(2010) 03 DEL CK 0070

In the Delhi High Court

Case No : Writ Petition (C.) No. 1069 of 2010 and C.M. No. 2262 of 2010 (for stay)

The Assistant Provident Fund Commissioner, EPFO APPELLANT

Vs

Ansal Housing and Construction Limited and Another RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7, 7I, 7O

Citation : (2010) 03 DEL CK 0070

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : R.C. Chawla, for the Appellant; Sukumar Pattjoshi, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The respondent''s establishment is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The petitioner had passed an order against the respondent''s establishment u/s 14B on 30.09.2009 directing it to pay Rs. 66,78,040/- (Rs. 47,98,505/- on account of damages and Rs. 18,79,535/- on account of interest for delay in deposit of PF contributions). The respondent''s establishment, aggrieved by the said order of the petitioner, filed a statutory appeal u/s 7I of Employees Provident Fund and Miscellaneous Provisions Act, 1952 before the Employees Provident Fund Appellate Tribunal on 22.10.2009. This appeal was taken up for admission hearing by the Tribunal on 26.10.2009 and the following order was passed:

Heard the learned Counsel for the Appellant. The impugned order was passed on 29th September 2009 and the appeal is in time and also the necessary fee was also paid. Hence the appeal is admitted.

In the Writ Petition No. 15093 of 2004, Old Village Industries v. APFC decided on 25.11.2004, the Lordship held that in the proceedings u/s 14B the Section 7(1) is not applicable and there is no need to deposit the money. Hence, the petition filed u/s 7O is allowed and the Appellant is exempted from depositing the money. The learned Counsel for the Appellant also prayed to stay the order passed by the Commissioner on the ground that the Commissioner was taking steps to realize the amount even before the expiry of the appeal period. Though a copy of appeal was served on the other side nobody appeared for the Respondent. So the order be stayed till the appearance of other side and the Appellant is directed to take steps to service the notice in both ways. Case is adjourned for appearance from respondent side and filing of reply/counter affidavit on 25th November, 2009.

2. The appeal on 26.10.2009 was adjourned for 25.11.2009 and on that day, the Tribunal passed the following order:

The appeal is admitted on deposit of 25% of the assessed dues and on such deposit of 25% of dues the check, if any, kept by the department be returned to the appellant within 1 week. The case is adjourned for completing of proceedings before Registrar on 10.03.2010.

3. The respondent''s establishment deposited 25% amount in terms of order of the Tribunal dated 25.11.2009 on 28.11.2009 and since the petitioner had not returned the assessed amount of Rs. 66,78,040/- despite order of the Tribunal, the respondent''s establishment filed an application before the Tribunal for directions to the petitioner to return the said amount and on its said application, the following order was passed by the Employees Provident Fund Appellate Tribunal on 07.01.2010.

Heard the learned Counsel for both the parties. The stay order in this matter was passed on 26.10.2009 and thereafter the entire amount was recovered and on 28.11.2009 as per the direction the appellant deposited 25% of the assessed amount. The recovering of the amount after the stay order amounts to deliberate violation of the order. Since realization was made after the stay order the entire amount be refunded back to the appellant within 2 weeks. Only the 25% of the assessed amount deposited by the appellant be kept. The case is adjourned to 10.03.2010 for completion of proceedings before Registrar.

4. The petitioner aggrieved by the orders dated 25.11.2009 & 07.01.2010 passed by the Employees Provident Fund Appellate Tribunal, as extracted above, has filed the present writ petition seeking quashing of both these orders.

5. I have heard learned Counsel for both the parties and have also perused the record.

6. Mr. R.C. Chawla, learned Counsel appearing on behalf of the petitioner, has argued that the petitioner had recovered the impugned assessed amount by attachment of bank account of the respondent on 26.10.2009 and had encashed

the pay order on 06.11.2009 before stay of the impugned assessment order by the Tribunal vide order dated 25.11.2009. Mr. Chawla has submitted that the Tribunal could not have admitted the appeal twice, i.e., firstly on 26.10.2009 and again on 25.11.2009. He has further submitted that his client had understood that the Tribunal had stayed the impugned recovery, for the first time, only on 25.11.2009 and, therefore, the Tribunal could not have directed return of the amount already recovered by the petitioner before the date of stay order. Mr. Chawla, therefore, prays for quashing of both the orders dated 25.11.2009 and also the order dated 07.01.2010 passed by the Employees Provident Fund Appellate Tribunal.

7. Per contra, Mr. Sukumar Pattjoshi, learned Counsel appearing on behalf of the respondent, has contended that impugned recovery was stayed by the Employees Provident Fund Appellate Tribunal vide order dated 26.10.2009 and, according to him, the stay order was only modified vide order dated 25.11.2009 when the respondent was asked to deposit 25% of the assessed amount as a condition of stay of the said order. Mr. Pattjoshi contends that the petitioner is guilty of deliberately flouting the order of the Employees Provident Fund Appellate Tribunal by encashing the pay order after the petitioner admittedly received the copy of communication dated 27.10.2009 which is at page 33 of the paper book.

8. Mr. R.C. Chawla, learned Counsel appearing on behalf of the petitioner, does not dispute that a copy of communication dated 27.10.2009 addressed by the petitioner to its bankers was received by the petitioner on 03.11.2009. Mr. Chawla also does not dispute that the pay order of the assessed amount received by the petitioner from the bankers of the respondent on 26.10.2009 was lodged for encashment after receiving the aforementioned communication dated 27.10.2009 on 06.11.2009.

9. I do not find any merit in the argument of the learned Counsel appearing on behalf of the petitioner that the impugned recovery was stayed by the Tribunal, for the first time, on 25.11.2009. A perusal of the order of the Tribunal dated 26.10.2009 would clearly show that the impugned recovery was stayed by the Tribunal on that day itself. What the Tribunal has done vide order dated 25.11.2009 was only modification of the stay order by directing the respondent establishment to deposit 25% of the impugned assessed amount and subject to that the petitioner was directed to return the cheque kept by it within a period of one week to the respondent establishment. I would like to note that the same Presiding Officer, who had passed the order dated 26.10.2009, has passed the impugned order dated 07.01.2010 in which he has observed that the impugned recovery was stayed by him vide order dated 26.10.2009. In that view of the matter, it cannot be said that the impugned recovery was stayed for the first time on 25.11.2009 as sought to be argued by Mr. Chawla appearing on behalf of the petitioner . The recovery was stayed by the Appellate Tribunal on 26.10.2009 and communication thereof was admittedly received by the petitioner on

03.11.2009 but despite that it chose to encash the pay order on 06.11.2009. This act of the petitioner was in complete violation of the stay orders of the Tribunal. However, the Tribunal while passing the impugned order dated 07.01.2010 has taken a liberal approach in the matter inasmuch as the Tribunal instead of initiating contempt proceedings against the petitioner choose only to direct it to return the assessed amount recovered by it in violation of stay order dated 26.10.2009 in view of the fact that the respondent establishment had admittedly deposited 25% of the assessed amount in terms of order dated 25.11.2009.

10. In view of the foregoing, I do not find any jurisdictional error in the impugned orders of the Appellate Tribunal which require interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed but with no order as to Costs.