Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4854 of 2015

Coastal Gujarat Power Ltd. .. Petitioner

Vs.

Central Board of Trustees
Through the Regional Provident
Fund Commissioner -1 and ors. .. Respondents

Mr.K.M.Naik -Senior Advocate a/w Mr.Pinkesh Shah i/b M/s Mulla & Mulla & Craige Blunt & Caroe, for the Petitioner.
Mr.H.K.Ramchandani i/b Mr.V.K.Wasnik, for Respondent Nos.1 to 3.

CORAM: N.M. JAMDAR, J.
Monday, 25 January 2016.

Oral Order :

The Petitioner challenges the order passed by the Regional Provident Fund Commissioner, Employees Provident Fund Organisation dated 17 April 2015 withdrawing the relaxation granted to the Petitioner on 15 December 2011 under Para 79 of the Employees Provident Fund Scheme (EPF Scheme).

2. The Petitioner by an application dated 1 November 2010, sought exemption under para 27AA of EPF Scheme. The Petitioner stated that it is a hundred per cent subsidiary of M/s Tata Power

Company Limited (Tata Power) and covered under the provisions of EPF Scheme. It stated that the parent Tata Power is an exempted establishment and was granted exemption under 27(A) of the EPF Scheme with effect from 1 March 1993. It was stated that Tata Power has a Provident Fund Trust in its name called 'The Tata Power Consolidated Provident Fund'. On this basis an application for exemption, was made attaching the relevant documents. A relaxation order was also sought for under para 79 of the Scheme, for class of employees with effect from 1 November 2010.

3. The Respondent Authority considered the application and granted relaxation holding that on preliminary examination of the Provident Fund Rules of Tata Power Consolidated Provident Fund as applicable, case was made out for grant of relaxation. By order dated 15 December 2011 relaxation was granted pending the decision of the exemption application, on certain terms. Thereafter a notice was issued to the Petitioner by the Authority on 30 June 2014, to show cause why the relaxation should not be withdrawn. The Petitioner submitted its explanation. Considering the condition (xxv) of the order granting relaxation, by the impugned order dated 17 April 2015, the relaxation was withdrawn. The Petitioner has challenged the impugned order by way of this petition.

4. Mr.Naik, the learned senior advocate appearing for the Petitioner contended that the condition (xxv) invoked by the Respondent Authority is a condition for grant of exemption and the Central Government has power to consider all aspects at the time of

grant of exemption under section 17 of the Employees' Provident Fund Act and Miscellaneous Provisions Act, 1952. He submitted that the Petitioner has faced various difficulties in respect of the finances and though it has reported loss for period of three preceding years, it is entitled to various amounts and set offs as per the order dated 21 February 2014 passed by Central Electricity Regulatory Commission. He also submitted that having granted the relaxation and without there being any loss to the employees the relaxation could not have been withdrawn and it will cause great prejudice to the Petitioner. He also contended that the condition imposed has to be imposed for exemption and cannot be imposed while granting relaxation. It was also contended that there is no power of withdrawal having once granted the relaxation. Mr.Ramchandani, the learned counsel for the Respondents supported the impugned order.

5. The Petitioner made an application for exemption since the provisions of the Act are made applicable to it. Section 17 of the Act grants power to the appropriate government to exempt an establishment from the provisions of the Act, on certain conditions being fulfilled. Section 17 reads as under :

> *17. Power to exempt - (1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme -*
> *(a) any establishment to which this Act applies, if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are*

not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character; or

(b) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character. Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme

6. Clause 79 of the Employees' Provident Fund Scheme 1952 reads as under -

> ***[79. Special provisions relating to [factories or other establishments] in respect of which applications for exemption are received*** *:- Notwithstanding anything contained in this Scheme, the Commissioner may, in relation to a [factory or other establishment] in respect of which an application for exemption under Section 17 of the Act has been received, relax pending the disposal of the application the provisions of this Scheme in such manner as he may direct].*

This provision grants power to the Commissioner to grant relaxation pending disposal of the application for exemption. Pending the application for exemption, an establishment which is otherwise covered by the provisions of the Act can apply for a relaxation order. The powers of grant of relaxation of the authority have to be construed keeping in mind the beneficial object of the Act of 1952. The relaxation order cannot be granted as a matter of course and will depend on facts and circumstances of the case. Therefore, merely because a relaxation order is granted it cannot be said that it can never be withdrawn even if the condition on which it is granted are violated.

7. In the present order of relaxation a specific clause i.e. clause (xxv) has been incorporated which reads as under -

> '*(xxv) A company reporting loss for three consecutive financial years or erosion in their capital base shall have their exemption withdrawn from the first day of the next / succeeding financial year*'.

8. The fact that the Petitioner has reported loss for three consecutive financial years has not been disputed. What is contended are the reasons how the loss is caused and how the Petitioner is entitled to certain amounts under the orders of the Central Electricity Regulatory Commission. The Respondent Authority, which has imposed this condition (xxv) has noted the loss of three preceding years. The reason why the loss has been caused is beyond the consideration of the Provident Fund authorities. Therefore, if the relaxation order is granted on a particular condition and during the course of the operation of relaxation order it is noticed that the condition is no longer fulfilled, the order of relaxation can come to an end. It cannot be that because the Petitioner is entitled to certain amount under the

orders of some other authority in future, the relaxation order will continue to operate. The Petitioner has accepted the order of relaxation with this condition and therefore, it cannot make complaint regarding the clauses contained therein.

9. As regards the contention of Mr.Naik that no loss is caused to the employees, clause (xxv), does not admit such interpretation. It specifically refers to the loss of three consecutive financial years or erosion in the capital base, which has admittedly taken place. Merely because the term 'exemption' is used in the relaxation order, it still retains the character of a relaxation order. As regards the contention that these clauses could not have been imposed at the time of relaxation is concerned, the Petitioner has accepted this order of relaxation on these conditions enjoyed the same for almost three years. I therefore find no error in the order of the Respondent Authority. The application for exemption is pending. Till then the Act applies to the Petitioner. Relaxation order was only an interim measure, based on conditions. Condition was breached, so the interim measure stands withdrawn.

10. However there is merit in the grievance made by the learned senior advocate that the application for exemption cannot be kept pending indefinitely. The application for exemption has been made in the year 2010 which has not been decided almost for a period of five years. The relaxation order has now been withdrawn. It is expected that the concerned Authority will dispose of the exemption application at the earliest. It is informed by the

Respondent that the application for exemption will be considered by the Under Secretary to Government of India, Ministry of Labour. The Under Secretary to Government of India, Ministry of Labour, is directed to dispose of the application for exemption within period of three months from the receipt of the order of this Court. Registry is directed to communicate the order to Under Secretary to Government of India, Ministry of Labour forthwith, in addition, by way of e-mail.

11. Mr.Ramchandani states, on instructions that, his officer will also communicate the order to the Under Secretary.

12. It is clarified that Under Secretary to Government of India, Ministry of Labour will consider the application for exemption on its own merits without being influenced by the order passed by the Respondent Authority withdrawing the relaxation granted by it. It is clarified that the observations made in the impugned order and in this order are in respect of the grant of relaxation, which is in the nature of an interim relief pending the main application and therefore, the main application for exemption would be considered on its own merits. It is also clarified that though it may be permissible to the Respondents to take action as per law as a consequence of the order withdrawing the relaxation, in view of the direction to decide the main application within three months, the Respondent authority will not take criminal action personally against the directors of the Petitioner pending the exemption

Application.

13. Writ Petition is accordingly **disposed of** in above terms.

(N.M.Jamdar, J.)