

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2435/2015 & CM No. 4379/2015**

% Judgement pronounced on: 13.03.2015

M/S. WRITERS AND PUBLISHERS PVT. LTD. Petitioner

Through: Mr.Atul T.N., Advocate alongwith
Mr.Rajiv Shukla, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Vivekanand Mishra, Advocate for
R-1.
Mr.R.R..Rajesh, Advocate for R-2
and R-3.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

CM No. 4380/15 (for exemption)

Allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 2435/2015 & CM No. 4379/2015

1. Vide the present writ petition, the petitioner has challenged the order dated 2nd February, 2015 under Section 7A of the Regional Provident Fund Commissioner.

2. Vide impugned order, the Regional Provident Fund Commission had proceeded with the hearing of the matter and fixed the case for 23rd February, 2015 with direction to the petitioner to provide all the relevant records for verifications by the squad of Area E.Os. Further, directions were

issued to the squad to submit its report after verification of the records on or before next date of hearing. On the request of the petitioner that it had not been provided the copy of calculation sheet submitted by the Employees Union, directions were issued to supply the same within a week, through speed post or by hand, to the petitioner. The petitioner was also directed to submit its comments on the report dated 08.12.2014 of the Area E.O. on the next date of hearing. It is also ordered by Regional Provident Fund Commission in its order that in case the petitioner fails to comply with the directions, the matter be proceeded ex-parte.

3. It is also apparent from the said order that the petitioner had raised objections regarding the enquiry under Section 7A of the Provident Fund Act and one of the objections for continuation of the enquiry under Section 7A of the Provident Fund Act was primarily based on the plea that the establishment had filed IA No. 87-88 /2013 in Special Leave Petition (Civil) No. 8398-8399 of 2005 before Supreme Court. Vide this order, Regional Provident Fund Commission has turned down the request of the petitioner to defer the proceedings before him till the final judgment of the Supreme Court on the ground that the proceedings under Section 7A of the Provident Fund Act neither have been stayed nor have been ordered to be kept in abeyance by the Supreme Court and thus proceeded with the enquiry under Section 7A of the Act.

4. Against this order of the Regional Provident Fund Commission, the petitioner had preferred an appeal before the appellate authority which is registered as ATA No. 244(4)/ 15.

5. It is submitted that the respondent no.3 is forcing the petitioner to subjugate to his ways, without affording its chance to present its statutory

appeal, with illegal and unwarranted determination under Section 7-A (2) of the Act. The respondent is proceeding for determination without adjudication of the issue of applicability and without waiting for the outcome before EPF Appellate Tribunal.

6. It is submitted that in the case of Arihant Threads Ltd. Vs. union of India bearing writ petition no. CWP No. 3331/2000, a Division Bench of Punjab and Haryana High Court had passed an order dated 25.03.2004, whereby directing all the authorities to maintain status quo in such matters where the Chair of the Appellate tribunal is lying bare and vacant and this court has also issued similar directions in various Writ Petition (Civil) Nos. 648/2015, 800/2015 & 1402/2015.

7. On these facts, it is prayed by the petitioner that the appropriate writ of Mandamus be passed against the respondent restraining them from taking any further steps in pursuance of the impugned order dated 2nd February, 2015. During the course of the arguments, it is submitted that in the appeal before the appellate authority, the petitioner had sought the stay of the proceedings before the Regional Provident Fund Commission.

8. Mr.Vivekanand Mishra, Advocate for respondent no. 1 and Mr.R.R..Rajesh, Advocate for respondent nos. 2 and 3 are present on advance notice. They have also addressed the arguments. It is submitted on behalf of the respondents that the present writ petition is not maintainable on the ground that it has been filed against an interim order. It is further argued that petitioner has concealed the material information from the notice of the court since it has not placed on record the copy of the order dated 23.02.2015, for which date the Regional Provident Fund Commission had fixed the case on 02.02.2015.

9. It is further submitted that matter is subjudice before Regional Provident Fund Commissioner. It is further submitted that by way of writ of Mandamus, this court cannot restrain the public authority to continue with the proceedings before it as per the law. It is also contended that even an appeal filed before the appellate authority is not maintainable under the Act.

10. Learned counsel for the petitioner has submitted that the appeal is maintainable.

11. I have given due consideration to the rival contentions of the parties. The petitioner has come before this court for a writ of Mandamus. It is apparent that the writ of Mandamus lies to secure the performance of a public or statutory duty. It is in the form of a command directed to a person or an inferior tribunal requiring to do a particular thing specified to his office and is in the nature of public duty. The court passes a Writ of Mandamus for enforcement of fundamental rights.

12. In the present case, it is apparent that petitioner has come up before this court, seeking the Writ of Mandamus whereby restraining Regional Provident Fund Commission from continuing with the enquiry under Section 7A of the Provident Fund Act. The petitioner relied to the above-mentioned case laws the findings in those cases is not applicable on the facts of this case. There is no alleged recovery ordered against the petitioner pursuant to the impugned order. Also, it is not the case of the petitioner that continuation of proceedings before the Regional Provident Fund Commissioner is violative of any statute or is in violation of any of his fundamental rights. From the facts of this case, it is apparent that the petitioner does not want Regional Provident Fund Commission to proceed with an enquiry under Section 7A of Provident Fund Act.

13. Only ground seeking the issuance of direction to Regional Provident Fund Commissioner, not to proceed to take any action pursuant to his order dated 02.02.2015 is the filing of appeal. Even the appellate courts are empowered to continue hearing appeals from interim orders without staying the proceedings of the lower courts.

14. In the present writ petition, the following is the prayer of the petitioner:-

“(a) Issue appropriate Writ of Mandamus or any other appropriate writ(s) against the Respondent No.2 thereby restraining them from taking any further step in pursuance of the impugned order dated 2.2.2015 against the petitioner till the pendency of statutory appeal bearing no. ATA No. 244 (4)/15 filed before the Appellate Tribunal, New Delhi.”

15. From the impugned order, it is clear that the Regional Provident Fund Commissioner had fixed the next date as 23.02.2015 and on that he must have taken the action pursuant of his directions in order dated 02.02.15.

16. The petitioner has not placed on record the order passed by Regional Provident Fund Commission on 23rd February, 2015. No explanation has come forward from the petitioner on this concealment. The only conclusion that can be drawn is that the petitioner has done it intentionally, in order to conceal an order which would defeat his claim in the present writ petition.

17. The petitioner has failed to show existence of any circumstance which needs intervention of this court.

In view of the above, the present writ petition is dismissed with no order as to costs.

CM No. 4379/2015

In view of the above order, the application has become infructuous.

The application stands dismissed.

**DEEPA SHARMA
(JUDGE)**

MARCH 13, 2015

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