
(2011) 10 DEL CK 0255

In the Delhi High Court

Case No : Writ Petition (C) 323 of 2011 and CM Appl 593 of 2011

Satyam Enterprises

APPELLANT

Vs

Asstt. Provident Fund Commissioner

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B, 7A

Citation : (2011) 10 DEL CK 0255

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : R.R. Kumar with Mr. Bharat Sangal, for the Appellant; Shrabani Chakrabarty, for the Respondent

Final Decision : Disposed Off

Judgement

Justice S. Muralidhar

1. These three petitions involve similar set of facts and are being disposed of by this common judgment.

2. Satyam Enterprises [the Petitioner in W.P. (C) No. 323 of 2011], Sachinam Enterprises [the Petitioner in W.P. (C) No. 324 of 2011] and Sundaram Enterprises [the Petitioner in W.P. (C) No. 325 of 2011] are sister concerns engaged in the business of exhibition of films. Each of the Petitioners was running a cinema theater named "Satyam", "Sachinam" and "Sundaram" respectively in Mumbai. It is stated that in view of the change in cinema exhibition technology and on account of the Government of Maharashtra offering 100% entertainment tax-exemption for five years and 75% entertainment tax exemption for a further period of five years on multiplex cinemas, the business of the Petitioners gradually came down by an average of 80% to 10% of ticket sales collections. With the financial downslide they were even unable to pay their water and electricity bills resulting in disconnection. The Petitioners' operations were suspended from 12th November 2001. It is claimed that none of the

employees of the Petitioners has been paid wages thereafter.

3. Each of the Petitioners addressed a letter dated 26th November 2001 to the Deputy Collector of Mumbai, Entertainment Duty Division stating, inter alia, that film exhibition has been suspended in the respective cinema halls from 12th November 2001. A similar intimation was sent to the cinema tax authority of the Brihan Mumbai Mahanagarpalika ("BMC"). The Assistant Engineer (Water Works) of the BMC was likewise informed by the owner of the buildings Manish Estates Pvt. Ltd. The Petitioner received a letter dated 10th January 2002 from the Bombay Electricity Supply and Transport ("BEST") stating that the Petitioners had failed to pay arrears of electricity bills and that as a reason thereof the electricity has been disconnected and the meter would be removed. The Petitioner addressed a letter dated 27th February 2002 to the Assistant Assessor and Collector of the BMC placing the above facts on record and requesting that they be treated as closed down for the purposes of determination of rateable value of the properties.

4. On 30th March 2002, each of the Petitioners received a communication dated 18th March 2002 from the office of the Assistant Provident Fund Commissioner ("APFC") Mumbai, the Respondent herein, fixing the date of hearing as 30th March 2002. In response thereto, the Petitioners on 2nd April 2002 informed the Respondent that they had stopped the operation of the cinema theatres since 12th November 2001. The Petitioners were asked by the APFC to produce the relevant records. The Petitioners kept seeking time stating that there was no staff and also in the absence of any electricity it was difficult to gather the records and produce them before the Respondent. The Petitioners sought time by letters dated 27th May, 12th June and 5th August 2002.

5. By a notice dated 31st October 2002 the Petitioners terminated the services of all their employees and closed down the establishments. The closure notice was challenged by the Mumbai Labour Union before the Labour Court. This was brought to the attention of the Respondent by the Petitioners marking copies of the letter dated 29th November 2002 addressed by them to the Mumbai Labour Union. The Petitioners made further requests for time to produce records by letters dated 22nd July 2003 and 24th February 2004.

6. On 26th February 2004 the Respondent APFC passed two separate orders u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act") calling upon the Petitioners to pay the demanded sums for the period between January 2000 to March 2003. The amounts determined by the APFC to be payable by Sachinam Enterprises, the Petitioner in W. P. (C) No. 324 of 2011, was Rs. 6,78,561/- and for Sundaram Enterprises, the Petitioner in W. P. (C) No. 325 of 2011, Rs. 10,24,803/-. For Satyam Enterprises, the Petitioner in W. P. (C) No. 323 of 2011, the APFC passed two orders u/s 7A EPF Act; one dated 22nd May 2003 demanding a sum of Rs. 15,03,653/- for the period between November 1998 and January 2002, and the other dated 11th March 2004 demanding a sum of Rs. 3,30,498/- for the period between February and October

2002.

7. Against the demand orders as above, the Petitioners filed review applications u/s 17B of the EPF Act. These were rejected by the APFC by orders dated 23rd June 2004 on the ground of limitation. Thereafter, a show cause notice dated 31st August 2004 was issued to the Petitioners for issuance of arrest warrants. The Petitioners filed appeals before the Employees Provident Fund Appellate Tribunal ("Tribunal"). By the common order dated 2nd March 2005, the Tribunal stayed the impugned orders of the APFC subject to the Petitioners depositing 40% of the determined amount in each order. Pursuant thereto each of the Petitioners deposited their respective 40% amounts.

8. In proceedings pending before the Debt Recovery Tribunal ("DRT"), Mumbai against the Petitioners being RP No. 466 of 2003 instituted by the Canara Bank the APFC intervened by filing applications for recovery of the EPF dues. An order dated 5th December 2005 was passed by the Recovery Officer of the DRT, the operative portion of which reads as under:

i. An amount of Rs. 19,71,530/- be deposited in a Fixed Deposit for a period of 6 months in the name of "R.O.-EPF Claim.

ii. The EPF Organisation is directed to make M/s. Manish Estate Pvt. Ltd. as a Party to their proceedings in the Appellate Tribunal in their favour for release of the funds from the sale proceeds of the property which belongs to M/s. Manish Estate Pvt. Ltd.

iii. No order as to costs.

9. It is stated that the aforesaid amount continues to remain in a fixed deposit and the APFC has made no move to get the said amount released to it. By the impugned orders dated 15th October 2010 the Tribunal dismissed the Petitioners' appeals.

10. Mr. R. R. Kumar, learned counsel for the Petitioners submits that none of the grounds urged by the Petitioners have been dealt with by the Tribunal. In particular, the documents to show that the Petitioners' respective theatres had stopped operations after 12th November 2001 were not even considered by the Tribunal. Learned counsel further submits that the determination of the demanded amount in respect of the Petitioners is for two distinct periods; one, upto January 2000 and the other for the period from January 2000 to March 2003. It is submitted that after the cinema halls ceased functioning with effect from 12th November 2001 none of the employees were paid wages. In fact, there was no demand made by any of the employees about their PF dues being not paid by any of the Petitioners. Therefore, it is submitted that while for the period prior to 12th November 2001 the Petitioners should be made liable for PF dues and the amount already deposited should be adjusted against such dues, for the subsequent period when the cinema halls were not in operation the Petitioners should not be made liable for the alleged PF dues.

11. Ms. Shrabani Chakrabarty, learned counsel for the Respondent on the other hand points out that despite sufficient opportunities the Petitioners failed to produce the records to show that they had in fact closed their theatres from 12th November 2001 onwards. In the absence of any document being produced by the Petitioners, it was not possible for the APFC or the Tribunal to accept such a contention. The burden was on the Petitioners to show that their theatres stopped functioning after 12th November 2001 and they had failed to discharge this burden. Till a notice was sent to them none of the Petitioners actually intimated the Respondent about the closure of their cinema halls. It is accordingly prayed that the impugned orders of the Tribunal in each of the cases do not call for interference.

12. The above submissions have been considered. It appears that each of the Petitioners had produced contemporaneous documents in the form of letters addressed to the BMC and the BEST that the cinema halls had ceased functioning after 12th November 2001. While the burden was on the Petitioners to substantiate this fact by producing the relevant records, it was equally possible for the Enforcement Officer ("EO") in the office of the APFC to inspect the business premises of the Petitioners and ascertain if indeed any of the cinema halls were functioning after 12th November 2001 and whether any of the employees continued in service thereafter. The counter affidavit is completely silent on this aspect. It also appears from the impugned orders of the APFC that no such attempt was made to ascertain the factual position.

13. Considering the contemporaneous records produced by the Petitioners, copies of which have been enclosed with the writ petitions, the case of the Petitioners that the operations in the three cinema halls ceased from 12th November 2001 onwards appears to be a plausible one. Moreover, the Petitioners have taken a fair stand that they are liable to pay the PF dues for the period prior thereto. The Petitioners have also demonstrated their bona fides by depositing 40% of the determined amount pursuant to the stay granted by the Tribunal. Further, a sum of Rs. 19,71,530/- has been kept in a fixed deposit towards EPF dues in terms of the order dated 5th December 2005 of the DRT.

14. Consequently, the impugned orders of demand and determination by the APFC which have been upheld by the Tribunal in the impugned order dated 10th October 2010 are hereby modified by directing that the demand and determination of the PF dues by each of the Petitioners is restricted to the period upto 12th November 2001 and not thereafter. The amounts so determined as due by the APFC will be recovered from each of the Petitioners, in the following manner. The amounts already deposited by the Petitioners will be adjusted against the said dues. Further, the sum of Rs. 19,71,530/- kept in a fixed deposit pursuant to the order dated 5th December 2005 passed by the DRT, together with interest accrued thereon, will be released forthwith to the Respondent APFC for adjustment against the aforementioned EPF dues upto 12th November 2001. If there is any balance amount of EPF due up to that date, the APFC can take

steps against each of the Petitioners in accordance with law.

15. With the above directions, the writ petitions are disposed of. The pending applications are also disposed of.