(2010) 10 UK CK 0102

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1726 of 2010

State Infrastructure and Industrial Development Corporation of Uttarakhand Ltd. (SIDCUL) (Nodal Agency of Govt. of Uttarakhand representing Jaspur and Kashipur spinning Units of UPSTC)	APPELLANT
Vs	
The Regional Provident Fund Commissioner (RPFC), Employees Provident Fund Organization (EPFO) and Others	RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(4), 14B, 3, 7A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17
Uttar Pradesh Reorganisation Act, 2000 — Section 48

Citation : (2011) 128 FLR 336 : (2011) 2 LLJ 497 : (2011) LLR 308

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.

(Stay Application No. 8653 of 2010)

1. Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the Petitioner has sought a writ in the nature of certiorari quashing the recovery certificates dated 26-06-2010 amounting to Rs. 1,04,768/- (Annexurre-1) and dated 13-9-2010 for Rs. 1,90,000/- (Annexure-4) and directing the Respondent No. 3 to return both the certificates of recovery to the Respondent No. 2.

3. Admittedly, the recovery proceedings u/s 8F Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the Act) were initiated against the Petitioner on the basis of order passed u/s 14B of the Act. The impugned orders pertain to execution proceeding. The original order has not been assailed by the

Petitioner.

4. The learned Counsel for the Petitioner has urged that the Petitioner-SIDCUL is a Nodal agency of the Government of Uttarakhand representing Jaspur and Kashipur spinning units of the U.P. State Textile Corporation Ltd.

5. Learned Counsel for the Petitioner further contended that the U.P. State Textile Corporation Ltd. Is a sick company and the unit was closed in the year 1998 and the proceeding under the Sick Industrial Companies (Special Provisions) Act 1985 (for short SICA) for revival is pending before BIFR and the scheme of demerger/rehabilitation is to be implemented u/s 17 of SICA 1985.

6. Learned Counsel further urged that after the Reorganisation of the State, as per provisions of Section 48 of the Uttar Pradesh Reorganisation Act, 2000 the assets and liabilities relating to U.P. State Textile Corporation Ltd. Shall pass to the State in which the undertaking is located and the two units of Jaspur and Kashipur spinning mills are located within the territory of the State of Uttaranchal now Uttarakhand, therefore, the State of Uttarakhand made a Nodal agency to the SIDCUL/Petitioner to settle all the disputes on behalf of the Government.

7. It is further submitted that the Petitioner could not approach the Central Board as per Proviso second appended to Section 14B of the Act for waiver of damages levied under this section on the ground that the scheme for rehabilitation has not yet been sanctioned.

8. On the other hand, learned Counsel for the Respondents has submitted that there is a statutory alternate remedy to file an appeal u/s 7I of the Act, therefore, the writ petition is not maintainable so far as the amounts under the impugned recovery are concerned.

9. Section 7I of the Act reads as under:

7I. 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.

10. In the above facts and circumstances, since statutory alternate remedy is available to the Petitioner, the Petitioner may avail statutory remedy of filing an appeal before the Tribunal u/s 7I of the Act.

11. Accordingly, it is directed that the Petitioner may prefer an appeal accompanied with an application for interim relief along with application for condonation of delay, if any, in filing the appeal, within a period of two weeks

from today. The appellate authority shall dispose of the interim relief application after hearing the Appellant/Petitioner as well as the Respondent within a period of two weeks from the date of filing the appeal. It is further directed that if the appeal is so preferred by the Petitioner, the appeal shall be finally decided expeditiously preferably within a period of three months from the date of filing of appeal.

12. In case the appeal is preferred along with an application for interim relief as well as delay condonation application within the stipulated period, as above, no recovery in pursuance to the impugned orders (Annexure-1 and Annexure-4 to the writ petition) shall be made from the Petitioner till the disposal of interim relief application by the Tribunal. If the appeal is not preferred within a period of two weeks from today, the interim protection would not be available to the Petitioner.

13. It is provided that if the Petitioner applies before the Respondents for copy of the order passed u/s 14B and 7A of the Act, the same shall be supplied to the Petitioner by the Respondent-authority concerned within a period of one week from the date of making application.

14. With the above direction, the writ petition is disposed of.

15. Certified copy of this order be issued to the learned Counsel for the parties by tomorrow on payment of usual charges.

