(2014) 02 KAR CK 0194

In the Karnataka High Court

Case No : Writ Petition Nos. 38512-514 of 2013 (L-PF)

The Regional Provident Fund Commissioner Employees'' Provident Fund Organisation — APPELLANT

Vs

M/s. Indus Fila Limited — RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7I, 7L

Citation : (2014) 142 FLR 323 : (2014) ILR 2118 : (2015) 1 KarLJ 16 : (2014) 2 KCCR 1454 : (2014) LLR 956

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Nandita Haldipur, Advocate for the Appellant; J. Kanikaraj, Advocate for C/R.1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The Regional Provident Fund Commissioner of the Employees'' Provident Fund Organization, has presented these petitions calling in question the common order dated 24.7.2013 in ATA Nos. 491[6] 2013, 492[6] 2013 & 493[6] 2013 of the Employees Provident Fund Appellate Tribunal, New Delhi. Learned counsel for the petitioners submits that the respondents suffered orders dated 17.6.2013, 10.7.2013 and 4.6.2013 passed by the petitioner invoking section 7A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 [for short ''Act''], determining the contributions due both in respect of employer and employees. Those orders, when carried in appeals u/s 7I of the Act, before the Provident Fund Appellate Tribunal, led to the orders impugned, modifying the orders by extending the benefit of payment of the amounts due in sixty monthly installments, first of which was payable by 16.8.2013 and every successive month thereafter. According to learned Counsel, the Appellate Tribunal failed to notice that the letter bearing No. RRC-

I/21[17]/2011/WB dated 11.4.2012 provided conditions for extending the benefit of payment of the amount determined u/s 7A of the Act, in installments, and that one such condition was ''In case of default of employees'' share, the proposal for installment will not be considered'' and therefore respondents, when found to have defaulted in the matter of payment of employees'' share were disentitled to payment in installments. In addition, learned counsel submits that u/s 7L of the Act, the Appellate Tribunal had no jurisdiction to grant the benefit of payment of the amount determined, in installments.

2. Learned Counsel for the respondents, per contra, submits that although there is no dispute over the determination of the amount due as contribution both of the employer and the employee in the orders dated 17.6.2013, 10.7.2013 and 4.6.2013 of the petitioner passed u/s 7A of the Act, nevertheless, regard being had to section 7I of the Act, investing an appellate jurisdiction in the Provident Fund Appellate Tribunal, which is deemed to be a judicial proceeding, therefore section 7L of the Act invests the Tribunal with the power to affirm, modify or annul the order appealed against including modification of the orders of the petitioner by granting installments as a mode to liquidate statutory liability cannot be found fault with.

3. In addition, learned counsel submits that the Regional Provident Fund Commissioner is not competent to present these petitions calling in question the common order of the Tribunal by invoking Article 226 of the Constitution of India and hence the petitions are not maintainable.

4. On the point of maintainability of these petitions, the question that arises for decision making is,

Whether the Regional Provident Fund Commissioner can be said to be aggrieved by the order of the Provident Fund Appellate Tribunal, directing payment, in installments, the amount determined by the petitioner in a proceeding u/s 7A of the Act?

5. The answer to the question lies in the fact that the Regional Provident Fund Commissioner while invoking jurisdiction u/s 7A of the Act to determine contribution payable by the employer, exercises a quasi-judicial authority. If that is so, then the order of the Appellate Tribunal cannot be said to have adversely affected the rights of the petitioner and deprived him of something to which he has a right. In my opinion, the Regional Provident Fund Commissioner cannot step into the shoe as a party to a dispute as he is not a party to the lis and any order passed by him exercising quasi-judicial powers are susceptible to an appeal under the statutory provision of section 7I of the Act, hence not competent to maintain these petitions.

6. Similar is the view taken by the High Court of Andhra Pradesh in Assistant Provident Fund Commissioner, Visakhapatnam Vs. Employees Provident Fund Appellate Tribunal and Another, and that of the High Court of Kerala in ''The Assistant Provident Fund Commissioner, Employees Provident Fund Organisation,

Kerala v. West Coast Petroleum Agency'' DD -12.01.2012 in WPC 32393/2011 [Y], In that view of the matter, petitions presented by the Regional Provident Fund Commissioner are not maintainable.

7. The submission that the Provident Fund Appellate Tribunal has no jurisdiction to direct payment of the contributions in installments, I am afraid is unacceptable, having regard to the fact that the appeal proceeding u/s 7I of the Act is a judicial proceeding and discretion is vested in the Appellate Tribunal, in the matter of modification of the order of the Authority u/s 7A of the Act, including that of extending the benefit of installments in the matter of payment of the monies due, so as to liquidate statutory liability of the respondent - Establishment. Regard being had to the plenary jurisdiction in the matter of moulding all relief''s by courts or giving relief''s, as parties may be entitled to in equity and justice, courts normally function as courts of justice and if there is any fetter, on such exercise of power, it would amount to impairment of the powers of the judicial authority of the court. Similar is the view taken by the High Court of Calcutta in ''Regional Provident Fund Commissioner, West Bengal and Another v. Employees Provident Fund Appellate Tribunal, New Delhi'' DD 26.9.2012 in W.P. No. 18288[W]/2012. In that view of the matter too, submission of learned Counsel for the petitioners cannot be countenanced.

8. Merely because the communication dated 11.4.2012 Annexure-E of the Director [Recovery] of the Employees'' Provident Fund Organization, records a condition over non eligibility for employers to the benefit of payment of contribution, in installments, in case of default of payment of employees'' share, in my considered opinion, applies to the petitioner or the Assistant Provident Fund Commissioner exercising jurisdiction u/s 7A of the Act and not to the Provident Fund Appellate Tribunal and on that score too, Annexure-E cannot come to the rescue of the petitioner. Petitions, devoid of merits, are rejected.