(2007) 06 CAL CK 0008

In the Calcutta High Court

Case No : Writ Petition No. 1501 of 2005

Yuvraj Agarwal and Another — APPELLANT

Vs

Regional Provident Fund Commissioner and Others — RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 7A, 7Q, 8, 8F

Citation : (2007) 115 FLR 777

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Judgement

Jayanta Kumar Biswas, J.—The petitioners are questioning the orders of the Regional Provident Fund Commissioner dated June 17th, 2005 and July 14th, 2005 made u/s 7A and 8F; respectively of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. By the 7A order the authority determined the dues payable by the establishment of the petitioners on account of contributions and interest at Rs. 3071717/- and Rs. 664892/- respectively. Though the order u/s 7A was appealable, the petitioners did not prefer any appeal.

2. Since they did not pay the determined dues, the authority issued the attachment order dated July 14th, 2005 ordering the bank concerned to pay Rs. 37,36,609/-. The writ petition was taken out on July 16th, 2005. By order dated August 12th, 2005 the petitioners were permitted to pay the amount mentioned in the attachment order in instalments. They were directed to set apart a sum of Rs. 10 lakh in a nationalized bank, and the authority was given liberty to take coercive measures in accordance with law, in default of compliance with the directions by the petitioners regarding payment and security.

Counsel submits that though in compliance with order of this Court dated, August 12th, 2005 the petitioners paid the dues, in violation of that order the authority withdrew the sum of Rs. 10 lakh that has been set apart by the petitioners by way of security. He questions the orders and prays for an order directing the authority to refund the illegally withdrawn sum of Rs. 10 lakh with interest. The orders made under Sections 7A and 8F are questioned by him on the ground that the authority did not consider the facts that the establishment was not only an exempted one, but was also a sick company within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985. The attachment order has been assailed on the additional ground that in view of the provisions in Section 8(b), the provident fund authority was not empowered to make any order u/s 8F for recovery of the amount determined u/s 7A.

3. There is nothing to show that in the 7A proceedings the petitioners submitted any written statement contending that in view of the facts that the establishment was an exempted one; and the company was a sick company declared by the competent authority, the provident fund authority was not competent to initiate the proceedings for determining the dues and levying interest. The advocate for the establishment appeared before the provident fund authority in the proceedings u/s 7A and he did not raise the contention before the authority as well. Hence, it cannot be now argued that the authority made the order u/s 7A overlooking or ignoring the facts that the establishment was not only an exempted establishment, but the company concerned was also a sick company.

4. Even otherwise, I do not find any merit in the contentions. The fact that the establishment was an exempted establishment had nothing to do with its liability to pay the statutory dues to the trust concerned. The amount determined u/s 7A was to be paid by it in terms of conditions specified while granting it exemption in terms of the provisions in Section 17. It is clear from the provisions in Section 8(b) that for recovery of amount due from the establishment in terms of conditions specified u/s 17, the provident fund authority was competent to make order u/s 8F. Since it admittedly failed to pay the dues for April and May 2004, the provident fund authority was competent to initiate the proceedings u/s 7A.

5. On the ground that the company was a sick company, the establishment was not entitled to say that it was not liable to pay the dues that it paid only after getting an order from this Court granting instalments. When it was the admitted position that the establishment committed defaults in payment of statutory dues, it was liable to pay interest in terms of the provisions in Section 7Q. The authority was fully justified in determining the dues on that account as well. Since the petitioners failed and neglected to pay the determined dues, the authority was compelled to issue the attachment order. I therefore do not find any reason to interfere with the impugned orders.

6. Counsel for the petitioners submits that in terms of order of this Court all dues payable in terms of the impugned orders have been paid. If all dues have been paid by the petitioners, needless to say that the attachment order should not remain in force. If what Counsel for the petitioners says is correct, then I think an order should be made directing the authority to refund the sum of Rs. 10 lakh with interest. It is not known whether the sum was withdrawn by the provident fund authority in violation of the order dated August 12th, 2005. Hence I think,

in view of the submissions made by Counsel for the petitioners, an order should be made directing the authority to examine whether the sum of Rs. 10 lakh that was set apart in terms of order dated August 12th, 2005 was withdrawn by the office of the provident fund authority.

7. For these reasons; I dispose of this writ petition ordering that if the sum of Rs. 37,3609 for which the attachment order dated July 14th, 2005 was issued, has already been paid by the petitioners, then the order dated July 14th, 2005 made u/s 8F shall be revoked at once. If the sum of Rs. 10 lakh set apart by the petitioners was withdrawn by the provident fund authority, even when the petitioners were depositing the instalments in terms of order dated August 12th, 2005, then the Regional Provident Fund Commissioner shall refund that amount to the petitioners with interest at the rate at which interest was levied from the petitioners u/s 7Q. If the amount is to be refunded then such refund shall be made within a fortnight from the date of communication of this order. If the amount is not to be refunded, or if the amount was not withdrawn, then the requisite intimation shall be given to the petitioners within that period. There shall be no order for costs in the case.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.

