.N. Prasad, J.

Bench : Single Bench

Advocate : M/s. Sanatan Das, A. K. Panda, S.S. Mishra and A.K. Sahoo,
Advocates, for the Appellant; M/s. S.S. Mohanty, Advocate, Mr. R.C. Das,
Advocate, M/s. P.V. Ramdas and P.V. Baliarsingh, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Prasad, J.—The petitioner being aggrieved with the order dated 12.8.2004 (Annexure-17) and order dated 1.11.2004 (Annexure-20) is before this court.

2. The order dated 12.8.2004 has been passed by the Regional Provident Fund Commissioner in exercise of power conferred U/s.7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'The Act 1952') while order dated 1.11.2004 is an order passed by the Assistant Provident Fund Commissioner rejecting the application filed by the petitioner to set aside the ex-parte order passed U/s.7A of the Act, 1952.

3. The case of the petitioner in brief is that it is a company, a good processing unit functioning in the name and style of M/s. Odyssey Pickles Ltd. registered under the Companies Act, 1956 having been set up in the month of June, 1997.

The petitioner ? Unit has received a notice from the opposite parties communicating therein that the petitioner ? Unit is covered under the purview of Section 2(A) of the Act, 1952 and as such the petitioner ? Unit was directed to

pay the dues from 3.1.1998 onwards and to submit the documents for perusal of the authorities. The petitioner ? Unit has not made communication in the address of opposite party no.1 regarding compliance of the instructions as received from the office of opposite party no.1 wherein he had categorically mentioned about the compliance of instructions stating therein that the petitioner ? establishment had deposited Rs. 40,000/- by way of demand draft in favour of opposite party ? organisation and submitted the challans to show that the petitioner is a bona fide employer. The opposite party no.1 has sent another notice on 26.3.2001 mentioning therein that the proceeding vide No.14B/48/2001 had been initiated to levy damages U/s.14-B of the E.P.F. & M.P. Act, 1952 to recover the E.P.F. contributions / Family Pension Fund and E.P.F. 95 contributions for the months 1/98 to 2/99.

Further it had been mentioned that the petitioner is being given chance for personal hearing on 19th April, 2001 and accordingly one of the Directors of the company had appeared before the authority on 26.3.2001 but the hearing of the proceeding was adjourned and another notice was served upon the petitioner ? establishment on 23.4.2001 mentioning therein the date of hearing of 14-B proceeding as 23rd May, 2001. Finally proceeding U/s.14-B of the Act, 1952 was concluded and the opposite party no.1 has passed an order on 16th July, 2001 which was communicated to the petitioner vide communication dated 17.7.2001 directing the petitioner ? establishment to pay the damage to the tune of Rs. 14,767/- with a direction to deposit the amount within fifteen days from the date of receipt of the order. The petitioner ? establishment has made an application for grant of 30 days time to deposit the levied amount, again another letter was written on 25.9.2001 stating therein that he had deposited Rs. 5,000/- out of the total penal levied amount and the rest amount would be deposited in the end of November, 2001. Opposite party no.2 sent a notice for recovery of provident fund contribution from the petitioner mentioning therein that a case being CC/63/02 dated 8.2.2002 had been initiated and the penal damage was levied for the period from 1/98 to 2/99 amounting to Rs. 9767/- to be recovered by following due process of law.

The petitioner has made communication before the Recovery Officer vide letter dated 21.11.2002 mentioning therein that the balance amount of Rs. 2867/- would be deposited in a month?s time.

4. It has been contended that due to serious ailment the director of the establishment could not be able to attend the proceeding initiated by opposite party no.2 U/s.7A of the Act, 1952 and due to the accident of Managing Director also the appearance could not have been made in the proceeding initiated U/s.7A of the Act, 1952 and in his absence the order has been passed by the authorities U/s.7A in the mechanical manner for the period from 4/01 to 5/04 and levied a demand amounting to Rs. 4,03,665/- along with penal interest. The petitioner having no other alternative remedy filed an appeal before the Asst. P.F. Commissioner, Sub-Regional Office, Rourkela on 29.2.2004 but the same has

also been dismissed hence this writ petition on the ground that the order is without any application of mind, without providing opportunity of being heard, without assigning any reason, based on presumptions, surmises and conjectures and without any documentary evidence and also being without jurisdiction.

5. Notices have been issued upon the opposite parties vide order dated 9.12.2004 but no counter affidavit has been filed. However, learned counsel representing the opposite parties has submitted that ample opportunity has been given to the petitioner, he has put his appearance but not appeared hence the authorities have passed order U/s.7A of the Act, 1952.

He further submits that there is forum of appeal and as such this court should not interfere at this stage since the factual aspect has been raised by the petitioner which cannot be adjudicated by this court sitting under Article 226 of the Constitution of India.

He further submits that the Appellate Tribunal has also been conferred with the same power having with original authority who has been empowered to pass an order under section 7A of the Act, 1952.

6. Heard learned counsels for the parties and perused the documents on record.

The petitioner being aggrieved with the order passed under section 7A of the Act, 1952 and the subsequent order filed for setting aside the original order passed U/s.7A is before this court.

The main ground taken by the petitioner is that the order passed U/s.7A is without providing an opportunity of being heard and for that reason he has also filed an application for setting aside the ex-parte order.

7. Learned counsel for opposite party ? State has raised preliminary objection regarding maintainability of the writ petition on the ground of availability of alternative remedy of appeal.

8. On perusal of the order passed U/s.7A of the Act, 1952 (Annexure-17) it is evident that the notices have been issued upon the petitioner ? establishment, appearance has been made and thereafter none appears before the competent authority hence the case was adjourned for several dates and thereafter the order has been passed under section 7A if the Act, 1952.

From perusal of the order passed under section 7A of the Act, 1952 it is evident that the competent authority has passed the order on the basis of relevant documents having been submitted by the Enforcement Officer, the number of employees with their wages per month who are working since the case period and after providing much opportunity.

9. The sole contention raised by the petitioner is that no opportunity has been given to him to defend the case but that cannot be accepted for the reason that when any proceeding is set on motion by any of the Court of Law or by the competent authority the requirement is to issue notice for its communication to

apprise the affected parties so that if he wants to say something in defence, he be able to say, accordingly in this case the competent authority has issued notice, the representative of the petitioner had appeared and thereafter not chosen to appear. The court of law or the competent authority cannot wait indefinitely if the party after putting appearance would not appear, the option left with the court of law or the authorities is to proceed and pass an order in accordance with law on merit, which has been done in this case.

10. Even assuming that no opportunity has been given then also no prejudice is being caused to the petitioner as because the statute provides forum of appeal as provided U/s 7(I) which has conferred enough power at par with the power which has been conferred with the authorities who is to pass an order under section 7A or 14-B, etc, hence the petitioner has a remedy to raise all the points before the appellate authority as per the provision made U/s.7(I) of the Act, 1952.

11. From the record it is evident that opportunity has been provided but the petitioner has appeared, more so, the Enforcement Officer has also produced the relevant documents before the authority basing upon which the order has been passed by the competent authority U/s.7A of the Act, 1952, now the petitioner ? establishment is disputing the claim based upon certain factual aspect regarding the demand having been made by the competent authority hence the

12. Hence the issue surrounding the aforesaid controversy requires determination of question of facts after going into the merit of the contention raised by the rival parties which can be considered by the appellate authority in exercise of appellate power while considering the correctness of the demand. This court in exercise of power under judicial review is only required to see whether the decision making process is proper or not and not to decide correctness of the demand in the nature of an appeal.

13. In the circumstances, this court refrains from entering into the merit of the dispute which involves determination of question of facts involving liability upon the petitioner ? establishment.

14. However, it will open to the petitioner to approach appellate forum under relevant provision of the Act, 1952.

15. It is submitted on behalf of the petitioner that the appeal itself may be grossly delayed because of the pendency of the writ petition.

16. in that view of the matter, it is observed that if an appeal is preferred before the Appellate Authority, it shall consider the issue of delay sympathetically in view of the fact that the petitioner was pursuing his remedy before this court through the instant writ petition.

17. This writ petition is, therefore, disposed of with the aforesaid liberty.

18. Interim order dated 9.12.2004 stands vacated.

19. Misc. Case No.12848 of 2004 is disposed of.