(2014) 05 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 13909 of 2010 (O&M)

Punjab Agro Industries Corpn. Ltd. APPELLANT

Vs

The Regional Provident Commissioner and Others RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(b), 17(a)(c), 7(1), 7(A), 7(i)

Citation : (2014) 176 PLR 390

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Jasjit Singh Dhaliwal, Advocates for the Appellant; Rajesh Hooda, Advocates for the Respondent

Judgement

Ritu Bahri, J.—This petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the impugned orders dated 15.04.2005 (P-1), 08.02.2007 (P-2) and 19.05.2010 (P-6) passed by respondent Nos. 1, 2 and 5 against the statutory provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity ''the Act'') and further prayer is for issuance of direction to respondent No. 2 to refund the amount of Rs. 8,42,890/-. Respondent No. 3 is a company registered under the Companies Act, 1956. A memo of understanding was entered into between petitioner and respondent No. 3 for setting up of 5TDP (Tons per day) sugar manufacturing in the State of Punjab. The petitioner invested Rs. 30 lacs in the equity share capital of the company. Respondent No. 3 signed this agreement with petitioner on 17.04.1995. The petitioner has 26% equity contribution in the Company in order to promote agro industries in State of Punjab.

2. Respondent No. 2 initiated proceedings under Section 7-A(1) of the Act against respondent No. 3 as he had failed to remit the provident fund, family pension fund and insurance fund contributions for the period from 1997 to 2000. Vide order dated 15.04.2005 (P-1), recovery of Rs. 4,09,760/- was sought from

respondent No. 3. It was further indicated in the order that no efforts, whatsoever were made to serve other Directors of M/s. Punjab Bio. Tech Ltd.

3. While passing order dated 15.04.2005 (P-1), attempts were made to serve respondent No. 3 but as per report of the postal department, the factory was reported to be closed. Bailable warrants of arrest were issued and no arrest could be made as the factory was lying closed and the whereabouts were not known. Thereafter, respondent No. 2, vide order dated 08.02.2007 (P-2) passed the order against the petitioner for recovery of arrears of Rs. 8,41,689/- under the Act in respect of liability of respondent No. 3 as the petitioner was having a joint venture with respondent No. 3. The arrears was ordered to be deposited with SBI. Sector 17, Chandigarh or Demand Draft of the said amount in favour of RPFC, Chandigarh be forwarded to the office immediately failing which all actions as provided under Section 8 of the Act were ordered to be taken against the petitioner.

4. The petitioner-company filed an appeal against the order dated 08.02.2007 before the Tribunal, which was dismissed by the Tribunal on the ground that Section 7(i) of the act does not permit any appeal to be filed against the order of attachment or recovery warrant. As per 17(b), the transferee and the transferor were jointly and severally liable for the default in depositing the contribution.

5. Learned counsel for the petitioner has argued that the impugned order dated 15.042005 (P-1) is liable to be quashed as no notice was given to the petitioner even though the petitioner invested Rs. 30 lacs in the equity share capital of the company as per MOU with respondent No. 3 on 17.04.1995. Further, the order has been passed without affording opportunity of hearing to the petitioner. Subsequently, order dated 08.02.2007 (P-2) was passed.

6. Learned counsel for the respondents on the other hand has argued that the object of the Act is to secure the provident fund, family pension fund and insurance fund contributions of the employees. Learned counsel further argues that the petitioner was given notice of recovery of arrears and thereafter, order dated 20.02.2007 (P-3) has been passed and the petitioner has not challenged the said order before any Court nor gave any reply.

7. Heard learned counsel for the parties.

8. The writ petition is liable to be dismissed as the petitioner had entered in to MOU with respondent No. 3 on 17.04.1995. The petitioner was having 26% equity contribution in the Company. After the order dated 08.02.2007 (P-2) was passed, the final recovery order was passed on 20.02.2007 (P-3) whereby a liberty was granted to the petitioner-company to deposit the said amount as assessed vide P-1. In the case of default, proceedings of attachment were to be initiated by the Recovery Officer while exercising its power under Section 8(b) of the Act. This order was passed after giving due notice to the petitioner (P-2) and the final order of recovery dated 20.02.2007 (P-3) was not challenged by the petitioner. Moreover, vide P-1 by which the amount of Rs. 4,09,760/- was sought

from respondent No. 3, the petitioner was not required to be impleaded as party, as per Section 7(A) of the Act.

9. Hon''ble the Supreme Court in a case of S.K. Nasiruddin Beedi Merchant Ltd. Vs. Central Provident Fund Commissioner, has held that under Section 7(A) of the Act, the authority was only required to quantify of the amount due from the employer. The applicability of the Act in class of employees was not to be determined by any proceedings under Section 7(A) of the Act.

10. Hence in the present case, there was no reason for giving notice to the petitioner before passing the impugned order dated 15.04.2005 (P-1). Moreover, there is a limitation of 60 days to file an appeal and much water has flown since the date of that order.

11. As far as order dated 19.05.2010 (P-6) passed by respondent No. 2 is concerned, the authorities have referred to Section 7(1) of the Act which provides for appeal against the order passed under Section 17(a)(c) and 14(b) of the Act, there is no provision to file an appeal against the order of attachment of recovery. In view of the above circumstances, the writ petition is dismissed on merits.