

(2012) 05 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No. 706 of 2011

Vidula Chemicals and
Manufacturing Industries Ltd.
and Another

APPELLANT

Vs

Employees" Provident Funds
Commissioner and Others

RESPONDENT

Date of Decision: May 14, 2012

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 7A, 7I, 7Q

Citation: (2012) 135 FLR 31 : (2012) LLR 1212 : (2013) 1 SCT 203 : (2013) 2 SLJ 199

Hon'ble Judges: J.K. Biswas, J

Bench: Single Bench

Advocate: H.K. Mitra with Mr. Debducta Sen, for the Appellant; Soumya Ray and Mr. Mihir Kundu, Advocates, for P.F. Authority, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta K. Biswas, J.

The petitioners in this writ petition under article 226 dated July 13, 2011 are questioning an order of an Assistant Provident Fund Commissioner (in short APFC) dated March 18, 2011 (writ petition p. 34).

The order was passed levying damages u/s 14B and directing payment of interest u/s 7Q of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952. The provisions of the Act and the schemes framed thereunder were applicable to the establishment of the petitioners. Proceedings were initiated u/s 7A for determining liability of the employer during the period from March, 2006 to August, 2007. It was found that the employer was liable to pay Rs. 6,51,752.

Certificate proceedings were initiated. Even then the dues were not paid. When the Recovery Officer issued a notice dated October 13, 2008 asking the employer to show-cause why warrant of arrest should not be issued, the petitioners paid the dues. Then by a letter dated November 5, 2008 the Recovery Officer asked the employer to pay Rs. 45,623 interest u/s 7Q saying that the certificate proceedings would be dropped once the payment was made. The petitioners paid the amount.

2. Thereafter the APFC issued a notice dated October 20/November 8, 2010 asking the employer to show-cause why damages should not be levied u/s 14B and interest should not be paid u/s 7Q for non-payment of the dues during the period from March, 2006 to August, 2007 within the statutory period. In the notice the amounts payable u/s 14B and section 7Q were mentioned. Statements showing how the amounts became due were annexed to the notice.

3. In response to the notice the petitioners submitted a letter dated February 9, 2011. Relevant part of the letter is quoted below:

Since the establishment named Vidula Chemicals & Manufacturing Industries Limited bearing PF Code No. WB/2491 is in non-functioning stage and has been closed a few year back, the relevant records and documents are unavailable. So you are requested to give us a copy of 7A order.

4. It is evident from the letter that the petitioners neither disputed their liability to pay damages u/s 14B and interest u/s 7Q for nonpayment of the statutory and other allied dues during the period from March, 2006 to August, 2007 within the statutory period, nor questioned the correctness of the figures mentioned in the several statements annexed to the notice and the amounts payable u/s 14B and section 7Q. (mentioned in the notice).

5. It is evident from the impugned order dated March 18, 2011 that it was passed after hearing the authorized representative of the employer. Apart from mentioning that the establishment had been closed and hence the employer was not in a position to pay the amounts levied u/s 14B and payable u/s 7Q, the authorized representative did not say any other thing. The order reveals that the APFC levied damages and directed payment of interest according to the relevant provisions.

6. The petitioners had a statutory remedy of appeal u/s 7I of the Act. They did not appeal against the order. They approached this Court straight. Mr. Mitra appearing for the petitioners has relied on "Regional Provident Fund Commissioner v. S.D. College Hoshiarpur and others, 1997 (75) FLR 530 (SC), and Shanti Garments Pvt. Ltd. v. Regional Provident Fund Commissioner, 2003 (1) LLJ 467 (Mad).

7. He has argued as follows. Interest was claimed twice. The second claim is contrary to the assurance that if the first claim was met, the proceedings would be dropped. The authority was bound by the promise. Particulars of the section 7A order were not supplied. In any case, the APFC did not exercise discretion in favour of reduction

and waiver.

8. The APFC initiating the proceedings never promised that if the first interest claim was met, the proceedings would be dropped. The assurance was given by the Recovery Officer in connection with the certificate proceedings. The proceedings in which the impugned order was passed were initiated after disposal of the certificate proceedings.

9. The subsequent proceedings had no connection with the certificate proceedings. Hence it is wrong to say that the APFC initiated the proceeding in breach of his promise. Besides, no one could give an assurance that proceedings for levying damages u/s 14B and ordering interest u/s 7Q would not be initiated.

10. The question of supplying details of the section 7A order could not arise at all. The section 7A order was accepted by the petitioners who paid the determined amount. It was not their case that the second interest claim made in the notice initiating the proceedings overlapped the first claim. They did not dispute the correctness of the amounts mentioned in the notice. Even before the APFC the authorized representative of the employer did not question the correctness of the amounts levied u/s 14B and ordered u/s 7Q.

11. The petitioners never questioned the APFC's jurisdiction to initiate the proceedings. The order was passed after giving opportunity of contesting the proceedings. From their fetter it is evident that the petitioners did not set up any case in defence. Closure of the establishment was an irrelevant aspect. The APFC was not empowered to waive or reduce any part of the levied damages. Only the Central Board, not approached, could consider it. No-one is empowered to waive or reduce interest payable u/s 7Q. On the facts, the cited decisions are of no assistance. For these reasons, the writ petition is dismissed. No costs.