(2010) 01 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1004 of 2010 (A)

The Kerala State Cashew Development Corporation Ltd.	APPELLANT
Vs	
The Regional Provident Fund Commissioner and Another	RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(f), 2(f), 7(4), 7A, 7O

Citation : (2010) 124 FLR 1118 : (2010) 1 KLJ 182 : (2010) 1 KLT 639 : (2010) 3 LLJ 807

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : C. Unnikrishnan SC, KSCDC Ltd and S. Harikrishnan, for the Appellant; Pirappancode V.S. Sudhir (SC, EFP), for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is a Government owned company. The first respondent has by Ext.P3 order made an assessment of additional contribution due from the petitioner at an amount of Rs. 71,29,165/-. The amount represents the contribution demanded from the petitioner in respect of 12 factories. The learned counsel for the petitioner submits that assessment in respect of 18 more factories are being finalised. The additional compensation demanded is in respect of the trainees who were being engaged by the petitioner. The 1st respondent has found that the trainees are, in fact regular employees of the petitioner who have been appointed after assessing the requirements of the petitioner. Therefore, according to the 1st respondent the trainees are persons who come within the definition of ''employee'' contained in Section 2 (f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. (hereinafter referred to as ''Act'' for short).

2. The case of the petitioner is that persons who have been assessed by the 1st respondent are actually trainees who have been engaged as per the provisions of the certified standing orders of the petitioner. Therefore, the petitioner claims that they belong to an exempted category mentioned in Section 2(f) of the Act.

Since the above claim has been rejected the petitioner has challenged the proceedings of the 1st respondent before the Employees Provident Fund Appellate Tribunal, New Delhi in an Appeal ATA No 758 (7)/2009. ATA No. 759(7)/2009 to 769 (7)/2009 are the other appeals filed by the petitioner in respect of the orders of assessment made by the 1st respondent with respect to the other factories owned by the petitioner. It is the case of the petitioner that the petitioner is in a state of acute financial stringency, the total accumulated loss of the petitioner being Rs. 681 crores. According to the counsel for the petitioner, the company is not in a position to disburse even the retirement benefits of its employees and has therefore been sanctioned amounts by the Government for the above purpose. In the above circumstances, the company is not in a position to deposit 75% of the amount assessed before the 1st respondent, which is a condition precedent for maintaining an appeal u/s 7-O of the Act. Therefore, the petitioner had filed a petition for waiver of the deposit amount. However, by Ext.P5 (series) orders, without stating any reasons the Appellate Tribunal has granted a stay of the order of the 1st respondent subject to the petitioner depositing 40% of the assessed amount. According to the counsel for the petitioner, the petitioner is not in a position to deposit the amount, in its present financial condition. The direction of the Appellate Tribunal to deposit 40% of the assessed amount is not supported by reasons and therefore he contends that there has been a willful non-exercise of the discretion vested in the Appellate Tribunal though the petition had been filed specifically for the said purpose.

3. The learned counsel for the 1st respondent on the other hand submits that the deposit of at least 75% of the amount assessed is a condition precedent for maintaining an appeal u/s 7-O of the Act The Appellate Tribunal has shown sufficient indulgence in waiving deposit of 35% of the assessed amount and has permitted the petitioner to maintain the appeal by depositing a mere 40%. The contention of the petitioner that it is entitled to complete waiver of the deposit is unsustainable. Therefore, he prays for dismissal of the writ petition.

4. I have heard the learned counsel appearing for the contesting parties. I have also anxiously considered the rival contentions.

Section 7-O of the Act reads as follows:

Deposit of amount due, on filing appeal:-- No appeal by the employer shall be entertained by a Tribunal unless be has deposited with it seventy-five percent of the amount due from him as determined by an officer referred to in Section 7A.

Provided that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

5. The above proviso clearly confers a discretion on the appellate authority for reasons to be recorded in writing to either reduce or waive the amount to be deposited under the above provision. The Tribunal certainly has the discretion to decide whether it should waive or whether it should reduce the deposit amount.

But since the Section mandates that the decision of the Tribunal should be supported by reasons, it follows that the order of the Tribunal has to be supported by proper reasons.

6. Ext.P4 is the order passed by the Tribunal. The order shows that it has been passed on the appeal. The order does not refer to any interlocutory application filed by the petitioner. Therefore, one is not in a position to understand whether the Tribunal had taken note of the prayer made by the petitioner in the I.A. or not. The order also does not state any reasons for rejecting the prayer of the petitioner for a complete waiver of the amount of deposit contemplated by Section 7(4) of the Act. It is true that the petitioner has been directed to deposit only 40% of the assessed amount. Since the provision stipulates that reasons should be stated in support of an exemption, the Tribunal should have stated its reasons for disallowing the prayer for waiver of the deposit amount. In view of the above, Exts.P5 series of orders are not in conformity with the stipulations contained in Section 7(4) of the Act.

For the above reasons, Exts. P5 series orders are set aside. The second respondent is directed to consider the applications for waiver of deposit submitted by the petitioner in ATA Nos. 758 (7) of 2009 to 769 (7) of 2009 and pass appropriate orders thereon, in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

The Writ petition is disposed of, as above.

