

(2017) 01 CAL CK 0062

In the Calcutta High Court

Case No : M.A.T. No. 934 of 2013 with C.A.N. Nos. 3309 of 2014 with 6787 of 2013 with 6148 of 2015

Regional Provident Fund Commissioner

APPELLANT

Vs

M/s. Sylee Tea Estate

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, Section 7I, Section 7L

Citation : (2017) LabLR 518 : (2017) LIC 992

Hon'ble Judges : Mr. Rakesh Tiwari and Mr. Mir Dara Sheko, JJ.

Bench : Division Bench

Advocate : Mr. S.C. Prosad, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Rakesh Tiwari, J.—Pursuant to the order dated 9.3.2016 the learned Counsel for the appellant submits that the defects have been removed.

We perused the office report dated 12.7.2016 which shows that defects have been removed. The appeal is therefore in order.

2. The application for condonation of delay being C.A.N.3309 of 2014 is taken up for hearing.

3. At the time of call Counsel for the appellant is present, however, nobody appears on behalf of the respondents, therefore, the matter is taken up at the instance of the Counsel for the appellant.

4. Heard the learned Counsel for the appellant and perused the record.

5. Office has reported that the appellant has preferred this appeal beyond time by 217 days. Though the reasons given in paragraphs 9, 10 and 11 of the delay condonation application being C.A.N. 3309 of 2014 are vague but in the interest of justice we have also looked into the merits of the case as has been settled by

the Apex Court in the catena of decisions that while considering the delay condonation application merits of the case may also be considered, hence the merit is also looked into.

6. Since none appears to oppose the delay condonation application and we find the cause shown for delay to be sufficient, it is condoned.

7. Before deciding the case on merits, the factual aspects may be considered.

8. Background of the appeal is that the Government had granted rehabilitation package to M/s. Naya Sylee Tea Estate, Nagrakata, Jalpaiguri which was taken over under the directions by the Government for rehabilitation. It appears from record that terms and conditions of taking over the appellant for rehabilitation are not on record, hence, it is assumed that in order to grant rehabilitation to it the liability of the industry may also have been taken over by the Government.

9. The establishment defaulted in payment of Employees' Provident Fund dues of the employees. The Commissioner of Employees' Provident Fund for initiated proceedings for recovery of the amount under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as "the Act", against the management of the company. An amount of Rs.43,26,403/- was assessed in the proceeding under Section 7A and interest amount of Rs.3,03,043/- towards Section 7Q of the Act. The assessment order was challenged before the Appellate Tribunal in ATA No. 872(15) 2011 (M/s. Naya Sylee Tea Estate v. RPFC, Jalpaiguri). which vide its order dated 3.1.2012 considered the genuine financial difficulty of the appellant, in remitting the huge amount wards Provident Fund dues with interest in one go and directed to pay the said amount in 36 equal instalments.

10. Being aggrieved, the petitioner, Employees' Provident Fund Organisation moved writ petition being W.P.13300(W) of 2012 challenging the order of the Tribunal directing recovery of the amount assessed under Sections 7A and 7Q of the Act be paid by the establishment in 36 equal instalments. The petitioner also challenged the very jurisdiction of the Appellate Tribunal and exercising its power under Section 7-I and 7-L of the Act saying that it had no authority in law to grant relief of instalment in payment of the balance amount as assessed by the Employees' Provident Fund Commissioner under Section 7-A read with Section 7-Q of the Act.

11. Further contention of the learned Advocate for the appellant is that even if the Tribunal has power to pass an order under Section 7-I of the Act with regard to the amount assessed under Section 7A of the Act, it has no power or authority to pass any order on the interest part accrued on the principal under Section 7Q of the Act.

12. The order passed in the writ petition is not a very long one but it gives out in detail the argument of the petitioner and the notification etc. on which the relief has been placed for challenging the order of the Tribunal dated 3.1.2012. For

ready reference the order of the learned Single Judge of this Court dated 3.9.2012 is set out herein below -

" This writ petition is directed against an order dated January 3, 2012 passed by the Presiding Officer of the Employees' Provident Funds Appellate Tribunal.

The occasion for this order was an appeal under section 7I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (an Act, for short) filed by the respondent no.1 herein against an order passed by the Regional Provident Funds Commissioner No. 1, Jalpaiguri, which is also the writ petitioner in this Court.

By the order under section 7A, the writ petitioner had determined a certain sum as payable by the respondent no.1 and quantified the interest on the said sum under section 7Q of the Act. Against the said order, an appeal before the Tribunal was preferred.

Before the Tribunal, the appellant expressed its financial difficulties and one of the reliefs sought for by the establishment before the Tribunal was to provide instalment facilities for the amount determined and the Tribunal after hearing the learned advocates for the parties and considering the financial difficulties of the establishment, directed the establishment to remit the balance amount as determined by the 7A authority in 36 equal instalments with directions for payments as contained in the order.

The 7A authority, which had passed the order, had filed the writ petition challenging the order of the Tribunal.

Mr. Mondal, the learned counsel for the writ petitioner has submitted that the order passed by the Tribunal was violative of the provisions of Section 7L of the Act inasmuch as the Tribunal ought to have referred the case back to authority which had passed such order with such direction as the Tribunal might have thought fit. According to him and as also made out in the writ petition that there is an internal circular which laid down the principle of granting instalments by the officials of the Provident Funds Authorities and the Tribunal by the order impugned had gone against the same. The third point of attack was that before the 7A authority the establishment never prayed for any instalment.

None of the points taken by Mr. Mondal can be sustained in invoking the writ jurisdiction of this Court. A Tribunal has sufficient power to pass any order as it may think fit by either confirming, reversing or modifying the order appealed against under Section 7L of the Act. All that is the Tribunal has done in this case is to modify the mode of payment without touching the final determination of the dues as payable by the establishment. It has only granted instalments to the establishment to liquidate the amounts to be paid by it towards the Provident Funds dues. The question of remanding the case to the authority concerned for a fresh adjudication arises only in such cases where the Tribunal thinks it is necessary and for which or in which additional evidence is necessary for grant of

instalments. The Tribunal was not required to refer the matter back to the authority concerned as it was itself competent to pass the order.

I do not find that the Tribunal by passing the order impugned in the writ petition has in any manner violated the provisions of Section 7L of the Act or exceeded its jurisdiction.

The circular referred to by the petitioner is clearly for the officials of the Provident Funds Authorities since the circular was about delegation of powers to grant instalments to the officials as contained therein according to different grades. For example, Officer-in-charge of a Sub-Regional Office, Regional Provident Fund Commissioner etc. Obviously this has nothing to do with the Tribunal exercising appellate jurisdiction over an order passed by the 7A authority. A Tribunal is not an officer under the Act. This submission of the petitioner also fails.

The last point taken is that the establishment did not make any such prayer for instalments before the 7A authority. Mr. Mondal submitted that the establishment did not pray to the 7A authority in terms of the said official circular containing delegation of authority, which has been annexed to the writ petition as annexure P5. Mr. Mondol's justification is that litigants must know the law and, therefore, their ignorance of the provisions of a circular is un-condonable.

This is an official communication issued by the Additional Central Provident Funds Commissioner (C) to officials of different zones. Mr. Mondal is not aware whether this was gazetted or not. This is a new departmental communication and Mr. Mondal has no clue about how an establishment is supposed to be aware of this internal communication made by one commissioner to another. Even if this was known to the establishment and no such prayer for instalments was made to the 7A authority, the appellate Tribunal was not without its power to grant it in an appropriate case. The reasons for granting the instalments, i.e., the financial difficulties faced by the establishment, has been quite specifically recorded by the Tribunal. I find no infirmity in the order passed by the learned Tribunal on this count also.

The writ petition is devoid of merits and is hereby dismissed.

There shall be no order as to costs.

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13. Learned Advocate for the appellant submitted that the order passed in the writ petition is bad.

14. Heard the learned Advocate for the appellant. Considering the facts and circumstances of this case we are of the view that the record is maintained by the Employees' Provident Fund organisation pertaining to the deposit of Provident Fund of the employee and matching contribution by the Government. Admittedly, in this case the respondent/establishment before us was sought to be

revived and rehabilitated by the Government to save the workers from unemployment. If one industry closes, it creates unprecedented hardship upon the workers by creating unemployment in which not only the workers suffer but also the family members suffer. Therefore, there can be no doubt that where the Government has provided rehabilitation package to the establishment, the endeavour of the Provident Fund Organisation is to work for the benefit of the workmen and strive to ensure that industry runs.

15. It is in this context that provisions of Sections 7-I and 7-L of the Employees' Provident Funds and Miscellaneous Provisions Act, which is a beneficial piece of legislation may be looked. The Sections 7-I and 7-L of the Act are reproduced below:-

"7-I. Appeals to Tribunal.- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

"7-L. Orders of Tribunal.- (1) A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law."

16. A perusal of the aforesaid sections would make it crystal clear that the Appellate Tribunal is vested with power under Section 7-I for modifying or

varying the order passed under Section 7A of the Act, particularly for the interest of the workers of an establishment. It is to be noticed that before the Employees' Provident Fund Appellate Tribunal the employers had put in their difficulty that after providing its rehabilitation package they would not be able to deposit whole of the balance amount due (in default) at one go as assessed in the proceedings under Section 7A and 7Q of the Act, particularly when the establishment was on verge of closer due to losses by the constituting management and had to be revived by the Government. It appears from the contention of the new management before the Appellate Tribunal that in order to allow the company to survive they needed sometime for payment of provident fund also pay the Provident Fund dues in instalments so that there is no adverse effect on the working of the establishment as well as upon the workers.

17. We are not impressed by the argument of the learned Advocate for the Provident Fund Organisation that Tribunal had no jurisdiction or authority to grant instalment, for Section 7-L provides that a Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the Tribunal. The provision leads no doubt in our mind that if the authority can grant relief as per the provisions under Section 7-L, it also can direct mode in which the relief is granted. Therefore, the objection of the learned Counsel for the appellant that the Tribunal had no authority or jurisdiction to modify or vary an order passed under Section 7-L is without jurisdiction, is not acceptable to us.

18. Moreover, under the Employees' Provident Funds and Miscellaneous Provisions Act powers have been vested in the Provident Fund Authorities to assess and reinforce their orders for the benefit of the employees as the Act of 1952 is a beneficial piece of legislation. But it cannot act in any manner which is detrimental to the object and reason of the Act particularly when, in the facts and circumstances of this case, rehabilitation package was given to the establishment for its survival so that the employees would remain in employment and contribute to production for the country. After all if huge amount is directed to be recovered under coercion then an establishment would certainly have an adverse impact on its functioning in its certain closer. It was neither the object of the Government to grant rehabilitation package to the establishment to close it down nor of the employer/now management to usurp the Provident Fund of the workers for they had pleaded that they shall deposit the amount assessed under Sections 7A and 7Q but their genuine financial crunch may be considered by the Appellate Tribunal, so that not only pay the amount of Provident Fund dues as assessed by the Provident Fund Commissioner is cleared out in easy instalments but also the establishment survives.

19. In so far as maintainable of ledger accounts of Fund by the Provident Fund Organisation and enforcement of the Act are concerned, it is for the benefit and welfare of the establishment as well as the employees to see that none of them

suffers. The order dated 3.1.2012 was passed by the Tribunal exactly four years back from today. The Tribunal had granted 36 instalments to the establishment to comply with the order of the assessment under which whole of the 36 instalments would have been paid by 3.1.2014.

20. There is nothing on record to show that the compliance has not been made by the respondent establishment before us.

21. For all the reasons stated above, the appeal is dismissed on merit.

22. As a consequence thereof, all the connected applications are also disposed of accordingly.