
(2015) 01 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition(C) No. 21117 of 2014

Sterling Holiday Resorts (I) Ltd.

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

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

Citation : (2015) 145 FLR 346 : (2015) 1 KLT 593 : (2015) LLR 427

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : P.B. Sahasranaman, T.S. Harikumar, K. Jagadeesh and Rajesh S. Subramanian, for the Appellant; Joy Thattil Ittoop, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—Petitioner is aggrieved by the attachment and appropriation of amounts from the bank account of the petitioner, towards the demand raised as per Ext. P1. The brief facts to be noticed are that, Ext. P1 was an order passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The said order is said to have been passed on 17.5.2013. Even, going by the provisions of the statute, an appeal is provided, which, if filed within 60 days, has to be considered, on merits. Time is also stipulated for delay condonation on satisfactory explanation of the delay. Admittedly, the petitioner herein moved an appeal within the appeal period and also obtained a stay on 4.7.2013. Even if the date of issuance of Ext. P1 order is taken into account, the stay was obtained within the 60 days provided by the statute. The respondent authorities made a demand, pursuant to Ext. P1, directing remittance of the amounts demanded within a period of 15 days. True, there is nothing prohibiting the respondent from making a demand as per a valid assessment passed. However, in fairness, it is incumbent on the respondent authorities to atleast keep the recovery in abeyance and proceed for recovery after the appeal period, provided under the statute has expired. In the present

case, it is to be noticed that the appropriation itself was made after the stay order was passed, despite the very vehement contention of the learned counsel for the respondent organisation that the proceedings for recovery were initiated long before the stay order was passed.

2. To appreciate the contention, it is required to look at the dates, on which the proceedings were initiated and were concluded with the appropriation of amounts. After Ext. P1 order, Annexures A and C demands were raised on 30.5.2013 directing remittance of the amounts within 15 days. The banker of the petitioner was addressed by Annexures E and F, which do not bear a date, but, however is seen acknowledged on 20.6.2013. One of the banks being South Indian Bank, informed the Assistant Provident Fund Commissioner that, the assessee did not maintain any account with the said bank. However, by Annexure-H, State Bank of India informed the Provident Fund organisation that, the accounts of the assessee have been frozen and that the demand draft for the amounts would be issued before the closure of business hours on 5.7.2013. Annexure-H is dated 4.7.2013 on which date it self the interim order was passed by the Provident Fund Appellate Tribunal, New Delhi in the presence of the representative of the respondent organisation.

3. Obviously, since the bank had addressed the respondent organisation by Annexure-H on 4.7.2013, the demand draft would have reached the hands of the respondent organization only on 5.7.2013, when there was an interim order of stay on condition of payment of 40% of the amounts. Hence, in compliance to the said interim order, the respondent organization ought to have appropriated only 40% of the amounts and ought to have transmitted the balance amounts to the bank, which sent the demand draft, for credit to the account of the assessee.

4. The petitioner had approached the Tribunal with an application pointing out the appropriation of amounts, which was in violation of the stay order. The Tribunal, by Ext. P6, found that the respondent organisation ought not to have proceeded with the recovery, since a stay was granted by the Tribunal. However, the respondent organisation was directed to keep the amount in safe custody till the disposal of the present appeal. It is brought to the notice of this Court that the appeals are pending consideration before the Tribunal and at this point of time there is no sitting, for reason of the incumbent presiding officer having retired. A batch of appeals raising similar issues as raised in the appeal are also said to be pending before the Honourable Supreme Court.

5. Be that as it may, the appeals filed by the petitioner are pending before the Employees' Provident Fund Tribunal, as of now. There was a stay order granted on 4.7.2013, wherein it was directed that 40% of the demand should be paid within a period of four weeks from the date of the order. The petitioner had also complied with the same by taking a demand draft for the above amounts and transmitting the same to the E.P.F. Organisation. The said demand draft has been returned as per Ext. P3 on the ground that the appropriation has been made, as against the demand, from the account of the petitioner. As was noticed,

appropriation, if at all permissible, could have been only to the extent of 40% of the demand, since the amounts appropriated reached the hands of the respondent organisation only after the conditional stay order was passed by the Tribunal. In such circumstances, this Court finds that the amounts appropriated in excess of the stay order, that too after the date of passing of the stay order, is illegal. The Tribunal's order, that the same should be retained with the respondent organisation in safe custody, cannot be countenanced. There shall be a direction to the respondent to return the amounts, appropriated in excess of 40% of the demand, within a period of one month from today. It is also made clear that, if the liability is eventually found against the petitioner, the petitioner would not be mulcted with any liability as to the interest for the amounts now directed to be refunded, between 5.7.2013 and the date of refund of the amounts made by the respondent organisation, since the E.P.F. Organisation had the benefit of the amounts during the said period.

Writ Petition is allowed. Parties left to suffer their costs.