

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 16899 of 2015 (J)

PETITIONER : -

M/S. JAYASREE TRAVELS AND TOURS COMPANY ,
P.O BOX NO.5236, PETTAH,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS PARTNER,
M/S. JAYASREE VIKRAMAN.

BY ADVS.SRI.RAVI KRISHNAN
SRI.RAHUL SHENOY
SRI.K.KRISHNAN

RESPONDENTS : -

1. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM 695 004.
2. THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM 695 004.

BY SMT.T.N.GIRIJA, SC, EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16899 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : COPY OF THE ORDER DATED 13.2.15 PASSED BY THE 1ST
RESPONDENT UNDER SECTION 14B OF THE EMPLOYEES
PROVIDENT FUND AND MISCELLANEOUS PROVISION ACT 1952.

EXHIBIT P2 : COPY OF THE ORDER DATED 13.2.15 PASSED BY THE 1ST
RESPONDENT UNDER SECTION 7Q OF THE EMPLOYEES
PROVIDENT FUND AND MISCELLANEOUS PROVISION ACT 1952.

EXHIBIT P3 : COPY OF THE APPEAL MEMORANDUM.

EXHIBIT P4 : COPY OF THE NOTICE OF DEMAND DATED 21.5.15 ISSUED BY THE
2ND RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

A.V. RAMAKRISHNA PILLAI,J.

W.P.(c) No. 16899 of 2015

Dated this the 08th day of June, 2015

JUDGMENT

The petitioner has come up before this Court alleging that though the petitioner has prepared a statutory appeal along with a stay petition in time, as no presiding officer was appointed, the appeal was not listed and in the meantime recovery proceedings were being initiated against the petitioner.

2. The petitioner establishment is a Partnership Firm. The petitioner is engaged in the business of Travel and Tourism. Respondents are amenable to the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The petitioner establishment has been bought under the Provisions of Employees Provident Fund and Miscellaneous Provision Act 1952 with effect from 01.04.2001 to 31.03.2016. The Managing Partner of the

Company is suffering from Motor Neuron Disease for around 5 years and he is completely paralyzed and living with the support of ventilator for the last more than 2 years. Hence, he was not in a position to look into the affairs of petitioner establishment and as a consequence the appellant establishment is facing various financial constraints and business loss. Now, the first respondent passed an order dated 13.02.2015 directing to pay the penal damages under Section 14 B of the Employees Provident Fund and Miscellaneous Provision Act, 1952 for the period 04/2001 to 03/2006 amounting to Rs. 6,58,012/- and an amount of Rs. 3,07,412/- towards interest under Section 7 Q of Employees Provident Fund and Miscellaneous Provision Act, 1952. Being aggrieved by the same, the petitioner preferred a statutory appeal before the Employees Provident Fund Appellate Tribunal, New Delhi, which was transferred to Employees Provident Fund Appellate Tribunal, Bangaluru. Since no presiding officer is appointed, the above appeal is adjourned sine-die. Now the respondents are initiating recovery proceedings against the petitioner. The first respondent forwarded revenue recovery certificate to the second

respondent to recover the damages and interest from the petitioner and the second respondent issued Notice of Demand dated 21.05.2015 to the petitioner to recover an amount of Rs.10,28,424/- under various provisions of the Employees Provident Fund and Miscellaneous Provision Act, 1952.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for respondents 1 and 2.

4. It was submitted by the learned Standing Counsel that the appeal now preferred by the petitioner is against the orders passed under Sections 14B and 7 Q of the Employees Provident Fund and Miscellaneous Provision Act, 1952. It was submitted that there is no provision for an appeal against an order passed under Section 7 Q. Therefore, the only option before the petitioner is to remit the interest within a time frame and to inform the appellate authority concerned that the appeal against the order under Section 7 Q is not pressed as it is not maintainable and requesting the authority to proceed with the appeal against the order under Section 14 B.

In the result, the writ petition is disposed of permitting the petitioner to remit the amount as per the order passed under Section 7 Q (Exhibit P2) within a period of four months and pursue its remedy of appeal against the order under Section 14 B before the appellate authority. The recovery proceedings shall be kept in abeyance for a period of four months. Extension of stay of the recovery proceedings is left open to be decided by the appellate authority.

A.V. RAMAKRISHNA PILLAI
JUDGE

DMR/-