IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3534 of 2020
and
W.M.P.No.4135 of 2020

The Management
M/s. Eco Pure Technologies Private Limited,
rep. by tis Managing Director,
Srinivasan Venkatesh,
no.12, M.L.P.Building,
Near Kumar Gas Service,
mangalam Road,
Tirupur - 641 604. ... Petitioner

vs

1. The Regional Provident Fund Commissioner-II,
EPFO, Regional Office,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018.

2. The Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office,
Coimbatore - 641 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the entire records in pursuant to the order dated 06.12.2019 in EPFA No.167 of 2019 passed by the Hon'ble Presiding Officer, central Government Industrial Tribunal Cum Labour Court/Employees Provident Fund Appellate Tribunal, Chennai and quash the same insofar as it relates to the pre-condition of deposit of rs.8,00,000/- out of the disputed amount of Rs.20,69,618/- as damages assessed under Section 14(B) of the EPF & MP, Act, 1952.

For Petitioner : Mr.K.Sathiya Murthi
For Respondents: Mr.J.sathyanarayana Prasad,
Standing Counsel.

O R D E R

Mr.J.Sathyanarayana Prasad, learned Standing Counsel takes notice for the respondents. By consent the main writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved against the order dated 06.12.2019 passed by the Tribunal in imposing a condition to pay a sum of Rs.8 lakhs for granting interim stay.

3. Heard both sides.

4. Challenge made before the Tribunal by way of an appeal is against the order dated 01.07.2019 made under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Under the said order, the petitioner herein was directed to pay a sum of Rs.20,69,618/- towards damages for the belated payment of the contribution for the relevant period. On the very same day, another order under section 7Q was also passed directing the petitioner to pay a sum of Rs.10,64,428/- towards interest for such belated payment. There is no dispute to the fact that the petitioner complied with the order passed under Section 7Q and paid the sum of Rs.10,64,428/- on 24.08.2019. However, aggrieved against the order passed under Section 14B claiming damages, the petitioner went on appeal before the Industrial Tribunal, Labour Court, Chennai, which in turn, passed the impugned order. The Tribunal, while admitting the Appeal and disposing the stay petition has passed the conditional order directing the payment of Rs.8 lakhs for grant of interim stay. The grievance of the petitioner before this Court is that when the interest amount has already been paid, the Tribunal is not justified in imposing a condition to pay the said sum of Rs.8 lakhs, especially, when there is no statutory requirement for making pre-deposit, while preferring an appeal against an order passed under Section 14B. He further contended that the Appellate Authority is to consider and decide whether damages under Section 14B is to be inflicted on the petitioner by considering the facts and circumstances and also by considering as to whether any mense rea existed on the part of the petitioner.

5. Learned counsel for the respondents, on the other hand, submitted that the conditional order was passed by the Tribunal only while considering the Stay Application filed by the petitioner and therefore, this Court need not interfere with the same.

6. Admittedly, the Appeal filed before the Tribunal is arising out of the order passed under Section 14B. There is no dispute to the fact that while preferring such appeal, there is no statutory requirement for making any pre-deposit, as in the case of an appeal preferred against an order made under Section 7A. The Tribunal has also pointed out the said statutory position. However, while considering the Stay Petition, the Tribunal has imposed the said condition of depositing Rs.8 lakhs. Since the Appeal is now pending before the Tribunal, this Court, at this stage is not expressing any view on the merits of the order passed under Section 14B including the question as to whether the authority who passed the order has expressed or given any finding on the mense rea. Needless to say, it is for the Tribunal to go into such question and decide. However, considering the fact that the petitioner has paid the interest amount under Section 7Q as ordered already, this Court is of the view that the Appeal can be taken up and decided by the Tribunal on merits and in accordance with law without insisting the petitioner to deposit the said sum of Rs.8 lakhs.

7. Accordingly, this Writ Petition is allowed and the impugned order insofar as it directs the petitioner to deposit a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) as a condition for grant of interim stay alone is set aside. Consequently, the Tribunal is directed to take up the appeal and decide the same on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. It is open to both parties to raise all the contentions before the Appellate Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vsi

To

1. The Regional Provident Fund Commissioner-II,
   EPFO, Regional Office,
   Bhavishyanidhi Bhavan,
   Dr.Balasundaram Road,
   Coimbatore - 641 018.

2. The Recovery Officer,
   Employees' Provident Fund Organisation,
   Regional Office,
   Coimbatore - 641 018.

+1 CC to Mr.J.sathyanarayana Prasad, Advocate sr 11716.
+1 CC to Mr.K.Sathiyamurthi, Advocate sr 11725.

W.P.No.3534 of 2020

BS(CO)
SP(25/02/2020)