(2016) 02 GUJ CK 0076

In the Gujarat High Court

Case No : Special Civil Application No. 17069 of 2012

Reliance Industries Ltd. and Others APPELLANT

Vs

Regional Provident Fund Commissioner-1, Employees and Others RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, Section 17(2A), Section 7A

Citation : (2016) 02 GUJ CK 0076

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : K.S. Nanavati, Sr. Counsel and Nandish Chudgar for Nanavati Associates, Advocate, for the Appellant; N.K. Majmudar, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. Heard Mr. K.S. Nanavati, learned Senior Counsel, with Mr. Chudgar, learned advocate for the petitioner - company, and Mr. Majmudar, learned advocate for the respondent - Provident Fund Commissioner.

2. In present petition, the petitioner company has challenged the order dated 18.10.2012 passed by the respondent No. 1 - Provident Fund Commissioner.

2.1 By the impugned order dated 18.10.2012, the respondent No. 1 - Commissioner has directed the petitioner company to comply statutory EDLI Scheme of 1976 w.e.f. 1.4.2011 and remit EDLI contribution in EPF Account No. 21 with the charges as specified in the impugned order dated 18.10.2012.

3. The facts involved in and relevant for considering and deciding present petition are that w.e.f. 1.12.1979, the petitioner was granted exemption from compliance of the provision under the EDLI Scheme brought in force under the provisions of the Employees'' Provident Funds & Miscellaneous Provisions Act, 1952

[hereinafter referred to as "the Act"].

The exemption was granted in view of and in exercise of the authority conferred by Section 17 of the Act. The said exemption was granted in light of the submissions by the petitioner company that it would enter into a contract with the Life Insurance Corporation [hereinafter referred to as "LIC"] for group insurance policy.

3.1 The petitioner has claimed that in view of and in pursuance of the exemption granted under Section 17 from compliance of the Scheme, the petitioner company had entered into a contract with the LIC and availed group insurance policy bearing No. GI-16195.

3.2 The petitioner has claimed that subsequently, the Central Provident Fund Commissioner extended the said exemption to the petitioner company from time to time. According to the petitioner company, the exemption continued without interruption and without any complaint until 2003. The said submission is not disputed by the respondent.

3.3 The petitioner has claimed that somewhere in 2003-2004, the Provident Fund Organization decided to allow private insurance companies under the control of Insurance Regulation Development Authority [hereinafter referred to as "IRDA"] to offer insurance scheme having better or atleast similar benefits as those available under the EDLI Scheme. The decision was approved in 157th meeting of the Board of Provident Fund Organization. The said submission is not disputed by the respondent.

3.4 The petitioner has further claimed that some wherein in 2005, the respondent No. 2 asked the petitioner company to submit certain documents in prescribed form and to also submit premium receipts issued by LIC. The said documents were asked for to consider the request for extension of exemption. The petitioner has claimed that requisite documents were provided to the authority and consequently, the extension of exemption from 1.4.2004 to 31.3.2007 was periodically granted by the authority. It is further claimed that in June-2007, the petitioner again requested for further extension in respect of exemption from 1.4.2007 to 31.3.2009. It is claimed that at the request of the petitioner, LIC had issued letter dated 13.7.2007 certifying that the petitioner company had paid policy renewal premium from 1.4.2000 to 31.3.2008.

3.5 In the aforesaid background and more particularly in light of the fact that from time to time, the petitioner company had been granted extension in respect of exemption and in light of the fact that in 2003-2004, the Board of Trustees had approved the proposal allowing the private insurance companies to offer group insurance scheme having similar or better benefits, the petitioner company negotiated with certain private insurance companies to achieve cost benefit and/ or better insurance coverage and better benefit. In pursuance of such negotiations, the petitioner entered into an agreement in April-2011 with the State Bank of India Life which, according to the petitioner company, offered better benefit and was cost effective. The said arrangement was made in lieu of EDLI Scheme.

3.6 The petitioner has claimed that subsequently LIC addressed a communication in November-2011 to the respondent No. 1 Commissioner informing that the petitioner had not renewed the group insurance policy from 2011. Therefore, the respondent No. 2 - Assistant Commissioner called upon the petitioner to submit compliance status with regard to EDLI contribution. It is claimed that the company informed the respondent No. 2 - Assistant Commissioner that the petitioner company had availed group insurance scheme from State Bank of India Life Insurance Company and had paid premium to the tune of Rs. 3,24,739/- and for the period from 1.7.2011 to 30.6.2012, the company had availed group insurance scheme from Max New York Life Insurance Company Ltd. and had paid premium to the tune of Rs. 8,34,744/-.

3.7 The petitioner has further claimed that after considering the said reply, a show cause notice dated 7.11.2011 came to be issued whereby the petitioner was asked to show cause as to why the exemption should not be withdrawn/ cancelled and why EDLI contribution should not be recovered. It is further claimed that the petitioner had replied the said show cause notice vide its response dated 22.2.2012 and thereafter, there was no correspondence.

3.8 It is further claimed that for the period starting from 1.4.2012, the petitioner entered into a contract with the Bajaj Allianz Life Insurance Company for group insurance policy and informed the PF authority about the said contract. The said contract was entered into for the period upto 2013.

3.9 According to the petitioner, another show cause notice came to be issued in August 2012, which was in continuation of or in furtherance of the earlier notice dated 7-11-2011. It was also informed by the PF authority vide the said notice that the petitioner''s reply was not found satisfactory and that the petitioner company had violated the conditions of exemption and that therefore, the petitioner should explain as to why action for cancelling the exemption and recovery should not be taken.

3.10 The petitioner has claimed that thereafter, the respondent No. 1 - Commissioner passed the impugned order dated 18.10.2012.

It is claimed that after the said order was passed, the petitioner company made representation to the Central Authority, New Delhi.

The petitioner was directed by the Board to approach the respondent No. 1 who is competent authority to take decision. According to the petitioner, since the respondent No. 2 issued demand notice and also initiated proceedings under Section 7A, it has preferred present petition.

4. Mr. Nanavati, learned Senior Counsel for the petitioner company, submitted that the Provident Fund Organization itself has permitted the option of availing group insurance policy with private insurance companies provided the group

insurance scheme offered by the private insurance company is similar or better than the EDLI scheme. He also submitted that when the PF Organization itself has permitted the said option, there is no illegality in action of entering into contract for group insurance scheme with the private insurance companies so long as the scheme under the policy with the private insurance company provides benefit at par with or better than EDLI scheme. He submitted that the decision to grant and/or to continue exemption even in cases where the group insurance scheme is availed with private insurance companies is taken by the P.F. authority after comparing the benefits under the group insurance scheme of the private insurance companies with the EDLI scheme and the permission and extension of exemption are granted by the PF Organization in cases where such scheme is found at par with or better than the provision under the EDLI scheme. So as to support his submissions, Mr. Nanavati, learned Senior Counsel for the petitioner company, referred to the orders passed by the PF Organization in similar cases (copies of the said orders are placed on record of present petition at Annexure-D Page 40 to 62).

5. Having regard to the said facts and submissions, the Court entertained the petition vide order dated 7.1.2013 and protected the petitioner against coercive action during pendency of the petition. The order dated 7.1.2013 reads thus:--

"Additional affidavit in reply is tendered by learned advocate appearing for the petitioners before this Court today and is taken on record.

Notice returnable on 11.01.2013. Direct service is permitted today. In the meantime, no coercive action shall be taken against the petitioners."

5.1 Thereafter, the Court passed below quoted order on 25.4.2013:--

"1. Heard Mr. K.S. Nanavati, learned senior advocate for the petitioners and Mr. Niral R. Mehta, learned advocate for the respondents.

2. This Court (Coram: Honourable Mr. Justice K.S. Jhaveri), vide order dated 07.01.2013 had passed the following order:

"Additional affidavit in reply is tendered by learned advocate appearing for the petitioners before this Court today and is taken on record.

Notice returnable on 11.01.2013. Direct Service is permitted today. In the meantime, no coercive action shall be taken against the petitioners.

3. Having heard learned counsel for the respective parties and having gone through the record, In my view the petition needs to be examined in detail. Hence, Rule. Mr. Mehta waives service of Rule on behalf of respondents.

4. So far interim relief is concerned, in my view, the interim relief was already granted by this Court, at the time of issuing notice, and if it is vacated at this stage, that would frustrate the cause. Mr. Niral R. Mehta, learned advocate for the respondents has vehemently contended that the stay may not be extended. He has further requested that the petition be heard at an early date. Having

heard learned advocates for the respective parties at length on the question of interim relief and on going through the record, in my view, the petitioner needs to be protected during pendency of this petition. Hence, interim relief in terms of paragraph-33(B) of this petition is granted.

5. At the request of learned advocate for the respondents, list the matter for final hearing on 01.05.2013."

5.2 During pendency of the petition, the petitioner company preferred Civil Application No. 5324 of 2013. The said application was preferred in view of the fact that the period of group insurance scheme (which was in operation at the time when the petition came to be filed and order came to be passed) had expired or was about to expire. In such circumstances, the petitioner - applicant by virtue of the Civil Application No. 5324 of 2013 prayed, inter alia, that:--

"11a. Your Lordships may be pleased to allow this present Civil Application and be further pleased to direct the respondents to consider the applicant/petitioner company''s establishment as an exempted establishment from the purview of the statutory EDLI Scheme 1976, under the provisions of Section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and permit the applicant company to avail Group Insurance Policy (GIS) in lieu of statutory EDLI Scheme from private insurance companies including M/s. Bajaj Allianz Life Insurance Co Ltd. or any other private insurance company as approved by the Central PF Office;"

5.3 The Court passed below quoted order in the said application on 7.5.2013.

"Mr. K.S. Nanavati, learned senior advocate for the applicants has pointed out that what is agitated in this application, though prima-facie may appear as the fresh cause of action, the subject matter of the main petition will have direct bearing on the point at issue. Reference is also made to the interim order dated 25.04.2013 passed by this Court, wherein it is inter-alia recorded that the respondent authorities wanted the final hearing of the petition at the earliest and at their request the matter was fixed for final hearing on 01.05.2013.

Mr. Niral R. Mehta, learned counsel for the respondent-authorities is reported to be on leave today. Mr. J.S. Parikh, learned advocate on behalf of Mr. Niral R. Mehta, prays for time. At his request, list on 09.05.2013."

5.4 The said order dated 7.5.2013 is followed by the order dated 10.5.2013, which reads thus:--

"1. Heard Mr. Nandish Chudgar, learned advocate for the applicants original petitioners and Mr. Niral Mehta, learned advocate for respondent authorities.

2. Learned advocate for respondent authorities Mr. Niral Mehta has submitted the affidavit-in-reply to contest this civil application, which is taken on record.

3. Controversy in main petition is challenge to the order passed by the respondent authorities, cancelling exemption granted under Section 17(2A) of

the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. The said petition is admitted by this Court vide order dated 25.04.2013 and interim protection is also granted in favour of the original petitioners. The said order dated 25.04.2013 reads as under:

"1. Heard Mr. K.S. Nanavati, learned senior advocate for the petitioners and Mr. Niral R. Mehta, learned advocate for the respondents.

2. This Court (Coram: Honourable Mr. Justice K.S. Jhaveri), vide order dated 07.01.2013 had passed the following order:

"Additional affidavit in reply is tendered by learned advocate appearing for the petitioners before this Court today and is taken on record.

Notice returnable on 11.01.2013. Direct Service is permitted today. In the meantime, no coercive action shall be taken against the petitioners.

3. Having heard learned counsel for the respective parties and having gone through the record, In my view the petition needs to be examined in detail. Hence, Rule. Mr. Mehta waives service of Rule on behalf of respondents.

4. So far interim relief is concerned, in my view, the interim relief was already granted by this Court, at the time of issuing notice, and if it is vacated at this stage, that would frustrate the cause. Mr. Niral R. Mehta, learned advocate for the respondents has vehemently contended that the stay may not be extended. He has further requested that the petition be heard at an early date. Having heard learned advocates for the respective parties at length on the question of interim relief and on going through the record, in my view, the petitioner needs to be protected during pendency of this petition. Hence, interim relief in terms of paragraph-33(B) of this petition is granted.

5. At the request of learned advocate for the respondents, list the matter for final hearing on 01.05.2013."

4. Interim relief which is granted in terms of para:33(B) reads as under:

33(B). Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the execution, implementation and operation of the order dated 18.10.2012 passed by the respondent No. 1 and further be pleased to restrain the respondents from taking any coercive measures against the petitioner company pursuant to the impugned order as well as from holding any inquiry pursuant to the notice dated 21.12.2012 at Annexure-AD;

5. It coincidentally happened that on the same date i.e. on 25.04.2013 itself, a communication dated 25.04.2013, which is on record, was sent by the authorities to the applicant, which turned out to be cause of action and urgency for the present application. Learned advocate for the respondent authorities Mr. Mehta has fairly submitted that had the authorities been aware of the above referred order of this Court dated 25.04.2013, the complexion of the grievance voiced in this Civil Application would have been different. What is stated by Mr.

Mehta as recorded above, is as an Officer of the Court and it is without prejudice to the rights and contentions of the respondent authorities, that the very filing of the application is not maintainable in view of the contentions raised in the affidavit-in-reply.

6. As referred in the order dated 25.04.2013, the final hearing of the main matter was fixed on 01.05.2013 and today being the last day before summer vacation, because of paucity of time, final hearing of this petition is deferred till reopening.

7. Under these circumstances, list the petition with this application for final hearing on 25.06.2013. The issue of the respondent authorities about maintainability of this Civil Application is also kept open. The question is, in the interregnum, what should be the arrangement.

8. I have gone through the record. If the details of page 17 of the application are taken into consideration, it cannot be said that the object of statute is not being taken care of by the petitioner. The present arrangement with Bajaj Allianz Life Insurance Co. Ltd. has been in force since 01.07.2012 and is to last till 30.06.2013. Having heard learned advocates for the respective parties, prima facie I have found that in substance the objection of the respondent authorities is only that without hearing them, the petitioner ought not to have decided or changed the company, which at present is Bajaj Allianz Life Insurance Co. Ltd. The stand of the respondent authorities though may not be illegal, it is more to assert their authority, less to serve the object of the statute. In view of this, further hearing of this Civil Application can be deferred, to be taken up with the main matter, with the further direction that the present arrangement of the petitioner with Bajaj Allianz Life Insurance Co. Ltd. which is to last till 30.06.2013 shall not be interfered with, by the respondent authorities.

9. List this application with main petition for further consideration on 12.06.2013. Direct Service permitted. "

5.5 It can be seen from the said order, that the Court observed that:--

"....it cannot be said that the object of statute is not being taken care of by the petitioner. The present arrangement with Bajaj Allianz Life Insurance Co. Ltd. has been in force since 01.07.2012 and is to last till 30.06.2013. Having heard learned advocates for the respective parties, prima facie I have found that in substance the objection of the respondent authorities is only that without hearing them, the petitioner ought not to have decided or changed the company, which at present is Bajaj Allianz Life Insurance Co. Ltd. The stand of the respondent authorities though may not be illegal, it is more to assert their authority, less to serve the object of the statute...."

5.6 Subsequently, the Court passed the order dated 26.6.2013, which reads thus:--

"1. Heard Mr. Chudgar for the applicants/petitioners and Mr. Niral Mehta for the respondent authorities. After having heard learned advocates for the respective parties and having gone through the material on record, it transpires that the matter would require detailed scrutiny. List for further consideration on 05.07.2013.

2. It is indicated that, as per the present arrangement, the insurance policy is with M/s. Allianz Bajaj Life Insurance Co. Ltd. and the same is to expire on 30.06.2013. If no order is passed, then, on and from 01.07.2013, technically there will be vacuum so far insurance protection, to the employees of the petitioner company is concerned and therefore some interim arrangement needs to be worked out. Learned counsel for the petitioner has submitted that, according to him, the present arrangement is legal and proper and if permitted by the authorities, the petitioner intends to continue with the same.

3. The controversy goes to the root of the matter, so far the purpose and extent of the regulatory power of the respondent authorities, in such cases, are concerned. Till that issue is gone into, the interest of the employees should not be jeopardised and at the same time, the arrangement, if any that may be worked out, should also not be inconsistent with the norms of the respondent authorities. The document at page-56 which is part of Annexure-D, is the order of Employees'' Provident Fund Organisation, New Delhi, (date is not properly legible-6/5/2004) No. EDLI/(C.V.)/Amendment/Scheme/2002/2483. As per the said order, M/s. Allianz Bajaj Life Insurance Co. Ltd., is a recognised company. The present arrangement of the petitioner company is with the said insurance company. If the same is permitted to be renewed, in my view, it would not create any inconsistency with the policy of the respondent authorities.

4. In this factual background, it is ordered that, it would be open for the petitioner company to renew the present arrangement which is with M/s. Allianz Bajaj Life Insurance Co. Ltd., which is to expire on 30.06.2013.

List for further consideration on 05.07.2013.

Direct service permitted."

6. It is submitted by Mr. Nanavati, learned Senior Counsel for the petitioner, that besides the said Civil Application No. 5324 of 2013, the company had subsequently filed another application being Civil Application No. 7122 of 2015 wherein the Court granted permission to the petitioner to enter into an agreement for group insurance scheme with private insurance company and the said order and agreement for group insurance scheme which came to be entered into pursuant to the order in Civil Application No. 7122 of 2015 would remain in operation until March 2016.

The fact which emerges from the orders passed in Civil Application No. 5324 of 2013 and the petition i.e. Special Civil Application No. 17069 of 2012 gives out that from 2012 until now, the Court has permitted the petitioner to enter into agreement for group insurance policy with the private insurance companies.

6.1 From the facts stated by the petitioner, it also emerges that before the petition came to be filed, the respondent PF Organisation itself had permitted the petitioner, during the period from 2009-2011, to enter into the agreement for group insurance scheme with private insurance companies.

However, subsequently, vide impugned order dated 18.10.2012, the respondent authority held that the petitioner has not complied with the statutory EDLI scheme. In the said order dated 18.10.2012, the respondent No. 1 - Commissioner has observed and held that:--

"AND WHEREAS as per the terms and conditions of grant of exemption under EDLI Scheme, 1976, the establishment is required to take prior approval of Regional Provident Fund Commissioner for any amendment/change to be made in the Group Insurance Policy or change of Insurance Agency or change of benefit etc.

AND WHEREAS establishment has failed to obtain prior permission/approval from the Regional Provident Fund Commissioner for the change of Insurance Agency, change of benefits etc. resulting in violation of the terms and conditions of grant of exemption under EDLI Scheme, 1976."

7. During hearing, learned counsel for the PF Organisation could not, and did not, dispute the petitioner''s claim that the PF Organisation itself has decided to allow IRDA to approve private insurance companies to offer group insurance companies which can be availed in lieu of statutory EDLI scheme provided the benefits under the group insurance scheme is beneficial i.e. better or at par with the statutory scheme. On examination of the order dated 18.10.2012, it does not appear that the respondent No. 1 - Commissioner had undertaken the process of comparison of the group insurance scheme availed by the petitioner in juxtaposition with the EDLI scheme. It appears that the impugned order is passed without comparing the schemes with EDLI and without reaching to the conclusion that the policy/scheme availed by the petitioner from private insurance company is not better than or is not at par with the statutory scheme.

7.1 Learned counsel for the respondent PF Organisation could not demonstrate from the record, more particularly from the impugned order, that on proper examination and on proper evaluation of the scheme availed by the petitioner and EDLI and after application of mind, the authority reached to the conclusion that the group insurance policy availed by the petitioner is not sustainable because it is not at par with the statutory scheme.

Learned counsel for the respondent PF Organisation also did not dispute that in past, the petitioner was permitted to enter into agreement for the policy with private companies and in other cases other companies are still allowed similar course of action.

8. In this factual background, when the impugned order is examined, it emerges that:--

"[a] The impugned order is not a speaking and reasoned order.

[b] The impugned order does not deal with and does not address the contentions of the petitioner.

[c] The respondent authority has not reached to and has not recorded conclusion that the group insurance policy availed or proposed to be availed by the petitioner company is less beneficial than the statutory scheme and that therefore, cannot be approved. Instead, on the ground that change in the group insurance policy or change of the insurance agency was made without prior approval, the impugned order is passed."

8.1 Since the impugned order suffers from the above referred defects and having regard to the orders dated 26.6.2013 and 10.5.2013 passed by the Court and also having regard to the order dated 25.4.2013, it appears that the respondent No. 1 - Commissioner should reconsider the matter and pass fresh order after taking into account and after dealing with the contentions of the petitioner and to pass fresh speaking and reasoned order and the order impugned in present petition does not deserve to be entertained in view of above mentioned defects which are inherent in the order. Therefore, for the foregoing reasons and in light of the above discussed aspects, following order is passed:--

"[A] The impugned order dated 18.10.2012 is set aside.

[B] It is clarified that the impugned order is set aside in view of the above mentioned defects in the order.

It is further clarified that this Court has not entered into merits of the factual aspect i.e. as to whether the group insurance policy offered by the private insurance companies and availed by the petitioner is better than the statutory scheme or not.

Such decision can be taken only after detailed examination and evaluation of two schemes/policies and that process can be undertaken and a decision can be taken by the respondent No. 1, who is the competent authority for the said purpose. It would not be possible or proper for the Court to enter into the process of such comparative examination and evaluation. Therefore, the Court has not entered into the said issue and the impugned order is set aside only on the aforesaid limited ground and on account of above mentioned defects.

[C] The respondent - Provident Fund Commissioner shall re-examine the matter and after hearing the petitioner and after considering the material on record, pass fresh speaking and reasoned order as expeditiously as possible and preferably within four weeks from the date of receipt of certified copy of the order.

The arrangement which is in operation in light of the order passed in Civil Application No. 7122 of 2015 shall remain in operation until then or until the expiry of the policy, which is in operation as of now, which ever is later."

With aforesaid observations and direction, present petition stands disposed of. Rule is made absolute to the aforesaid extent.