Chatterjee Cleaning Arts Services Pvt. Ltd. Vs Assistant Provident Fund Commissioner

Writ Petition (Civil) 3613/2011

Court: Delhi High Court

Date of Decision: Sept. 2, 2014

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 14(B), 14B, 7(Q), 7Q

Citation: (2014) 143 FLR 1093 : (2014) LLR 1073

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: Biswajit Das, Nayanika Pattnaik and Sujoy Dutta, Advocate for the Appellant; Balraj Dewan, Advocate for the Respondent

Judgement

Suresh Kait, J.
Vide the present petition, petitioner seeks direction thereby declaring the orders dated 03.03.2011 and 30.08.2006,

rendered by respondent No. 1 under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, bad in law and seeking direction for

setting aside the same. Further seeks direction to respondent No. 3 to refund the amount received by it to the petitioner along with interest and

damage accrued to the petitioner on account of illegal action carried out by the respondents.

2. Vide communication dated 28.8.1998, respondent No. 3 conveyed the petitioner that ""You are hereby advised to remit the PF contributions of

the employees engaged by you through the principal employer. It is further clarified that it is the responsibility of principal employer to ensure

compliance for payment of PF contributions in respect of all employees engaged by them directly or indirectly through the Contractor"".

3. Thereafter vide communication dated 5.11.1998 addressed to the Principal Employer, respondent No. 1 stated as under:

In this connection it is stated that the separate Code No. as desired by M/s. Cleaning Arts is not applicable as per Rules. So you are as a

principal employer to ensure that payment of P.F. Contribution in respect of all the employees engaged by the contractor directly or indirectly is

made without delay.

4. The petitioner made representation on 12.5.1999 to respondent No. 3 for allotment of Permanent Employees" Provident Fund number in its

favour. Despite, respondents did not allot the same. Being aggrieved, the petitioner approached the High Court of Calcutta by way of Writ Petition

being No. W.P. No. 765 (W) of 2000 whereby respondents were directed to allot the PF Code to the petitioner.

5. Pursuant to the said order, respondents vide communication dated 26.09.2000 allotted the Code being No. WB/CA/34535 to the petitioner.

6. Thereafter, vide communication dated 10.11.2000 addressed to the petitioner it is stated that ""since the PF Contribution and other dues for the

period from February, 1998 to September, 2000 have not been paid, you are requested to remit the PF contribution and other dues for the period

mentioned above along with interest @ 12% per annum under Section 7(Q) of the Act from the due date till the actual date of payment.

7. Ld. Counsel appearing on behalf of the petitioner submits that the petitioner sincerely made all efforts to get the Provident Fund Code number,

however the same was denied. It was issued vide order dated 26.9.2000 and thereafter from October, 2000, petitioner started paying the PF

contribution continuously without any fail.

8. Moreover, just to buy the peace, the petitioner paid the provident fund contribution from February, 1998 to October, 2000. However; not paid

the interest for the reason that he was not entitled to pay the same.

9. In notice dated 9.5.2006, interest under Section 7(Q) of the Employees" Provident Fund Act, 1952 as Rs. 3,21,673 and damages under

section 14(B) of the said Act as Rs. 6,68,214 were calculated by the respondents. Thus, the total amount from the period of February, 1998 to

October, 2000 was directed to be paid as Rs. 9,89,887.

10. On receiving the said notice, petitioner made a representation to the respondents, which is still pending.

11. Ld. Counsel appearing on behalf of the petitioner submits that petitioner is not liable to pay any previous amount, however paid just to buy

peace.

12. It is pertinent to note that in order dated 30.08.2006, respondent No. 1 recorded as under:

On 19.7.2006, Shri Kaustav Sanyal, Authorised Representative appeared and submitted a written statement which was taken as record. He

stated that the establishment was covered under the purview of the Act, vide coverage letter No. R-NE/WB/CA/34535/COMP:CIRCLE-I dated

26/09/2000 w.e.f 1.2.1998 directing the employer to remit the P.F. and other allied dues on or before 10.10.2000. He further pointed out that

instalment facility to remit the P.F. dues was granted but he could not produce any supporting documents in favour of his arguments. He further

submitted that due date of payment of P.F. and other allied dues should not be prior to 10.10.2000 and pre discovery benefit should be given to

them. The perusal of the records show that the contention made by him is true. The establishment should be given benefit of pre-discovery. period

from 02/98 to 9/2000. Authorized representative has agreed the dates of payment amount of contribution shown in the payment Notice from

10/2000 to 02/04. As such I have gone through the details of the case and applied my mind also. The submission and appeal made by the

Authorised Representative of the establishment have also been gone through. I consider that the establishment had defaulted (except pre-discovery

period) in the payment on statutory dues without any valid reason. Not only the loss of interest caused to the funds is required to be made good,

also to increase in the cost of administration is to be taken into account and also deter the employer from repeating such violation of Rules, penal

damages under section 14B and interest under Section 7Q of the Act are required to be levied so that in future, dues are paid in time. The belated

payment made for various months in between 02/98 and 04/04 and damages and interest can be imposed upon the company according to the

rules allowing the benefits of pre-discovery period and considering their submission.

In exercise of the powers conferred upon me by Section 14B on the Act, read with Govt. of India, Ministry of Labours, Notification No. S.O.

548 (E) dated 16.10.1973, I Shri Abani Kumar Ray, A.P.F.C., R.O., Kolkata, W.B. think fit and accordingly order for the above reasons levy of

damages to the tune of Rs. 6,60,132 (Rupees Six Lakhs Sixty Thousand one Hundred and Thirty Two only) on the basis of amount deposited

towards P.F Contribution and allied charges for the period from 02/98 to 04/04 and interest Rs. 3,21,673 (Rupees Three Lakhs Twenty One

Thousand Six Hundred Seventy Three Only) as per prescribed rate/rule for the delayed payment. However, as the establishment has already

deposited the sum of Rs. 29,474 (Rupees Twenty Nine Thousand Four Hundred and Seventy Four Only) towards interest under section 7Q of

the Act, I direct the establishment to deposit the balance amount of Rs. 2,93,229 (Rupees Two Lakhs Ninety Three Thousand Two Hundred and

Twenty Nine Only) towards interest under Section 7Q and a sum of Rs. 6,60,132 (Rupees Six Lakhs Sixty Thousand One Hundred and Thirty

Two Only) as damages under Section 14B of the Act after allowing pre-discovery benefit in different Accounts as detailed below:

13. Since the representation made by the petitioner is pending with respondent No. 3, I leave this issue open and direct the respondent No. 3 to

decide the representation of the petitioner within two months from today by giving opportunities to parties. Decision taken by respondent No. 3

shall be communicated to the petitioner within one week thereafter.

14. Needless to state that if the petitioner is still aggrieved with the decision taken by respondent No. 3, it may approach the appropriate forum.

15. In view of above, instant petition stands disposed of. A copy of this order be given dasti.