
(2014) 12 DEL CK 0409
In the Delhi High Court
Case No : W.P.(C) No. 691/2011

National Thermal Power Corporation Limited	APPELLANT
Vs	
Regional Provident Fund Commissioner-II	RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(B), 14B, 17, 17(3)(a), 7(Q)

Citation : (2014) 12 DEL CK 0409

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : R.R. Kumar, Advocates for the Appellant; Shivanath Mahanta, Advocates for the Respondent

Judgement

Suresh Kait, J.—Vide the present petition, the petitioner seeks directions for quashing the impugned orders dated 30.11.2006 and 01.11.2010 passed by Original Authority and Appellate Authority whereby the petitioner Establishment has been directed to pay a sum of Rs. 68,616/- as penal damages under Section 14B and penal interest a sum of Rs. 8,09,593/- payable under Section 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short the "Act").

2. Learned counsel appearing on behalf of the petitioner submitted that the respondent issued scheme in the year 1996 w.e.f. November, 1995 that the Establishment shall deposit 8.33% from Trust account to the PF account towards pension fund. The aforesaid scheme was challenged by the petitioner before the High Court of Calcutta. Vide order dated 17.07.1997, the scheme of 1995 was stayed, however, the petitioner continued to deposit 8.33% as per scheme of 1995 and when the aforesaid scheme has been held valid and accepted by the Supreme Court in case of OTIS Elevators Employees Union & Ors. v. Union of India & Ors., thereafter, the whole amount was transferred to Provident Fund with interest accrued thereon.

3. Learned counsel further submitted that in original order dated 30.11.2006, the respondent calculated the penal damages and penal interest for the period November, 1995 to February, 2005. In the said order, it is specifically recorded that as per the instructions dated 05.02.2004 issued by the Head Office of EPFO, the Establishment is not liable to pay the damages under Section 14B, however, penal interest under Section 7Q is payable by the Establishment. But, the Regional Provident Fund Commissioner vide its order dated 30.11.2006 directed the petitioner to pay a sum of Rs. 68,616/- as damages under Section 14B and penal interest for a sum of Rs. 8,09,593/- under Section 7Q of the Act which is contrary to the instructions dated 05.02.2004 issued by the respondent.

4. Ld. Counsel appearing on behalf of the petitioner submitted that the petitioner cannot be penalized and asked to pay penal interest under Section 7(Q) of the Act for retaining the contribution in respect of EPF Account No. X, because the petitioner retained the said amount in compliance of interim order dated 20/24.03.1998 in W.P.(C) 263/1997 and 17/24.07.1997 in W.P.(C) 1064/1997 passed by the High Court of Calcutta. The principal amount was retained in separate bank account and was not used by the petitioner for its own purpose. However, after the vacation of the interim orders by the Hon''ble Supreme Court, petitioner transferred the entire principal amount along with bank interest earned thereon to EPFO in 2004. The EPFO itself had exempted the petitioner vide its instructions dated 05.02.2004 from levy of any damages under Section 14(B) of the Act for retaining the contribution under the courts order. Thus, the amount so retained by the petitioner in respect of account No. X cannot be "due" from the petitioner.

5. Ld. Counsel further submitted that the respondent has wrongly levied Rs. 64,888/- under Section 14(B) of the Act and Rs. 21,644/- under Section 7(Q) of the Act in respect of account No. II, from the petitioner because exempted trust under Section 17 of the Act is not required to pay any amount towards account No. II, for the reason that the said account pertains to administrative charges towards maintenance of account No. I. In case of exempted trust, the account No. I is maintained by the trust itself. Moreover, there is no provision for charging administrative charges in respect of account No. II under section 17(3)(a) of the Act from exempted Trust.

6. To strengthen his arguments, Id. Counsel for the petitioner has relied upon a case of Bharat Heavy Electricals Limited v. R.P.F.C., Indore, 1994 Suppl. (2) SCC 723, wherein held that an exempted Trust is not liable to pay any administrative charges to EPFO.

7. Ld. Counsel appearing on behalf of the petitioner without prejudice has undertaken to pay an amount of Rs. 1,728/- and Rs. 600/- in respect of account No. XXII levied by the respondent under Section 14(B) and Section 7(Q) of the Act respectively, in as much as the petitioner does not have any document to show that the said payments/contributions were ever transferred to EPFO for the said period.

8. On the other hand, Id. Counsel appearing on behalf respondent submitted that during the pendency of the validity of the Scheme, the respondent had issued a circular dated 25.02.2004 that the petitioner unit is liable to transfer the EPS, 95 contribution along with interest earned by the petitioner on EPF own Trust to the concerned EPF office and no damages will be levied, however, petitioner establishment did not transfer the full interest earned by all EPF Trust hence enquiry under Section 14(B) and 7(Q) of the Act was initiated and finally directed to pay the outstanding interest amount and damages determined in respect of account Nos. II and XXII.

9. Id. Counsel further submitted that an exempted establishment is required to pay in EPF account No. II, inspection charges @ 0.18% of the aggregate of basic wages, DA and Cash Value of Food Concession of the employees w.e.f. August, 1998, whereas the inspection charges were payable @ 0.09% w.e.f. 01.10.1964 till 31.07.1998. So, the amount of damages assessed as Rs. 64,888/- on inspection charges is quite correct and is payable by the petitioner/establishment.

10. Moreover, section 7(Q) came into force w.e.f. 01.07.1997. Accordingly, interest under Section 7(Q) of the Act has been calculated @ 12% per annum for the period of delay. Thus, total interest payable by the petitioner Establishment under Section 7(Q) in account No. X, II and XXII is assessed to the tune of Rs. 29,61,766/-, Rs. 21,644 and Rs. 600/- respectively.

11. However, a sum of Rs. 21,74,417/- towards amounts of interest for different months have been deposited by the establishment on different dates as was confirmed by the establishment itself vide its order dated 22.08.2006 along with a statement. In this context it is clear that the interest amount of Rs. 21,74,417/- which had been deposited by the Establishment in respect of the belated payments in EPF account, i.e., Account No. (X), has not included in the interest; only outstanding amount of interest has been assessed and is payable by the Establishment.

12. Learned counsel appearing on behalf of the respondent has clarified that as per the Table which is at page 53 of the petition the present case pertains to Account No. X for levy of penal damages and penal interest for the period from November, 1995 to February, 1995.

13. Id. Counsel further submitted that the Table at page 53, reveals that the damages under Section 14(B) of the Act have not been levied upon the petitioner and only the penal interest under Section 7Q of the Act has been assessed as Rs. 29,61,766/-. The petitioner had already paid an amount of Rs. 21,74,417/- and the outstanding amount towards the petitioner is Rs. 7,87,349/-. Thus, there is no contradiction in the order dated 30.11.2006 passed by the respondent, i.e., Regional Provident Fund Commissioner (II), Varanasi.

14. Learned counsel for the respondent further submitted that interest on the above amount has been levied from July, 1997, and not prior thereto, therefore, the respondent Commissioner has rightly assessed the amount and directed the

petitioner to pay the same in terms of the order dated 30.11.2006.

15. Upon hearing learned counsel for the parties, it is established that during the pendency of the validity of the Scheme, the respondent had issued a circular dated 25.02.2004 that the petitioner Unit is liable to transfer the EPS 1995 contribution along with interest earned by the petitioner on EPF own Trust to the concerned EPF office and no damages will be levied. However, petitioner establishment did not transfer the full interest earned by all EPF Trust, accordingly enquiry under Section 14(B) and 7(Q) of the Act was initiated and finally directed the petitioner to pay the outstanding interest amount and damages determined in respect of account on. II and XXII. An exempted establishment is required to pay in EPF account No. II, inspection charges @ 0.18% of the aggregate of basic wages, DA and Cash Value of Food Concession of the employees w.e.f. August, 1998, whereas the inspection charges were payable @ 0.09% w.e.f. 01.10.1964 till 31.07.1998. So, the amount of damages assessed as Rs. 64,888/- on inspection charges is payable by the petitioner/ establishment.

16. Moreover, section 7(Q) came into force w.e.f. 01.07.1997. Accordingly, interest under Section 7(Q) of the Act has been calculated @ 12% per annum for the period of delay. Thus, total interest payable by the petitioner Establishment under Section 7(Q) in account No. X, II and XXII is assessed to the tune of Rs. 29,61,766/-, Rs. 21,644 and Rs. 600/- respectively.

17. However, a sum of Rs. 21,74,417/- towards amounts of interest for different months have been deposited by the establishment on different dates. In this context it is clear that the interest amount of Rs. 21,74,417/- which had been deposited by the Establishment in respect of the belated payments in EPF account, i.e., Account No. X, has not included in the interest. Thus, only outstanding amount of interest has been assessed and is payable by the petitioner.

18. On perusal the Table, which is at page 53 of the petition, it is revealed that the damages under Section 14B of the Act have not been levied upon the petitioner and only the penal interest under Section 7Q of the Act has been assessed as Rs. 29,61,766/-. Since, the petitioner had only paid an amount of Rs. 21,74,417/-, the outstanding amount towards the petitioner is Rs. 7,87,349/-.

19. In view of the above, I do not find any discrepancy or perversity in the orders dated 30.11.2006 and 01.11.2010 passed by the original authority and the appellate authority respectively.

20. Accordingly, the present writ petition is dismissed with no orders as to costs.