

GAHC010211352018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/23/2019

M/S POPULAR TIE UP PVT LTD AND ANR
A COMPANY DULY REGISTERED UNDER THE COMPANY S ACT, 1956,
HAVING ITS REGISTERED OFFICE AT 32, JAWAHARLAL NEHRU ROAD, 4TH
FLOOR, KOLKATTA, 700017 AND IS REPRESENTED BY ITS POWER OF
ATTORNEY HOLDER ,SHRI SHASHI PRAKASH SINGH.

2: SELENG TEA ESTATE.
P.O. SELENGHAT
DIST.-JORHAT
ASSAM
PIN 785636

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT, DISPUR, GUWAHATI - 781006,
ASSAM.

2:THE BOARD OF TRUSTEES

ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION. ATEPFO
REPRESENTED BY THE SECRETARY CUM P.F. COMMISSIONER
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION ATEPFO
NIDHI BHAWAN
LALMATI
BASISTA
GUWAHATI-781029.

3:THE ASSISTANT PROVIDENT FUND COMMISSIONER.
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION ATEPFO
JORHAT ZONAL OFFICER
A.T ROAD TARA JAN
P.O. and DIST. JORHAT-785001

ASSAM.

4:THE DEPUTY COMMISSIONER.

JORHAT
A.T. ROAD
ATILAGAON
JORHAT
ASSAM
PIN-785001.

5:THE BAKIJAI OFFICER

OFFICE OF THE DEPUTY COMMISSIONER.

JORHAT
A.T. ROAD
ATILAGAON
JORHAT
ASSAM
PIN-785001

Advocate for the Petitioner : MR. G N SAHEWALLA

Advocate for the Respondent : GA, ASSAM

Linked Case : WA/25/2019

M/S POPULAR TIE UP PVT LTD AND ANR
A CO. DULY REGISTERED UNDER THE COMPANY S ACT 1956 HAVING ITS
REGISTERED OFFICE AT 32
JAWAHARLAL NEHRU ROAD
4TH FLOOR
KOLKATA 700017 AND IS REPRESENTED BY ITS POWER OF ATTORNEY
HOLDER
SHRI AMITABH RANJAN

2: SELENG TEA ESTATE
P.O. SELENGHAT
DIST. JORHAT
ASSAM
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VERSUS

THE STATE OF ASSAM AND 4 ORS

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
LABOUR AND EMPLOYMENT DEPTT.
DISPUR
GUWAHATI 781006
ASSAM.

2:THE BOARD OF TRUSTEES
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION (ATEPFO)
REPRESENTED BY THE SECY. CUM P.F. COMMISSIONER
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION (ATEPFO)
NIDHI BHAWAN
LALMATI
BASISTHA
GUWAHATI 781029

3:THE ASSTT. PROVIDENT FUND COMMISSIONER
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION (ATEPFO)
JORHAT ZONAL OFFICE A.T. ROAD
TARAJAN
P.O. AND DIST. JORHAT 785001
ASSAM.

4:THE DEPUTY COMMISSIONER
JORHAT A.T. ROAD
ATILAGAON JORHAT
ASSAM
PIN 785001

5:THE BAKIJAI OFFICER
OFFICE OF THE DEPUTY COMMISSIONER JORHAT
A.T.ROAD
ATILAGAON JORHAT
ASSAM
PIN 785001

For the Appellants : Mr. G. N. Sahewalla, Sr. Adv.
Mr. A. Sahewala, Adv.

For the Respondents: Mr. N.C. Das, Sr. Adv.
Ms. M. Devi, Adv.
Mr. D.K. Sarmah, GA, Assam.

BEFORE

**HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 25/04/2024.

Date of judgement : 02/05/2024.

JUDGEMENT AND ORDER (CAV)

Suman Shyam, J

1. These 2 (two) intra Court appeals arise out of the common judgement and order dated 04/05/2018 passed by the learned Single Judge disposing of 2(two) writ petitions, viz. WP(C) No. 5896/2017 and WP(C) No. 5902/2017 preferred by the present appellants as writ petitioners. Writ Appeal No. 23/2019 arises out of the judgement and order passed by the learned Single Judge in WP(C) No. 5896/2017 whereas Writ Appeal No. 25/2019 arises out of the order dated 04/05/2018 passed by the learned Single Judge in WP(C) No. 5902/2017. Since common questions of law and facts are involved in both the writ appeals, hence, we propose to dispose of the same by this common judgement and order.

2. The essential facts, necessary for disposal of the writ appeals, are briefly narrated herein below:-

(i) The appellant no.1 is a Private Limited Company having its registered office at No. 32 Jawaharlal Nehru Road, Kolkata in the State of West Bengal and appellant No. 2, viz. Seleng Tea Estate, is a Tea Garden situated at Jorhat, in the State of Assam. The appellant no 2 Tea Estate, which is engaged in manufacturing black tea, is presently being run and managed by the appellant no.1. As per the provisions of “*The Assam Tea Plantations Provident Fund (i) (and Pension Fund (8) (and Deposit Linked Insurance Fund) Scheme Act, 1955 (herein after referred to as the Act of 1955)*” the management was required to deposit Provident Fund contribution of the employer with the “*Assam Tea Employees Provident Fund Organization (ATEPFO)*” {formerly known as “*Assam Tea Plantation Provident Fund and Pension Fund Scheme*”}. However, according to the appellants, during the period from 1998 to 2008, the management of the Tea Garden was faced with acute financial crisis as a result of which, it could not deposit the Employers and employees’ contribution of provident fund with

the statutory authority.

(ii) On 31/08/2007, the Chairman of the Board of Trustees had issued a notice/ demand to the management of the Tea Company for recovery of Provident Fund Contribution of an amount of Rs 2,42,76,521.17p pertaining to the period from 23/12/1998 to 24/03/2007. Thereafter, on 30/04/2009, another demand was raised by the Chairman, Board of Trustees for an amount of Rs. 73,75,032.29p being the unpaid Provident Fund contribution of employers' and employees' pertaining to the period from 08/04/2007 to 01/11/2008. The certificate issued by the Chairman of the Board of Trustee of ATEPFO was thereafter sent to the Deputy Commissioner, Jorhat for recovering the amount. Accordingly, Bakijai cases No. PF/BC/1/2007-08 and PF/BC/2/2007-08 were registered for recovery of the sums of Rs. 2,38,23,023/- and Rs. 73,76,032/-.

(iii) Although, notices were issued to the appellants in respect of both the aforementioned Bakijai proceedings, yet, no significant progress was made in the above proceedings in view of the interim order(s) dated 22/09/2017 operating in WP(C) 5896/2017 and WP(C) No. 5902/2017 preferred by the Management of the Tea Estate. As such, the respondent nos. 2 & 3 as applicants, had moved 2 (two) Interlocutory Applications, registered as IA(C) No. 560/2018 in WP(C) 5896/2017 and IA(C) No. 515/2018 in WP(C) No. 5902/2017, praying for vacating the stay orders. Both the IAs were disposed of by the order dated 06.01.2015 with a direction to bring the Bakijai proceedings to its logical end within 6 (six) months from the date of the order.

(iv) According to the appellants, after the order dated 06/01/2015 was passed by this Court, the appellant no. 2 had issued cheques clearing the outstanding dues in both the Bakijai Cases and obtained Bakijai Clearance Certificate on 26/08/2015. After the said process was completed, the Secretary of the Board has issued the impugned notice dated 08/09/2015 raising a further demand of Rs. 2,94,21,497.77P as 15% statutory interest of the defaulted amount of Provident Fund for the period from 13/12/1998 to 24/03/2007. A further amount of Rs. 70,85,582.89 as interest at the statutory rate of 15% per annum was also demanded from the appellant by the notice dated 08/09/2015

pertaining to the period from 08/04/2007 to 01/11/2008.

(v) The grievance of the appellants in these proceedings is pertaining to the notice dated 08/09/2015 issued by the respondent No. 2 claiming an amount of Rs. 2,94,21,497.77P as 15% statutory interest of the defaulted amount of Provident Fund for the period from 13/12/1998 to 24/03/2007 and the further amount of Rs. 70,85,582.89 as interest at the statutory rate of 15% per annum relating to the period from 08/04/2007 to 01/11/2008. According to the appellants, interest at the statutory rate was included in the earlier demand notices/certificates which were fully deposited by the management and hence, further demand for interest at the rate of 15% on the un-paid dues was not maintainable under the law. By the impugned judgement and order dated 04/05/2018, the learned single judge had however, rejected such plea of the appellants. Hence, these writ appeals.

3. Mr. Sahewalla, learned senior counsel for the appellants has argued that his clients are not disputing the liability of the management to deposit the employers' and employees' contribution of provident fund as demanded by the respondent no. 2 but according to Mr. Sahewalla, the amount due and payable by his clients have already been deposited by the appellants in connection with Bakijai Case Nos. PF/BC/1/2007-08 and PF/BC/2/2007-08, whereafter, Bakijai Clearance Certificate was issued. According to Mr. Sahewalla, once a Certificate was issued for recovery of the unpaid dues no further interest at the statutory rate can be raised subsequently and delay, if any, in realization of the amount for the period subsequent to the issue of recovery certificate would at best attract interest only at the rate of 6¼ percentum per annum as per section 16(a) of the Bengal Public Demand Recovery Act, 1913 and no further. Referring to the statement appended to the notice dated 08/09/2015 projecting the interest claim for the different periods commencing from the year 1998 till the year 2015, Mr. Sahewalla submits that levy of interest at the statutory rate of 15% beyond the period covered by the certificates dated 31/08/2007 and 30/04/2009, is illegal and hence, liable to be interfered with by this court. On such ground, the appellants have assailed the notice dated 08/09/2015.

4. Mr. N.C. Das, learned senior counsel appearing for the ATEPFO authorities, on the other hand, has resisted the arguments advanced by Mr. Sahewalla by contending that the

appellants are liable to pay interest at the statutory rate of 15% per annum due to the delay in depositing the employers' and employees' Provident Fund contribution within the statutory period of 30 days from the date on which the same had fallen due. Under the circumstances, there was no illegality on the part of the respondents in issuing the impugned demand notices dated 08/09/2015. Mr. Das has further argued that upon receipt of the notice dated 08/09/2015, the appellants have not only accepted the claim of the respondent No.2 but had also agreed to deposit the entire amount by way of 84 installments. Acting on such request made by the appellants, submits Mr. Das, they were permitted to pay the amount in 50 installments subject to deposit of equal number of post dated cheques and the appellants have already deposited 20 post dated cheques, each amounting to Rs 7,30,142 /- out of which, 12 cheques have already been en-cashed. Under the circumstances, submits Mr. Das, the appellants are estopped from raising the aforesaid plea in these proceedings. Mr. Das, further submits that after taking due note of the facts and circumstances of the cases, the learned Single Judge has rightly dismissed the writ petitions by recording sufficient reasons. As such, there is no scope for this court to interfere with the impugned judgement and order.

5. We have considered the submissions made by the learned counsel for both the sides and have also gone through the materials available on record.

6. As has been noted above, the core controversy involved in these proceedings is pertaining to the validity of the demand for payment of statutory interest @ 15% per annum on the delayed deposit of Provident Fund contribution raised by notice dated 08/09/2015.

7. The basic facts of the case are more or less admitted. It is the admitted position of fact that the appellants were liable to deposit the Employers' and Employees contribution of Provident fund as per notices dated 31/08/2007 and 30/04/2009 but there was default on their part. It is not in dispute that such amount was recoverable as public demand by following the procedure laid down in the Act of 1955 read with the provisions contained in *The Bengal Public Demands Recovery Act, 1913 (for short, the Act of 1913)*. However, the stand of the appellants is that having deposited the entire amounts payable under the 2(two) Bakijai proceedings viz. (a) Bakijai Case No. PF/BC/1/2007-08 for an amount of Rs. 73,76,032/- pertaining to the period from 08/04/2007 to 01/11/2008 and (b) Bakijai Case No. PF/BC/2/2007-08 pertaining to the sum of Rs. 2,38,83,023/- for the period from 23/12/1998 to 24/03/2007 interest at the statutory rate of 15% would not be payable by them. The

appellants have therefore, questioned the legality and validity of the impugned notice dated 08/09/2015. In order to answer the question raised in these appeals, it would be necessary for this Court to briefly survey the legal frame work pertaining to the mode of recovery of Provident Fund deposits in case of default by the employer.

8. Section 11 of the Act of 1955 enjoins responsibility of collection of contribution according to which, every employer shall be responsible for collection of contribution, for making their remittance in accordance with provisions of the scheme and for maintenance of records in respect of the members. Section 11(A) of the Act of 1955 provides that if the employer fails to deposit employer's contribution together with the employees share of contribution within 30(thirty) days of its collection, the employer shall be liable to pay interest @ 15% per annum on the arrear till its deposit.

9. Section 14 of the Act of 1955 lays down that accumulation in the Provident Fund is to be transferred to the fund established under the scheme, which is the ATEPFO in the present case.

10. Section 15 of the Act of 1955 lays down the mode of recovery of money due from the employer. Section 15 is reproduced herein below for ready reference:-

*”15. **Mode of recovery of money due from employer** : Any amount due from the employer in relating to a plantation to which the Act of any Scheme framed thereunder applies in respect of any contribution payable to the Provident Fund or the Pension Fund as the case may be, damages recoverable under Section 16 of the Act, accumulation required to be transferred under Section 14 or any charges payable by him under any provisions of this Act or any provisions of the Scheme framed thereunder, may if the amount is in arrear, be recovered by the Government or a person authorized by it in the same manner as an arrear of land revenue.”*

11. As per section 16 of the Act of 1955, when the employer makes default in payment of any contribution to the Provident Fund or in the transfer of accumulations required to be transferred under the scheme or in the payment of any charges payable under the Act or the scheme framed thereunder, the Government or any other person authorized by it may recover from the employer, such damages, which can be recovered as amount of arrears. However,

under the original Act of 1955, "Authorized Officer " was not a defined expression nor was there any specified procedure laid down for recovery of the amount due under the certificate. It appears that the Certificates / Demand notices dated 31/08/2007 and 30/04/2009 were issued by the Chairman of the Board of Trustees and the recovery proceedings were initiated under the Act of 1913. However, the Act of 1955 was significantly amended by "The Assam Tea Plantations Provident Fund And Pension Fund And Deposit Linked Insurance Fund Scheme (Amendment) Act 2016,(for short "Amendment Act of 2016"), which was notified in the Official Gazette on 03/03/2016. As per section 2(k) of the Amendment Act of 2016, the Secretary-cum-Provident Fund Commissioner would be the "Authorized Officer" to exercise powers and functions under the Act. Sections 15A to 15G were inserted after section 15 of the Act of 1955, laying down the procedure for recovery of money due. Section 15B.(1) makes provisions for issuance of Certificate of Recovery. The amended provision of section 15B.(1) reads as follows :-

"15B(1) Where any amount is in arrear under section 15, the Authorized Officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the plantation or, as the case may be, the employer by one or more of the modes mentioned herein below :-

(a) Attachment and sale of the movable or immovable property of the plantation or, as the case may be, the employer;

(b) Arrest of the employer and his detention in prison;

(c) Appointing a receiver for the management of the movable or immovable properties of the plantation or, as the case may be, the employer;

Provided that the attachment and sale of any property under this section shall first be effect against the properties of the plantation and where such attachment and sale is insufficient for recovery of the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recover of the whole or any part of such arrears.

(2) The Authorized Officer shall issue a certificate under sub-section (1)

notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.”

12. Section 15C lays down as to the Recovery Officer to whom, Certificate of Recovery is to be forwarded. Section 15D contains provisions that deals with validity of certificate and amendment thereof. Section 15E of the amended Act, which deals with stay of proceeding, amendment or withdrawal thereof, which reads as follows :-

“15E (1) Notwithstanding the fact that a certificate has been issued by the Authorized Officer to the Recovery officer for the recovery of any amount against any plantation or employer, the Authorized Officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the Authorized Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to demand of amount for which certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Authorized Officer shall stay the recovery of such part of the amount of the certificate which pertains to the said reduction, for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Authorized Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate accordingly or withdraw it, as the case may be.”

13. From a conjoint reading of sections 15B and 15E, more particularly sub-section 3 of section 15E, it appears that even after a certificate of recovery is issued, the amount included therein can be modified in an “appeal” or “other proceeding” preferred under this Act and if necessary, even the recovery proceeding can be stayed during the pendency of the appeal or other proceeding.

14. From a scrutiny of the amended provisions of section 15A to 15G, as inserted by the Amendment Act of 2016, it is apparent that by inserting the above provisions, a self contained code, not only for issuance of certificate of recovery but also for execution of the same in a recovery proceeding has been provided thus, laying down the mechanism for modification/execution of the certificate. Under the circumstances, after the amendment of the Act of 1955, as noted above, it may no longer be necessary for the Provident Fund authority to take recourse to the provisions of the Act of 1913 by instituting a Bakijai proceeding for recovery of amount due under a certificate. If that be so, the arguments of Mr. Sahewalla, learned senior counsel for the appellants that interest, not at the statutory rate of 15% but @ 6¼ percentum would only be applicable appears to be completely untenable in law since in our opinion, the question of application of interest @ 6¼ percentum would arise only if a proceeding is registered under the Act of 1913 and a question arises within the ambit of section 16(a) of the Act of 1913 regarding levy of interest on the certificate amount. Admittedly, there is no proceeding pending at this stage under the Act of 1913. Therefore, the question of applicability of section 16(a) of the Act of 1913, in our view, would also not arise in the facts of the present case.

15. Having held as above, we have also taken note of the fact that although section 15E (3) & (4) of the Act of 1955 speaks about preferring an appeal against the certificate, there is no separate provision for filing an appeal under the Act of 1955 nor has it been mentioned as to before which authority, the appeal will lie. Appeal being a creature of statute, the appellate remedy must be specifically provided under the statute or the Rules framed thereunder.

16. In order to resolve the above ambiguity in the parent Act, we have examined the provisions of the relevant scheme and find that in exercise of powers conferred by section 3 read with section 5 of the Act of 1955, the Governor of Assam had framed the "*Assam Tea Plantations Provident Fund and Pension Scheme, 1968*" (herein after for short, the Act of 1968) in supersession of the scheme published earlier in the year 1959. The scheme so framed, was notified on 21/07/1968 vide Memo No. GLR.550/65/39. Chapter-II of the scheme deals with procedures for collection of Provident Fund dues. Paragraph 26 of the Scheme of 1968 deals with interest. Paragraph 26 is quoted herein below for ready reference :-

*“26. **Interest** : The Board shall determine the interest payable on the account of each member on the credit balance of such member on such date in*

accounting year as may be decided by the Board.”

17. The scheme of 1968 also provides for constitution of “Primary Committee” which shall be constituted by the Board of Trustees in each Tea Plantation or Tea Factory consisting of (1) 2 representatives nominated by the employer of whom one shall be either the Manager or the Superintendent of the plantation or the Factory and the Superintendent or the Manager shall be the Chairman of the Committee.

18. Paragraph 39 of the Scheme of 1968 provides for preferring an appeal before the Board of Trustee in the event of any dispute or grievance against the decision of the Primary Committee. Save and except paragraph 39, we do not find any other provision either under the parent Act or the Scheme of 1968, which indicates as to the authority before whom an appeal will lie. An appeal under paragraph 39 of the Scheme of 1968, however, would be maintainable by an aggrieved person only against the decision of the Primary Committee.

19. It is to be noted herein that by the impugned notice dated 08/09/2015, the respondent no. 2 has raised a demand which amounts to a money claim. The demand has been resisted by the appellants by disputing the correctness of the amount claimed by the respondent no. 2. A money claim may be contested by the aggrieved party on several grounds including correctness of computation of the amount and also on the ground of applicability of the Law of Limitation debarring any such recovery. Unless an amount is found to be statutorily due and recoverable, no person can be compelled to pay the amount. The question as to whether the amount claimed under the impugned notice dated 08/09/2015 is correct and, therefore, recoverable from the appellants for the corresponding periods, would require verification of several factual aspects, which may not be possible in a writ proceeding in exercise of jurisdiction under Article 226 of the Constitution of India. However, that does not mean that the aggrieved party should be left remedy less. Ordinarily, an appellate remedy would be the right course of action for the aggrieved persons for agitating their grievance in such a matter.

20. In view of the language used in sections 15E (3) & (4) it appears that there is scope for preferring an appeal against the certificate. Considering the fact that paragraph 24 of the Scheme of 1968 specifically provides that it is the Board of Trustees, which would be the competent authority to determine “the interest payable on the count of each member,” after

considering the fact that the dispute raised in these proceedings pertains only to one issue i.e. the quantum of interest payable on the unpaid and / or delayed deposit of Provident Fund contribution by the appellants, we are of the considered opinion that the writ appellants ought to be provided with an opportunity to raise their grievance before the competent authority, which in our opinion, would be the Board of Trustees, in this case.

21. We, therefore, dispose of both these appeals by granting liberty to the appellants to submit a representation and/or appeal before the Chairman of the Board of Trustees, ventilating their grievance as regards the liability to pay interest, as per the statement appended to the impugned notice dated 08/09/2015, issued by the Secretary/Provident Fund Commissioner of the Board.

22. If such a representation/appeal is filed within 2 (two) weeks from today along with a certified copy of this order, the same be considered on merit and be disposed of by a reasoned order, in the light of the observations made herein above and without being influenced by any observation made in the impugned judgement and order dated 04/05/2018 passed by the learned Single Judge. Till such time, the representation/appeal is disposed of by the Board by a reasoned order, recovery proceeding, if any, initiated against the appellants in terms of the notice dated 08/09/2015, shall remain suspended. This order shall, however, not come in the way of recovery of current dues of Provident Fund, if any, from the appellants, along with statutory interest, in accordance with law, if so advised.

23. If the appellants continue to remain aggrieved in the matter even thereafter, it will be open for them to avail appropriate remedy, as may be permissible, under the law.

With the above observations, both the writ appeals stand disposed of.

Parties to bear their own costs.

JUDGE

CHIEF JUSTICE

Sukhamay

Comparing Assistant