
(2009) 12 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition No. 1250 (W) of 2008

Sujata Electric Pvt. Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

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

Citation : (2010) 124 FLR 936

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : N.K. Mehta and S.M. Obaidullah, for the Appellant; Shiv Chandra Prasad, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this Article 226 petition dated January 16, 2008 is aggrieved by the orders of one T. Ghosh, Assistant Provident Fund Commissioner, Regional Office, Kolkata dated August 3, 2007, Annexure P4 at P 29 and of one T. Mukhopadhyay, Assistant Provident Fund Commissioner C.C.V., West Bengal, dated December 20, 2007, Annexure P7 at p. 46. The orders were made under sections 7-A and 7-B respectively of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short the Act 19 of 1952).

2. On the basis of information laid before him, T. Ghosh, in the capacity of the authority competent to initiate proceedings u/s 7-A of the Act 19 of 1952, initiated the proceedings and issued a summons dated May 1, 2007 informing the petitioner that he would determine the liability of the petitioner's establishment for the period from January, 1997 to June, 2006. The petitioner chose to contest the proceedings without submitting its case in writing. It participated in the proceedings through its authorised representative hearing whom the authority made the final order dated August 3, 2007 recording therein as follows:

AND WHEREAS, with a view to meet the ends of natural justice, the report of the concern visiting Enforcement Officer dt. 17.8.2006 and the statement of Provident Fund dues for the period-from 1/1997 to 6/1996 are made over to the Authorised Representative of the establishment during the course of instant proceeding.

3. The petitioner submitted a section 7-B application, Annexure P6 at p 37, seeking review of the section 7-A order. In para 6 (b) of the section 7-B application it stated as follows:

"(b) For that while passing the impugned order learned Authority wrongly observed "for the ends of natural justice, the report of the concerned Enforcement Officer, dated 17th August 2006 and the statement of Provident Fund dues for the period from 1/1997 to 6/2006 are made over to the Authorized Representative of the establishment" which is a completely mis-statement and the establishment submits that no such report and/or statement ever had been handed over to the Authorized Representative of the establishment either on 20th July 2007 or earlier, even after demand and thus the natural justice has been violated in the instant matter

4. By the order dated December 20, 2007 the section 7-B application was turned down. The relevant portions of the section 7-B order are set out below:

With reference to your application dated 18.8.2007 on the subject cited above. In this connection it is stated that none of the conditions as required for accepting a review u/s 7-B are being fulfilled in the instant application. Therefore, application u/s 7-B cannot be entertained for reviews.

You are requested to remit and produce the challans in respect of u/s 7-A and 7-Q interest which was assessed on 3.8.2007 to the undersigned immediately failing which further necessary action will be initiated as per provision of the Act.

5. In para. 12 the petitioner has stated that the inspection report referred to in the section 7-A order had never been supplied to it. The allegation has been dealt with in para 13 of the opposition affirmed by an enforcement officer and not by the persons who made the sections 7-A and 7-B orders. The deponent of the opposition has stated that during the progress of the proceedings a copy of the inquiry officer's report dated August 17, 2006 and statement of provident fund dues for the period from January, 1997 to June, 2006 were made over to the authorized representative of the establishment.

6. He has not produced any document to show that what was stated in the section 7-A order is true. It is evident from the section 7-B order that the allegation of the petitioner made in para 6(b) of the section 7-B application was not considered at all. The petitioner made a serious allegation of violation of principles of natural justice. I am unable to accept the arguments of advocate for the Respondents that the petitioner raised only a technical point. Violation of principles of natural justice is not a mere technicality. It goes to the root of the

case and vitiates the decision itself. I have no doubt that the section 7-B application was rejected mechanically. The authority was under an obligation to give due attention to the allegation.

7. For these reasons, I allow the writ petition ordering as follows. The impugned section 7-B order is set aside. The authority shall give a fresh decision in the section 7-B application dealing with all the grounds taken therein and especially the one in para 6 (b). The section 7-A order shall abide by the fresh order given in the section 7-B application.

No costs. Certified xerox according to law.