

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3910 of 2020
and
W.M.P.No.4642 of 2020

M/s.Solara Active Pharma Sciences Limited
27, Vandaloore Kelampakkam Road,
Keelakottaiyur Village, Melakottaiyur
Kancheepuram - 600 127.

... Petitioner

vs.

Regional Provident Fund Commissioner-I
Employees' Provident Fund Organization
Regional Office : Tambaram
3, Rajaji Salai, Chennai-600 045.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, forbearing the respondent from initiating recovery proceedings in terms of its order dated 23.01.2020 in proceedings No.TB/TAM/RO/11095/Enf/T-5/2019 till the appeal filed by the petitioner is taken up for enquiry by the Central Government Industrial Tribunal cum Labour Court, Chennai.

For Petitioner : Mr.S.Ravindran
Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondent : Mr.K.Ramu
standing counsel

O R D E R

Mr.K.Ramu, learned standing counsel takes notice for the respondent. Since the issue involved in this writ petition lies in a narrow compass, this Court is inclined to take up the main writ petition itself for final disposal at the admission stage itself.

2. The challenge made in this writ petition is against the order of the respondent dated 23.01.2020 only insofar as the direction issued in the said order to comply with the same within

15 days of receipt of the said order, also with an indication that the failure to do so, would result in proceeding to recover the arrears in the manner specified under Section 8B to 8G of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. Heard Mr.S.Ravindran, learned Senior Counsel appearing for the petitioner and Mr.K.Ramu, learned standing counsel appearing for the respondent.

4. The petitioner suffered an order dated 23.01.2020 (impugned in this writ petition), passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, determining the dues for the period from 04/2013 to 03/2015 in respect of omitted wages. The respondent passed the said order and determined the total liability of Rs.24,40,729/-. In the said order itself, the respondent informed the petitioner that if they failed to comply with the above order within 15 days of the receipt of the said order, action will be initiated to recover the arrears in the manner specified under Section 8B to 8G of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Admittedly, the said order of the respondent is an appellable one before the concerned Tribunal. There is no dispute to the fact that the appeal time is not yet over.

5. On the other hand, it is submitted by the learned Senior Counsel appearing for the petitioner that the petitioner has filed the statutory appeal along with the stay and waiver petitions before the Tribunal on 17.02.2020.

6. Under such circumstances, the grievance of the petitioner before this Court, in this writ petition, is only against the direction issued by the respondent for remittance of the dues within 15 days. In other words, it is the contention of the petitioner that when the appeal time is yet to over and the petitioner is entitled to approach the Appellate Authority and seek for interim relief as well as against the said demand, the respondent is not justified in directing the petitioner to pay the same, within 15 days from the date of receipt of the said order.

7. I find force in the above submissions made by the learned Senior Counsel appearing on behalf of the petitioner. When a statutory appellate remedy is provided and time limit is also fixed for filing such appeal, even before the expiry of such time limit, insisting for the payment of the disputed dues within a shorter time, would defeat the very purpose of filing the appeal and seeking interim relief. Therefore, in all fairness, the authority, who passed the order, should wait till the appeal time is over for enforcing the demand made in the said order. At the

same time, it is made clear that this Court by expressing so, is not indicating that the petitioner herein has made out a case for granting any interim relief as against the impugned demand, since it is for the said Appellate Tribunal to consider and decide such interim application.

8. Considering the submissions made by the learned Senior Counsel for the petitioner that the appeal has been filed on 17.02.2020, along with stay and waiver petitions, this Court is of the view that pending an order to be passed in the stay and waiver petitions by the Tribunal, the respondent shall not take any coercive steps against the petitioner to recover the arrears as demanded in the order dated 23.01.2020. Since the appeal has been filed on 17.02.2020 as stated before this Court, the stay and waiver petitions along with appeal shall be taken up by the Tribunal and decided on merits and in accordance with law, within a period of 15 days, if the same is in order. If the appeal filed along with stay and waiver petitions are not in order and returned by the Tribunal for some reasons and the same are not represented within the appeal time, it is open to the respondent to proceed against the petitioner to recover the amount due after the expiry of the appeal time.

9. With the above observations and directions, this Writ Petition is disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Regional Provident Fund Commissioner-I
Employees' Provident Fund Organization
Regional Office : Tambaram
3, Rajaji Salai, Chennai-600 045.

+1 CC to Mr.K.Ramu, Advocate sr 13390.

+1 CC to Mr.S.Bazeer Ahamed, Advocate sr 13646.

W.P.No.3910 of 2020

VSNII(CO)
SP(19/02/2020)