

(2011) 05 DEL CK 0423

Delhi High Court

Case No: Writ Petition (C) 3613 of 2011 and CM No. 7562 of 2011 (for stay)

Chatterjee Cleaning Arts Services
Pvt. Ltd.

APPELLANT

Vs

Assistant Provident Fund
Commissioner (Damage) and
Others

RESPONDENT

Date of Decision: May 25, 2011

Acts Referred:

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

Citation: (2011) 182 DLT 450 : (2012) 1 LLJ 644

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Biswajit Das and Mayarika Pathak, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rajiv Sahai Endlaw, J.

The petition impugns the order dated 3rd March, 2011 of the Employees' Provident Fund Appellate Tribunal, New Delhi impleaded as Respondent No. 2. The said Tribunal is not required to be impleaded as a party and is deleted from the memo of parties. An endorsement to the said effect be made by the Court Master today itself.

2. The first contention of the counsel for the Petitioner is that the Tribunal has not heard the Petitioner and refused the adjournments sought by the Petitioner.

3. No merit is found in the said contention. The Petitioner has no right to adjournment and if chooses, when the appeal comes up for hearing, to seek adjournment, does so at its own risk and no error is found in the refusal of

adjournment and the Tribunal proceeding to reserve the order. The contention that because the appeal had come up after five years, adjournment should have been granted, cannot be accepted.

4. The appeal was preferred against the order dated 30th August, 2006 of the Respondent No. 1 whereby the Petitioner was directed to deposit a sum of Rs.6,60,132/- towards damages u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and a sum of Rs.2,93,229/- towards interest u/s 7Q of the Act.

5. A perusal of the paper book at pages 47 to 60 indicates that the default for which damages and interest have been computed exists from February, 1998 till March, 2004. It is the contention of the Petitioner that though in the order dated 30th August, 2006 it was held that the Petitioner is entitled to benefit of pre-discovery period from February, 1998 to September, 2000 but the same has not been given while making the computation.

6. However as far as the period from October, 2000 to March, 2004 is concerned, the contention of the counsel for the Petitioner is that since the Section 7A assessment itself was done vide order dated 11th April /17th June, 2002 at page 43 of the paper book; prior thereto the Petitioner could not be expected to know with respect to which employees and what amount had to be deposited and as such there could be no default inviting damages and interest prior to the 7A assessment vide order dated 11th April/17th June, 2002. It is contended that the Petitioner since the year 1998 had been representing to the Respondent No. 1 for registration but was earlier informed that the responsibility is of the principal employer for whom the Petitioner was running services and the Petitioner was registered only on 26th September, 2000. It is contended that the Petitioner as such could not know that the provident fund with respect to which employees was being deposited by the principal employer and for which employees it was liable to deposit the provident fund.

7. The contention of the Petitioner aforesaid if accepted would tantamount to no proceeding under Sections 14B and 7Q of the Act being maintainable till the Section 7A order. The said position cannot be accepted in law. The Petitioner is to make the requisite deposit of its own and at least since the allotment of the Code number, was required to make the said deposit and the explanation offered for the default after September, 2000 cannot be accepted.

8. Yet another argument offered by the counsel for the Petitioner is that the Petitioner pursuant to the order u/s 7A was permitted to pay the amount in installments. The Tribunal has in the order impugned in this petition held that no material in this regard was placed by the Petitioner. The Petitioner before this Court also has not placed any such material. The counsel for the Petitioner contends that it was an informal understanding between the Petitioner and the Respondent No. 1. The said argument cannot be accepted. The Section 7A order itself records that the

same was "without prejudice to the rights" of the Respondent No. 1 to levy and recover damages u/s 14B and interest u/s 7Q of the Act. Had there been any such understanding, at least the said part of the order would not have been then in existence.

9. Even otherwise if a view were to be taken that contribution is to be deposited only after assessment and not in advance as is required under the law, the same would be contrary to the statutory provision and do away with the provision of self-assessment and deposit.

10. This Court in [Ajanta Offset and Packaging Ltd. Vs. The Regional Provident Fund Commissioner](#), held that the provisions of the EPF Act apply proprio vigore and all that the Respondents are required to do, is to allot a Code number; that even if there be any delay on the part of the Respondents in allotting a Code number, that will not absolve the Petitioner of its liability under the Act. The EPF Act thus applies to the notified establishments with effect from the date from which the Notification makes the Act applicable and not from the point of time the competent authority holds the employer of such establishment liable and determines the amount payable. The Act comes into operation by its own vigour and its operation is not dependent on any decision being taken by the authorities under the Act. The Petitioner was under a legal obligation to make deposits to the Fund within the time prescribed, the moment the Act and the Scheme became applicable to it and no intimation or notice of any kind in that respect was necessary to be issued by the authorities concerned. Reference may also be made to [S.K. Nasiruddin Beedi Merchant Ltd. Vs. Central Provident Fund Commissioner](#), laying down that the applicability of the Act is not determined or decided by any proceeding u/s 7A of the EPF Act but under the provisions of the Act itself; what is done u/s 7A is only determination or quantification of the same; the Assessee cannot rely upon his own laches in not making the deposit.

11. Thus no merit is found in the petition in so far as impugning the levy of damages and interest for the period after September, 2000.

12. Issue notice limited to the period February, 1998 to September, 2000 to the Respondents by all modes including dasti, returnable on 15th November, 2011.

13. There shall be stay of recovery only qua damages and interest till September, 2000.

14. It is clarified that there is no stay for recovery of damages and interest for the balance period.

15. The Petitioner is at liberty to approach the Respondents for bifurcation of the amount.

CM No. 7563/2011 (for exemption).

Allowed, subject to just exceptions.