

(2012) 07 CAL CK 0043

Calcutta High Court

Case No: Writ Petition No. 23240 (W) of 2010

M/s. Crystal Fabrication Pvt. Ltd
and Another

APPELLANT

Vs

Regional Provident Fund
Commissioner and Others

RESPONDENT

Date of Decision: July 10, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 7A, 7I

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Biswajit Mukherjee and Mr. Shovendu Banerjee, for the Appellant; Mihir Kundu, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioners in this WP under art.226 dated November 24, 2010 are questioning an order of the APFC, PD Cell, SRO/BKP dated November 4, 2010 (WP p.61). The order was passed under s.14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The proceeding was initiated for levying damages for delay in depositing contributions, etc. payable for the period June 1998 - December 2007. The APFC passed the order levying damages according to the provisions of para.32A of the Employees' Provident Funds Scheme, 1952.

2. The proceeding was initiated by issuing a notice dated December 5/19, 2008 (WP p.35). With the notice details of the delay were provided to the employer. Amounts proposed to be levied were also mentioned in the notice. An order under s.7A of the Act had been passed on December 30, 2005(WP p.28) determining the amount due

from the employer that did not deposit contributions, etc. payable for the period April 2003 - October 2005.

3. Previously a proceeding under s.14B of the Act had been initiated by issuing a notice dated May 30, 2003 (WP p.22) proposing to levy damages for delay in depositing contributions, etc. payable for the period November 1997 - February 2001. By an order dated July 1, 2003 (WP p.23) damages were levied after hearing the authorised representative of the employer. The employer accepted the order and complied therewith.

4. The proceeding initiated by the notice dated December 5/19, 2008 was taken up for hearing on December 29, 2008 when the authorised representative of the employer submitted that the employer had already paid damages for delay in depositing contributions, etc. payable for certain period mentioned in the notice. Taking cognizance of the submission the APFC directed the department to examine the matter.

5. The proceeding was heard from time to time, and it is evident from the orders passed therein that the department examined the matter for ascertaining whether damages were sought to be levied for any period twice over.

6. It is evident from an application dated May 4, 2010 (WP p.56) filed by the employer that on April 7, 2010 the department filed a report that some out of time deposits for the period November 1997 - February 2001 had not been included in the previous s.14B proceeding; and that the department requested the APFC to levy damages for the escaped deposits.

7. In the application dated May 4, 2010 the employer disputed the correctness of the calculation and requested the APFC to direct the department to look into the calculation sheet and give details of the basis of the calculation.

8. The petitioners entitled to appeal under s.7I of the Act did not appeal to the Tribunal; nor have they said anything in the WP why they chose not to appeal. They have not said anything regarding the remedy of appeal.

9. Mr. Mukherjee appearing for the petitioners has argued as that damages could not be levied for the same period (November 1997-February 2001) twice over; that the proceeding was vitiated by an incurable jurisdictional error; and that in any case, the inordinate delay in initiation of the proceeding denied the petitioners a reasonable opportunity to defend themselves.

10. There is no basis to say that damages were levied for some deposits twice over. Deposits concerning which damages were levied by the impugned order had not been taken into consideration in the previous s.14B proceeding. It is true that the period for which the previous proceeding had been initiated formed a part of the period for which the proceeding in which the impugned order was passed was initiated. Damages were not to be levied for any period, but for delay in depositing

contributions, etc. for a period.

11. The APFC took cognizance of the objection and made extensive inquiry for ascertaining whether the department wanted levy of damages for any deposit twice over. The department satisfied him that no proposal was made for levying damages for any deposit twice over. Simply because the period included in the previous proceeding was included also in the proceeding in which the impugned order was passed, it cannot be said that the proceeding was vitiated by an incurable jurisdictional error.

12. There is no merit in the argument that delay in initiation of the s.14B proceeding denied the petitioners a reasonable opportunity to defend themselves. There is no limitation for initiating a proceeding under s.14B of the Act. Proceedings are to be initiated within a reasonable period. Proceedings are not permissible, if it is shown that delay in initiating them has caused irretrievable prejudice to the employer.

13. Here the proceeding was preceded by a s.7A order and a reminder notice dated November 10, 2008 concerning out of time deposits for the period June 1998 - December 2007. The employer was contesting only the calculation. All necessary particulars of the out of time deposits were provided by the department. Hence there is nothing to suggest that the delay caused any irretrievable prejudice to the employer. For these reasons, the WP is dismissed. No costs. Certified xerox.