IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15062 of 2006

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Modi Steel Limited, E/2 Industrial Area, Patliputra Patna-13, through its Director, V. Singhania

.... Petitioner

Versus

1. The Regional Provident Fund Commissioner, Regional Office, R Block, Patna-1
2. Assistant Provident Fund Commissioner, Regional Office, R. Block, Road No.6, Patna.
3. The Recovery Officer, Regional Provident Commissioner Office, R. Block, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. V.N. Sahay, Advocate
		Mr. Arun Srivastava, Advocate
For the Respondent/s	:	Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-03-2018

Heard Mr. V.N. Sahay, learned counsel for the petitioner and Mr. Prashant Sinha, learned counsel for the respondents.

2. This writ petition has been filed by the petitioner for quashing the notices of demand dated 31.08.2006, 04.10.2006 and 13.10.2006 (Annexure-1, 2 and 3) issued by the respondent no.3

under Section 7Q and 14 B of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (for short 'the Act of 1952) purported to be assessed by respondent no.2 in a proceeding under Section 7A of the Act of 1952 for non-payment of contributions for the period November, 1990 to April, 1998 for the un-enrolled members.

3. The case of the petitioner, in brief, is that it is a company incorporated under the Indian Companies Act, 1956 having its factory at E/2 Industrial Estate, Patliputra, Patna. It was engaged in business of cold rolling steel strips and galvanized steel strips. The Act of 1952 was made applicable on the establishment in the year 1978 and it was paying employers and employees contribution, administrative charges and family pension contribution regularly till the closure of the establishment in April, 2001. The Inspector under the Act of 1952 visited the factory periodically and inspected the factory and records of the establishment and always found that the establishment was running its business complying with the provisions of the Act of 1952 and no major lapses or non-coverage of employees of the factory was ever brought to the notice of the petitioner. However, on 27.03.1998, for the first time, the petitioner received a notice from the Regional Provident Fund Commissioner to produce different records from 1990 till date on

the ground that the he had reason to believe that all the employees working in the factory were not extended the benefits of the Act of 1952. The letter was replied and the records were produced for inspection, but the matter was not brought rather a notice dated 01.09.1998 under Section 7A of the Act of 1952 was served for evasion of membership and the petitioner was directed to produce the documents from 1990 to 1998 and date was fixed 24.09.1998 for hearing. The petitioner replied vide its letter dated 24.09.1998 and 13.11.1998 that periodical inspections were done and Provident Fund Inspector did not find evasion of membership at any point of time. A request was made to drop the proceeding, but the same was not brought acceded to and, thereafter, several notices were issued to the petitioner by Assistant Provident Fund Commissioner on 24.09.1999, 15.10.1999, 29.10.1999, 14,08,2000, 27.10.2000 and 08.11.2000 and lastly a notice dated 17.01.2002 was received fixing 24.01.2002 as the date for hearing. The petitioner attended the proceeding on 24.01.2002 and, thereafter, the proceeding was adjourned with an oral information that notice of the date will be communicated. However, no notice was received thereafter, and all of a sudden another notice dated 21.07.2003 for the period of April, 2001 to August, 2001 for evasion of membership contribution was sent by respondent no.2. Though, the petitioner replied vide letter dated 31.07.2003 that the factory is closed with effect from April, 2001, the proceeding was not brought and, again, a notice dated 26.08.2003 was served for the same period. Ultimately, a notice dated 10.06.2005 (Annexure-1) was received to the petitioner to pay the amount of Rs. 25,93,506/- by the Recovery Officer (respondent no.3). On receipt of the notice for payment to the petitioner, replied to the Recovery Officer vide its letter dated 08.07.2005 informing that the factory is closed since April, 2001 and till 31.03.2001 all the provident fund dues have been paid by the company. The company was registered by Board of Industrial and Financial Reconstruction (for short 'BIFR') vide its letter dated 16.09.2001 on the ground that the company sustained heavy financial loss. Therefore, no action of recovery can be taken against the company during pendency of the BIFR proceeding. Subsequently, the petitioner was communicated with the notice dated 04.10.2006 informing him that after adjustment of the amount recovered from the bank there exists due towards interest due under Section 7Q and an order in this regard has also been passed and the said order was under registered cover was sent along with the notice issued to the petitioner. Again, a notice dated 13.10.2006 (Annexure-3) was issued to the petitioner for recovery of damages under Section 14B of the Act of 1952.

4. Mr. V.N. Sahay, learned counsel for the

petitioner submitted that the entire proceeding is illegal and bad in view of the fact that the factory is closed since 31.03.2001 and no complaint whatsoever was registered by the Provident Fund Authorities for evasion of membership during regular periodical inspection carried out by the Provident Fund Inspector. He submitted that no information for final hearing was given to the petitioner in the proceeding under Section 7-A of the Act of 1952. The petitioner attended the proceeding lastly on 06.02.2002 and, thereafter, all of a sudden a notice dated 10.06.2005 was received by it for payment of Rs.25,93,506/-. The determination made by the 7-A Authority was challenged in appeal under Section 7-I before the Appellate Tribunal, but the same was dismissed whereafter a writ application being C.W.J.C.No.15740 of 2005 was filed by the petitioner for stay of certificate for recovery, but during pendency of the said writ application, the respondent no.3 directed the bank to send the certificate amount and in compliance with the direction, Citi Bank, Kolkata remitted Rs. 25,93,506/- and Overseas Bank paid Rs.1,64,069/- to the department. Since the amount was already recovered and the writ petition had become infructuous, the same was dismissed for want of prosecution. He submitted that the respondent no.3 has no power and jurisdiction to pass order making amendment in the certificate and recover excess amount and adjust the same against interest. According to him, the respondent no.3 has exceeded his jurisdiction in passing fresh order of recovery of interest without having certificate and assumed jurisdiction of Authorized Officer and Recovery Officer as well. He submitted that against the order passed by the Authority under Section 7-A, an appeal was preferred before the Tribunal, which was dismissed and the appellate order passed by the Tribunal was challenged before this Court in a writ petition, which was dismissed and, thus, the order passed by the 7-A Authority attained finality.

5. On the other hand, Mr. Prashant Sinha, learned counsel appearing for the respondent-Employees Provident Fund Organization submitted that the writ petition is misconceived. He submitted that it is wrong to say that the petitioner had no notice of the proceeding rather the fact is that the representative of the company was regularly attending the proceeding before the 7-A Authority. Once it was known to petitioner, if subsequently pairvi was left, it cannot be said that the petitioner had no notice of proceeding. He submitted that there is no substance in the submission of the petitioner that the Recovery Officer assumed the role of Adjudicating Officer. As a matter of fact, the Recovery Officer took action in accordance with the provisions of Section 7Q of the Act of 1952.

6. I have heard learned counsel for the parties and perused the record.

7. I find substance in the submission made on behalf of the respondents.

8. From the own pleading of the petitioner, it would be manifest that the petitioner was duly served with notice in the proceeding initiated against it and it participated in the proceeding on different dates and, subsequently, left pairvi. It is not even the case of the petitioner that it was not served with the order passed by the Authority under Section 7-A of the Act of 1952. It is also not in dispute that the 7-A order has attained finality. The order passed under Section 7-A was challenged in appeal before the Appellate Tribunal and the same was also dismissed. The writ petition filed against the appellate order passed by the Tribunal dismissing the appeal against the order passed by the 7-A Authority has also been dismissed.

9. From the very perusal of the order passed by the 7-A Authority under the Act of 1952, it would be evident that after determining the dues payable, it was directed that the establishment would be liable to pay dues for the notice period and the interest on the amount due from the date on which the amount became due till the date of their actual payment. Thus, the notice issued by the

Recovery Officer issued under Section 7Q was consequential in nature and it cannot be said that he had modified the order passed by the 7-A Authority or had made fresh adjudication and determination of the liability against the petitioner. Moreover, the dues against the petitioner was determined for the period November, 1990 to April, 1998, i.e., much before the date of closure of the factory on 31.03.2001 and, thus, in the opinion of this Court, there is no illegality in taking action for evasion of membership contribution of dues in respect of un-enrolled contract labour for the aforesaid period. The impugned notices as contained in Annexures-1, 2 and 3 are neither illegal nor bad.

10. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	NA