

(2024) 04 CAL CK 0050

In the Calcutta High Court

Case No : W.P.A.No. 15861 Of 2019, I.A. No. CAN/ 1/ 2024

M/S. Trend Vyapaar Ltd.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17

Citation : (2024) 04 CAL CK 0050

Hon'ble Judges : M. V. Muralidaran, J

Bench : Single Bench

Advocate : Anant Shaw, Ravi Kr. Dubey, Sailendra Kr. Mishra, Madhushree Dutta, Satyendra Agarwal

Final Decision : Allowed

Judgement

M. V. Muralidaran, J

Heard Mr. Anant Kr. Shaw, learned counsel for the petitioner, Mr. Sailendra Kr. Mishra, learned counsel for the Union of India and Mr. Satyendra Agarwal for the second respondent and Ms. Madhushri Dutta, learned counsel for the third respondent.

2. The petitioner has filed the writ petition with the following prayers:

"(a) A writ of or in the nature of Certiorari commanding the respondent to certify and transmit all the records pertaining to the letters/memo dated 16.01.19, 01.04.19 and 13.06.19 being Annexures "P-11", "P-14" and "P-16" respectively to this Hon'ble Court, so that conscionable justice may be done by quashing and/or setting aside the same after careful scrutiny;

(b) A writ of or in the nature of Mandamus commanding the respondents, its agents, servants, assigns to forthwith rescind, cancel, set aside, quash and/or withdraw the impugned letters, memo dated 16.01.19, 01.04.19 and 13.06.19 being Annexures "P-11", "P-14" and "P-16" respectively.

(c) A writ of or in the nature of Prohibition prohibiting the respondents, its agents, servants, assigns not to give effect the impugned letters dated 16.01.19, 01.04.19 and 13.06.19 being Annexures "P-11", "P- 14" and "P-16" respectively.

(d) Any other appropriate writ(s) order(s) and/or direction(s).

(e) Rule NISI in terms of prayers (a) to (d) above.

(f) Injunction restraining the respondents from giving effect or further effect to the letters/memo dated 16.01.19, 01.04.19 and 13.06.19 being Annexures "P-11", "P-14" and "P-16" respectively till the disposal of the rule/application."

3. The case of the petitioner, as could be seen from the averments set out in the writ petition, is as follows:-

The petitioner is a factory engaged in manufacturing of jute products and is covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The petitioner is a Unit of Kelvin Jute Mills. The petitioner has been granted exemption under Section 17 of the said Act. Pursuant to the said exemption, the petitioner had constituted a Board of Trustees and had been depositing contributions of its employees into a trust fund being managed and controlled by the Board of Trustees and to Pension Fund also.

3.1. On 20.10.2005, the Deputy Secretary, Labour Department issued a notice for cancellation of exemption granted to the Kelvin Jute Company Limited in an arbitrary manner without consulting any of the parties. A Special Officer was appointed by the High Court to look after the affairs of the Kelvin Jute Company Limited and all the operating unions of the company by letter dated 23.11.2005 had protested against the cancellation and on receipt of such objection against cancellation, the appropriate authority slept over the matter and did not proceed further in the matter and the functioning of the trust fund was running as if it was under the supervision of the PF authorities.

3.2. In the year 2017, the petitioner on unanimous demand of all the operating unions of the mill surrendered the exemption of the trust fund and had written for withdrawal of the said exemption vide letter dated 17.4.2017. Though the Deputy Secretary, Government of West Bengal remained silent, the second respondent, vide its letter dated 3.5.2017, informed the petitioner that the exemption granted under Section 17 has already been withdrawn by the Government under notification dated 20.10.2005 and the petitioner was directed to transfer the past accumulations. In compliance of the order of the second respondent, the petitioner had written to the second respondent on 18.5.2017 requesting to change the PF Code from exempted to un-exempted unit and solicited advice for smooth transfer of past accumulations. In reply, the second respondent directed the petitioner to furnish past accumulation statement that is aggregative of total accumulations standing to the credit of each subscribers for takeover of the trust fund and the petitioner had also submitted the statement.

3.3. As per the past accumulation statement, the petitioner had to transfer the

fund of Rs.21,54,30,083.27 up to cut off date 31.5.2017. The petitioner had transferred the cash amount lying in the saving account of the trust to the statutory fund of the second respondent and also transferred the amount lying in the special deposit account of the trust fund. The petitioner had also contacted the second respondent for transfer of 23 security bonds (secured and unsecured) held by the trust in their demat account.

3.4. During the meeting at the chamber of the second respondent, the petitioner was advised to sell the unsecured/unguaranteed bonds held in the trust fund and also to transfer the cash value of those bonds to the statutory fund and send secured bonds for transfer in favour of the Central Board of Trustees, EPF Organistaion and, accordingly, the petitioner sold out 15 unsecured bonds in spite of suffering a loss of Rs.52 lakh and transferred the cash value of the unsecured bond with an amount of loss in sale of those unsecured bonds and sent the remaining 8 bonds to the authorized agent of the second respondent i.e. the third respondent for transfer in favour of the second respondent vide letter dated 23.7.2018. Thus, the total funds transferred to the second respondent was Rs.18,05,20,007.63 out of Rs.21,54,30,083.27 and the remaining balance of Rs.3,49,10,075.64 were to be realized from transfer of eight secured/guaranteed bonds. A letter dated 31.7.2018 was also addressed to the second respondent informing the details of payment made to them and security forwarded for transfer. The petitioner had also received letter dated 3.8.2018 from the second respondent originally addressed to the third respondent seeking confirmation about the aforesaid eight SGL securities submitted by the Board of Trustees of the petitioner company asking them to confirm whether the aforesaid eight SGL securities are fit to be accepted and transferable.

3.5. In response to the letter dated 3.8.2018, the third respondent, vide letter dated 23.8.2018, forwarded certain queries and requisitioned stating inter alia that on completion of those query and requisition, the said securities will be transferred in the name of Central Board of Trustees EPF. On 19.10.2018, the second respondent again wrote a letter to the authorized representative of the third respondent stating inter alia to ensure that those bonds which are State Guaranteed can be transferred to the Central Board of Trustees, EPF and the second respondent cannot deviate from its own stand that secured bonds should be transferred in favour of CBT EPF without any ifs. In the process, the petitioner had complied all the formalities for transfer of eight State Guaranteed Securities in the name of the Central Board of Trustees Employees Provident Fund, but the second respondent, vide letter dated 16.1.2019, informed the petitioner that only three securities has been transferred in favour of CBT EPF and the remaining five bonds have not been transferred and the second respondent demanded cash value of these bonds instead of transferring the five bonds. According to the petitioner, the same is in violation of the provisions of para 28 of the EPF Scheme.

3.6. On 28.1.2019, the petitioner sent objection against the demand of cash value of the five secured bonds and requested to arrange for an early transfer of

the rest five secured bonds in favour of CBT EPF. However, the matter of transfer of secured securities has been kept pending by the second respondent without any plausible reason.

3.7. Despite the fact that the Board of Trustees has transferred more than 90% of the past accumulation of the members to the CBT EPF and withholding the transfer and acceptance of five State Guaranteed Securities by the respondents 2 and 3, the retired employees of the Mill are being paid 82.93% of their PF dues by the second respondent instead of full and final settlement though having sufficient fund. This is completely in contravention of the Act and also denial of natural justice to the long retired employees. Due to this, the mill's working environment has been completely jeopardized for the reason of having been created by the second respondent by not paying the full and final settlement of PF dues.

3.8. On 18.3.2019 the petitioner informed the second respondent that it had deposited the entire amount of non-SGL bonds and has suffered loss of more than Rs.52 lakh and further stated that as per law the State Guaranteed Securities have to be transferred in the name of CBT EPF and, therefore, the petitioner is not liable to pay in cash the amount of Rs.2,54,36,953.20 being the amount of five guaranteed bonds which have already been submitted to the third respondent for transfer in the name of the CBT EPF. Without considering the representation of the petitioner, on 1.4.2019, the second respondent issued a reminder directing the petitioner to pay the cash value of the five State Guaranteed bonds of Rs.2,54,36,953.70. According to the petitioner, the same is in violation of para 28 of the scheme. Again by issuance of memo dated 13.6.2019, the second respondent demanded the aforesaid sum. Challenging the aforesaid three letters/memos, the petitioner has filed the present writ petition.

3.9. The non-transferring of five SGL securities duly guaranteed by the Government of Punjab in the name of CBT EPF is highly an illegal act on the part of the second respondent and that the petitioner is aggrieved by action of the respondent authorities for non-acceptance by the second respondent of five SGL securities by the Government of Punjab, which is also in violation of para 28(2) of the EPF Scheme. Challenging the demand of Rs.2,54,36,953.70 by way of the impugned letters dated 16.1.2019, 1.4.2019 and 13.6.2019, the petitioner has filed the present writ petition.

4. The second respondent filed affidavit-in-opposition, inter alia, stating that the Regional Provident Fund Commissioner-I Barrackpore through the letter dated 19.10.2018 requested the Standard Chartered Bank to ensure that the transferred bonds are State Guaranteed Bonds and the transfer is as per the CBT EPF Rules. The third respondent vide letter dated 29.12.2018 intimated the respondent authorities that the petitioner establishment had out of eight securities only three securities for the face value of Rs.1,10,00,000/- was transferred in favour of CBT EPF which is 88.19% of the declared Pat Accumulation of the establishment BOT. Subsequently, the third respondent vide

letter dated 20.2.2019 had forwarded a list of five securities which was not transferred to CBT EPF Organization due to the reasons stated that the company has declared buy back for zero Coupon Bonds and the company is also under financial crunch. However, the bank also intimated that in case of permission is granted from EPF Organisation, the said securities would be accepted.

4.1. It is stated that the CBT EPF Organisation, pursuant to the letter dated 3.10.2019 of the Regional Provident Fund Commissioner-I, had directed the Regional Provident Fund Commissioner-I, Barrackpre dated 5.12.2019 to accept four out of five non-transferred securities by the establishment belonging to Punjab Infrastructure Development Board for the face value of Rs.3,30,00,000/- and one security in respect Punjab State Industrial Development Corporation Limited to Rs.25,00,000/- the establishment may be directed to remit the same. The said information was duly intimated to the Standard Chartered Bank and the bank accepted three securities out of four non-transferred non-SGL securities by the establishment belonging to Punjab Infrastructure Development Board for face value of Rs.3,30,00,000/-. In the meantime, the security Punjab Infrastructure Development Board with total face value amounting to Rs.70,00,000/- got matured and the amount was received by the United Bank of India, N.S.Road Branch against the maturity proceeds of a security. The said amount was transferred as on 24.1.2020 by the said United Bank of India to the CBT EPF Organisation.

4.2. It is stated in the affidavit that the petitioner had yet to transfer the CBT EPF Organisation fund corpus of Rs.1,20,98.495.70. All transfer of PF dues is as per the provisions laid down in the statute and there is no scope for any violation or relaxation of the same by the Regional Provident Fund Commissioner. The bonds which are acceptable have been accepted and the headquarter has taken a final decision in the matter and, hence, the balance amount is required to be transferred in cash as already intimated and clearly stated in the statute. In view of the above, the petitioner should take immediate action since delay is resulting in 14B/7Q imposition on the same.

5. Subsequent to the filing of the writ petition and the affidavit-in-opposition filed by the second respondent some change in circumstances had taken place.

6. The daily orders of this Court dated 13.9.2022 passed in the present writ petition records that, pending writ petition, the third respondent confirmed that three several securities had been transferred in the name of CBT and due date for maturity of one such security, being the security bond issued by Punjab State Industrial Corporation Limited, was on 26.8.2022 and the aforesaid security was at the material point of time lying with the third respondent. Excepting the only security which was due for maturity on 26.8.2022, all other securities have been accepted by the CBT. Accordingly, the writ petition also confined to acceptance of only one particular security. The order dated 13.9.2022 of this Court further records that the aforesaid security has already matured.

7. It appears that the order dated 13.9.2022 was passed after hearing the learned counsel for the second respondent. Thereafter, the matter was taken up for hearing and, at the request of the parties, adjourned from time to time.

8. In the order dated 1.3.2023, this Court recorded as under:

"By referring the supplementary affidavit the learned advocate representing the respondent no.3 submits that out of the three (3) securities which were in the custody of the respondent no.3 only one security is yet to mature. The maturity date of such security is 30th January, 2024."

9. The third respondent also filed supplementary affidavit to the following effect:

"The Security – 9.97 AP Pow Fin Sr 12011 Opt B NCB bearing ISIN INE847E08DM2 (Qty-50 were issued on 30.1.2022 and is due to mature on 30.01.2024.

The other two securities – 10.15pc PSPC Bonds 2008-09 Srs II Red 29Jan19 FV INR 1000000 and 9.7PC Rajasthan ST Road Transp Bond DOI 17Jul12 Red 17Jul22 were matured on 29.01.2019 and 17.07.2022 respectively. The maturity amount of Rs.50,00,000/-and Rs.10,00,000/- respectively were deposited in the EPFO account on the respective maturity dates."

10. The second respondent by way of supplementary affidavit stated as under:

"... the establishment had yet to transfer to the Central Board Trust Employee Provident Fund Organisation fund corpus is Rs.1,20,98,495.70. The establishment had on 31.05.2017 submitted to the respondents authorities the Past Accumulation Statement amounting to Rs.21,54,30,083.27 in respect of 2038 employees as on the said date. The total transfer has taken place valued at Rs.20,33,31,587.57."

11. It is the plea of the second respondent that the petitioner establishment has to pay/remit the balance past accumulation dues amounting to Rs.1,20,98,495.70 including the equivalent sum in place of security of Punjab State Industrial Development Corporation Limited pertaining to Rs.25,00,000/- so as to safe guard the interest of the PF members/workers.

12. The learned counsel for the third respondent submitted that the third respondent is acting as custodian for EPFO by managing the State Government Securities and/or Securities guaranteed by State Governments. As a custodian, it is the duty of the third respondent to provide the same degree of care as it exercises in respect of its own property/security while performing the above duties. Further, the third respondent maintain high standard of integrity and fairness in all business transaction and it shall always act in the best interest of its clients/investors.

13. According to the learned counsel, the general duties of any custodian involves that if any loss/damage to the securities and investible fund arising due to errors/omission/commission/negligence of the third respondent bank or its

employees/officers/agents, then the same shall be borne by the third respondent and not by EPFO being client/investor. Thus, the learned counsel contended that the third respondent bank being merely a custodian for securities, cannot act/decide upon its own discretion without instruction from the EPFO.

14. The learned counsel for the petitioner contended that the respondent authorities accept the receipt of an amount of Rs.20,33,31,587.57 out of total past accumulation of Rs.21,54,30,083.27. The learned counsel further submitted that Rs.20,33,31,587.57 was derived by the respondent authorities after taking into account of Rs.44,78,992/- being the value of three PIDB bonds as per the third respondent instead of book value of Rs.1,71,85,000/- by understating the value of Rs.1,27,06,000/- to be added to Rs.20,33,31,587.57 which comes to Rs.21,60,37,587/- besides the pending acceptance of final bond of 9.7% Punjab Industrial Development Corporation Bond of Rs.25,00,000/- despite the State Guaranteed Bonds, and the total value would arrive at Rs.21,85,37,587/-Thus, there is excess transfer of Rs.31,07,504/-. Narrating all these things, the petitioner has also filed an affidavit affirmed on 10.3.2021.

15. The learned counsel for the petitioner highlighted that an amount of Rs.20,33,31,587.57 has been arrived at after taking into account the transfer value of Rs.44,78,992/- of 3 PIDB Zero Coupon Bonds as determined by the third respondent vide letter dated 27.1.2020 addressed to the Regional Office, EPFO. According to the learned counsel, the nature of zero coupon bonds are such that the interest accruing on such bonds is not paid periodically during the tenure of the bond but are accumulated and paid only at the time of its maturity along with its issue price. The amount of Rs.44,78,992/- represents the initial cost of purchase of three bonds in the year of acquisition by the Trustees, whereas as per books of accounts of the PF Trust, which is maintained on Mercantile basis, the interest accruing on and from the date of purchase of three bonds of PIDB every year till 31.5.2017, the holding value including interest accrued and due of the said bonds arrive at Rs.1,71,85,000/- and the maturity value comes to Rs.2,60,00,000/-. The said bonds were State Guaranteed Bonds and the interest accrued during its holding period by the trust but payable at the time of maturity must be passed on to the member employees.

16. According to the learned counsel for the petitioner, the shortfall created by the third respondent comes to Rs.1,27,06,000/- and the value on the maturity would be Rs.26,00,00,000/-. The above discrepancies in the value of PIDB zero coupon bond were duly pointed out to the Regional Provident Fund Commissioner, Barrackpore by the petitioner vide letter dated 17.3.2020, however, the said authority did not bother to redress the matter, rather became accomplice to deprive the benefit of accrued interest to be passed on to the member employees. Thus, the Regional Provident Fund Commissioner has deliberately understated the value of the aforesaid bonds by Rs.1,27,06,000/- to deprive the employees of their interest and the same need to be modified to include the interest earned and accrued on those bonds during the holding period

by the PF Trust to be passed on for the benefit of the employees.

17. It is seen that the petitioner has filed a supplementary affidavit stating that, initially, the Regional Provident Fund Commissioner and/or Central Board of Trustees were reluctant to transfer the entire eight secured bonds guaranteed by the State Government in its favour. But, subsequently, they accepted three bonds out of eight and left five bonds of Government of Punjab. It is also stated that after filing of the writ petition, they accepted another three bonds on 24.1.2020 and had also accepted the proceeds of Rs.70,00,000/- of one redeemed bond transferred through the bank. However, now they are not transferring the last one bond of Rs.25,00,000/- having 9.70% interest of Punjab State Industrial Development Corporation Limited duly guaranteed by the State Government of Punjab for timely payment of interest and repayment of principal despite giving the information memorandum without offering any justification and, thus, depriving the employees in payment the full and final settlement of provident fund dues from 2017 who have already retired.

18. It is pertinent to note that the respondent EPFO and the third respondent cannot have liberty to pick and choose the bonds or securities guaranteed by the State or Central Government and thereby deliberately delay the process of transfer of the accumulations to CBT, causing suffering to the retired employees of the Mill, who are being paid only in part i.e. only 90% of their PF accumulations in full and final settlement of provident fund dues since September, 2017.

19. As stated supra and as could be seen from the materials on record, the total demand from the petitioner to be made in cash in lieu of the securities was Rs.2,54,36,954/-, whereas an amount of Rs.3,30,00,000/- is already accepted by the third respondent and another amount of Rs.70,00,000/- is also State guaranteed and, as such, is bound to be accepted by the provident fund authorities. In view of the above, the question of any amount being payable from the petitioner's side cannot and/or does not arise at all, inasmuch as the amount over and above the demand raised by the provident fund authorities has already been recovered by them. Apart from that, in the absence of the basis for calculation of the amount of Rs.1,20,98,495.70, the petitioner is in absolute dark as to on what account such a huge amount is claimed for.

20. According to the learned counsel for the petitioner, the provident fund authorities have made false and baseless allegations and also irrelevant statements which are not relevant for determination of the present lis. Since none appeared on behalf of the respondent EPFO authorities and since there is no rebuttal evidence on the side of the respondent authorities to disprove the case/averments of the petitioner, there is no option but to believe the affidavits filed by the petitioner subsequent to the filing of the writ petition.

21. The bonds are to be accepted at their matured value in place of the face value, inasmuch as in the case of the said bonds, interest is to be paid upon

maturity and not every year. The provident fund authorities in spite of being aware are repeatedly undervaluing the same for the reasons best known to them.

22. It is to be noted that upon surrender of exemption, the petitioner company deposited the accumulated provident fund amount/corpus with the provident fund authorities along with the State government securities/bonds invested in terms of investment pattern. The provident fund authorities initially accepted all but eight bonds. In spite of repeated requests, the said bonds were not accepted. As a result of which, the petitioner was compelled to move the present petition challenging the action on the part of the provident fund authorities.

23. As stated supra, during the pendency of the writ proceedings, the provident fund authorities gradually accepted four bonds out of five bonds and now the only bond which is not accepted by the provident fund authorities is of Punjab State Industrial Development Corporation Limited being bond No.INF973F09129, which goes to show that there were no infirmities and/or irregularities in the bonds in which the provident fund Trustees had invested. Thus, it is evident that the provident fund authorities had unnecessarily saddled the petitioner with litigation for no fault on its part.

24. Since the respondent EPFO in its affidavit has admitted the receipt of an amount of Rs.20,33,31,587.57 out of the total past accumulation of Rs.21,54,30,083.27 and the petitioner pleaded that there is excess transfer of Rs.31,07,504/-, it would be appropriate to remit the matter back to the authority concerned, as the respondent EPFO has failed to put forth the correct facts before this Court by way memo of calculation. In case there is any due from the petitioner, the respondent EPFO can raise a fresh demand substantiating its claim. In that event, all contentions of the respective parties are kept open.

25. In the result,

(i) The impugned letters/memo are set aside and the writ petition is allowed.

(ii) The matter is remanded back to the respondent EPFO for raising a fresh demand, if any.

(iii) If a fresh demand is made by the respondent EPFO, the petitioner is at liberty to defend the same by filing reply/objection, if any.

(iv) No costs.