(2014) 01 KAR CK 0178

In the Karnataka High Court

Case No : W.P. No. 56296 of 2013 (L-PF)

M/s. T.T.P. Technologies Pvt. Ltd. APPELLANT

Vs

Regional P.F. Commissioner-II and Recovery Officer, Tumkur and Others RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7I, 7Q

Citation : (2014) 140 FLR 1045

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.V. Shastri, Advocate for the Appellant; Harikrishna S. Holla and Aravind M. Neglur, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Sri. S.V. Shastri, learned Counsel for the petitioner does not have any objection to allow the application for impleading. IA No. 2/2014 is allowed. Applicant is permitted to be brought on record as party respondent No. 3. Petitioner to amend the cause title. Having heard Sri. S.V. Shastri, learned Counsel for the petitioner for considerable time and perused the pleadings and annexures, what is obvious is that the petitioner is said to have purchased the assets of the 2nd respondent in a public auction conducted by M/s. Karnataka State Financial Corporation [for short ''KSFC''] sometime during the year 2008 subject to a condition that the auction purchaser will have to clear all the statutory dues of the 2nd respondent.

2. According to Sri. S.V. Shastri, learned Counsel, the KSFC is said to have reserved liberty to the petitioner to call in question the orders of the statutory authorities, determining statutory dues, payable by the 2nd respondent. In addition, learned Counsel submits that this Court too permitted the petitioner to file an appeal before the Employees Provident Fund Appellate Tribunal, in respect

of order dated 28.10.2009 for recovery of penal damages u/s 14B of these Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 [for short ''Act''] and penal interest u/s 7Q of the Act totalling to Rs. 25,30,138/- due by the 2nd respondent for the period 4/1991 to 2/2002 and in which an interim order of stay is passed, subject to deposit of 30% of the demand which is complied with.

3. Sri. S.V. Shastri, learned Counsel submits that the Provident Fund Authorities failed to include the alleged dues of Rs. 7,79,216/- towards provident fund and interest u/s 7Q of the Act for the period 3/2000 to 12/2002 and therefore is disentitled in law to issue notice dated 27.9.2013-Annexure-G to pay the said sum within seven days, followed by the prohibitory order dated 3.12.2013 to recover the said amount. In addition, learned Counsel submits that the notice dated 26.8.2013 informing the petitioner of the determination of Rs. 7,79,216/- and its recovery from the 2nd respondent by orders dated 1.4.2002 and 10.4.2006 as indicated in Annexure-E, is impermissible.

4. The only contention advanced by the petitioner as aired by its learned Counsel is that the provident fund authorities failed to include Rs. 7,79,216/- being the provident fund dues and interest u/s 7Q of the Act while making a demand for payment of Rs. 25,30,138/- being the penal damages u/s 14B of the Act and penal interest u/s 7Q of the Act by order dated 28.10.2009, subject-matter of Appeal No. ATA No. 717[6]/2011, pending before the Provident Fund Appellate Tribunal, in which there is an interim, order of stay, subject to deposit of 30% of Rs. 25,30,138/-.

5. Apparently, what is not forthcoming is the notification issued by KSFC to sell by public auction the assets of the 2nd respondent. There is no material whatsoever over the conditions of auction purchase. If the submission of the learned Counsel for the petitioner is accepted, then the auction purchase subject to payment of statutory dues would include payment of dues to the Provident Fund Organization. Petitioner having not made its due diligence over the amount due by the 2nd respondent-company to the Provident Fund Organization, is estopped from contending that the Authority is disentitled to recover dues which the 2nd respondent was due and payable way back in the years 2002 and 2006 much prior to the petitioner''s acquisition of right, title and interest of the assets of the 2nd respondent in the auction held during the year 2008.

6. The submission of the learned Counsel that KSFC reserved liberty to the petitioner to question the orders of statutory authorities is unacceptable. Regard being had to section 7I of the Act, the challenge to orders passed by the Provident Fund Organization under the Act is only by way of statutory appeal to the Appellate Tribunal at Delhi and not otherwise. The 2nd respondent having failed to make payment of provident fund dues, suffered orders during the years 2002 and 2006, which are final and binding on the 2nd respondent since not questioned. The orders for recovery of statutory dues, is under the social welfare legislation, relating to amounts due and payable to the workforce of the 2nd

respondent-Industry. If the 2nd respondent did not question the orders within the time stipulated u/s 7I of the Act, by filing an appeal, it cannot but be said that the petitioner an auction purchaser during the year 2008, cannot question the orders of the Provident Fund Organization. Hence, neither KSFC has authority to extend liberty to the petitioner nor does law provide for it and that submission, it is needless to stale, cannot be countenanced. Yet again, there is nothing on record to show that M/s. KSFC extended such liberty to the petitioner at the time of auction.

7. In the communication dated 26.8.2013-Annexure-E as well as 29.7.2013-Annexure-G, the Provident Fund authorities have made it clear that the order dated 28.10.2009 demanding penal interest u/s 7Q of the Act totalling to Rs. 25,30,138/- due for the period 4/1991 to 2/2002 which is subject-matter of appeal in ATA No. 717[6]/2011, pending before the Provident Fund Appellate Tribunal, in which there is interim order dated 26.4.2012 staying the said recovery subject to deposit of 30% and that petitioner has in fact deposited Rs. 7,59,041/- representing 30% of the said sum. The Provident Fund authorities have stated that payment of Rs. 7,79,216/- is not connected with the payment subject-matter of appeal and that it is subject-matter of orders of recovery dated 1.4.2002 and 10.4.2006 as indicated in Reference Nos. 1 and 2 to the said communication. Therefore, it is clear that recovery notices relate to the period when the petitioner was not the owner of the assets while it was the 2nd respondent which held the assets and the 2nd respondent having failed to question the said orders of recovery, petitioner-auction purchaser in the year 2008, cannot be heard to contend that he was not a party to the proceedings or that he had no knowledge of the order and therefore not liable to make the payment.

8. Petition hopelessly without merit is accordingly rejected on payment of cost of Rs. 10,000/- payable to the Regional Provident Fund Commissioner. In view of the dismissal of the writ petition, IA No. 1/2014 for paper publication is unnecessary and is accordingly, dismissed.