(2014) 04 MAD CK 0112

In the Madras High Court

Case No : W.P. Nos. 28833 and 28834 of 2010

S.G.P. Exim Private Limited and M/s.Waterfall Estate Pvt. Ltd.	APPELLANT
Vs	
The Regional Provident Fund Commissioner and The Recovery Officer, Employee's Provident Fund	RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B

Citation : (2014) 04 MAD CK 0112

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—In both the Writ Petitions, the petitioners have challenged the Prohibitory Order passed by the Employees Provident Fund Organisation prohibiting the petitioners from making payment to any person other than to the respondent organisation on the ground that M/s. NEPC Tea Garden Unit Nos. 1 & 2 have failed to pay the arrears due to the respondent organisation. In the impugned order W.P. No. 28833 of 2010, the total amount claimed is Rs. 20,13,080/- and in W.P. No. 28834 of 2010, the total amount claimed is Rs. 1,05,02,653/-.

2. In W.P. No. 28833 of 2010, the petitioner is engaged in the business of export of pharmaceuticals and they are an associate of M/s. Waterfall Estates Pvt. Ltd., which is the petitioner in W.P. No. 28834 of 2010, which in turn has tied up with M/s. NEPC Tea Gardens to manage and purchase the crop of tea leaves. The petitioner M/s. Waterfall Estates Pvt. Ltd., entered into an arrangement with M/s. NEPC Tea Gardens for overseeing the operations and consumption of the crop of Green Tea Leaves at Tea Estates at Valparai from November 2009. It is the contention of the petitioners that they are distinct and separate legal entities and M/s. NEPC Tea Garden is a different entity and the respondent organisation have no authority to proceed against the petitioners in respect of the alleged dues of

M/s. NEPC Tea Garden. In support of their contention, the petitioners have stated about the various welfare measures, they have provided to their employees. It is further submitted that M/s. NEPC Tea Garden have challenged the proceedings initiated by the respondent organisation before the Appellate Tribunal constituted under the provisions of the Employees Provident Fund Act and the appeals in Appeal Nos. ATA No. 336 (13) 2009 and ATA No. 623(13) 2010 are pending before the Tribunal and an interim order of stay has been granted restraining the second respondent from taking any coercive measures. Therefore, it is contended that the pending disposal of those appeals filed by M/s. NEPC Tea Garden, the respondents have no jurisdiction to issue recovery notices or prohibitory order against the petitioners. Thus, the contention of the petitioners is that they are independent entities and since the appeals are pending before the Appellate Tribunal at this instances of M/s. NEPC Tea Garden, the impugned notices are without jurisdiction.

3. The learned Standing counsel appearing for the respondent organisation based on written instructions submitted that M/s. NEPC Tea Garden Unit Nos. 1 & 2 are tea plantations covered under the provisions of the EPF Act and both units are managed by M/s. NEPC Agro Foods Ltd., Valparai and the said establishment became habitual defaulter in payment of Provident Fund dues including the share contribution collected from the workers since 1999 onwards. Therefore, the respondents resorted to various measures under the Act to determine the amount due from the defaulter establishment and realise the same through recovery machinery. The details of the amount due in respect of those two units has been stated to be Rs. 1,06,13,630/- and Rs. 11,25,84,35/-respectively. It is further submitted that M/s. NEPC Tea Garden units 1 & 2 filed four appeal petitions before the Appellate Tribunal in ATA 463 (13) 2002 for the period from May 1999 to October 1999; ATA 449(13) 2002 for the period from November 1999 to February 2000; ATA 448 (13) 2002 for the period from May 2001 to December 2001; and ATA No. 447(13) 2002 for the period from May 2001 to December 2001 and all those appeals were withdrawn by them on 11.02.2010 and were accordingly dismissed as withdrawn. It is further submitted that the said company M/s. NEPC Tea Garden along with their other group companies filed a suit before the Second Additional District Judge, Coimbatore in O.S. No. 2585 of 2004, for adjusting the amount paid by the other group companies and the Civil Court by order dated 22.02.2006, directed the employer share paid by the employer in respect of the employees of M/s. NEPC Airlines after deducting the settlements made to the employees who left services, the balance to be adjusted in the arrears dues payable by M/s. NEPC Textiles Ltd., Coimbatore and M/s. NEPC Tea Garden, Valparai. Till such adjustments were made, it was ordered that no coercive recovery action should be taken against the employer/establishment. The respondent/organisation preferred an appeal as against the said order in A.S. No. 87 of 2006, which was dismissed by the lower Appellate Court and they have preferred Second Appeal before this Court in S.A. No. 582 of 2009 and an order of stay has been granted by this Court by order dated 25.06.2009. It is

further submitted that M/s. NEPC Tea Garden by their letter dated 10.02.2009, requested the respondent to adjust the amount refundable to the group company; M/s. NEPC Airlines to the extent of Rs. 95,17,019.70/- in respect of M/s. NEPC Tea Gardens. Another representation was made to the same effect on 19.02.2009. It is further submitted that pending filing of the Second Appeal before this Court, without prejudice to the rights of the respondent, they adjusted the amount available in the accounts of NEPC Airlines to the tune of Rs. 5,77,543/-, by adjusting 50% of the amount to NEPC Textiles and another 50% to M/s. NEPC Tea Gardens. Thereafter, M/s. NEPC Tea Garden Units 1 & 2 have filed appeal before the Employees Provident Fund Appellate Tribunal, New Delhi, in Appeal No. ATA 336(13) 2009, challenging the recovery certificates and the notice of demand. It is submitted that the appeal is not maintainable, since the substantive order has not been challenged and no appeal could be entertained against the action of the Recovery Officer under Sections 8B to 8G of the Act. Therefore, it is submitted that the very entertainment of the appeal itself is not sustainable. Further, it is submitted that the appellant has mislead the Appellate Tribunal, while filing the appeal.

4. It is further submitted that the respondent proceeded for recovery of Provident Fund dues, damages and interest payable by the defaulter excluding the dues, where it has been ordered to maintain status-quo as per the order passed by the Appellate Tribunal. When a notice of attachment was issued to the defaulter, M/s. NEPC Tea Garden, it was brought to the notice by the officers that they have entered into an arrangement with the petitioner in W.P. No. 28834 of 2010. Subsequently, it came to the knowledge of the respondent organisation that the petitioner in W.P. No. 28834 of 2010, has taken over the establishment of M/s. NEPC Tea Garden units I & II as a whole by way of lease through a lease deed dated 30.10.2009, for a consideration of Rs. 2.5 crores. They have taken over the properties, absorbed the workmen of the defaulter and they continued to comply with the provisions of the Act under the same code number allotted to the defaulter (NEPC Tea Garden Unit I & II). It is further submitted that this fact was never informed to the respondent organisation inspite of there being a statutory requirement to intimate the same in Form No. 5A prescribed under the Act. Without mentioning these facts, the petitioner has filed these writ petitions. Therefore, it is submitted that the petitioner M/s. Waterfall Estate Pvt., Ltd., are aware of the statutory liability of the defaulter at the time of executing the lease deed. In this regard, clause Nos. 13, 29 & 35 of the lease deed have been referred to, which shows that the petitioner M/s. Windfall Estate are aware of the statutory liability of the defaulter/lessor. Therefore, by relying upon Section 17B of the Act, it is submitted that the establishment of the defaulter having been transferred to the associate/subsidiary of the petitioner by way of lease, they are liable to pay the dues upto the date of transfer by lease, as the transferee steps into the shoes of the employer.

5. It is reiterated that the Provident Fund dues demanded from the petitioner does not include the dues, where the EPF Appellate Tribunal has ordered for

status-quo in ATA Nos. 336(13) 2009 and ATA No. 623(13) 2010. It is further stated that if the petitioner is bonafide in his claim they should have filed the entire appeal papers filed by M/s. NEPC Tea Garden before this Court. It is further submitted that the petitioners have direct financial transaction with the defaulter M/s. NEPC Tea Garden. Therefore, the second respondent in exercise of its powers conferred under Sections 8B to 8G of the Act read with II & III Schedules of the Income Tax Act, 1961 issued prohibitory orders to the petitioners from transferring the amount payable on the accounts of defaulter, M/s. NEPC Tea Garden to the Regional Provident Fund Commissioner by the impugned order. As the second respondent came to know that the establishment of the defaulter has been transferred to the petitioner, M/s. Waterfall Estate Private Ltd., through lease agreement, dated 30.10.2009, they are also jointly and severally liable for payment of the provident fund dues of the defaulter upto the date of transfer. It is further submitted that the petitioner in W.P. No. 28833 of 2010, M/s. S.G.P. Exim Private Limited, have also been assigned with the lease of M/s. NEPC Tea Garden through the agreement with M/s. Waterfall Estate Private Ltd., to pay the dues to both the defaulter/transferor M/s. NEPC Tea Garden and the transferee, the petitioner in W.P. No. 28834 of 2010, M/s. Waterfall Estate Private Ltd.

6. The learned counsel appearing for the respondent would submit that the defaulter is colluding with each other and attempting to fish in troubled waters. It is further submitted that the defaulter M/s. NEPC Tea Garden filed a writ petition before this Court in W.P. No. 45 of 2011, challenging the warrant of attachment of immovable property passed on 11.11.2010, and the said writ petition was dismissed as withdrawn on 05.01.2011.

7. In the light of the above facts, it is evidently clear that the petitioners have not disclosed the entire facts pertaining to the defaulter M/s. NEPC Tea Garden and merely projected their case, as if they are the distinct legal entity and the impugned prohibitory orders cannot be issued against them. If the petitioners by virtue of the lease agreements and other arrangements have stepped into the shoes of the defaulter, M/s. NEPC Tea Garden then they should pursue the appeal, but the fact remains the present prohibitory order does not relate to the period, which is covered in the appeal petitions, which are pending in ATA. Nos. 336(13) 2009 and ATA 623(13) 2010. The submission has not been controverted by the petitioners.

8. For all the above reasons, the petitioners have not made out any case for interference. Accordingly, the writ petitions fail and they are dismissed. The dismissal of the writ petitions will not stand in the way of the petitioners working out their rights in the manner known to law in terms of the procedure contemplated under the provisions of the Employees Provident Fund Act, 1952 and the Rules framed thereunder. In the result, the Writ Petitions are dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

