**IN THE HIGH COURT AT CALCUTTA**
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

**MAT 257 of 2021**
**with**
**CAN 1 of 2021**

Heard on: 02/03/2021

Pronounced on: 02/03/2021

Delta Limited & Ors.

........Appellants

Through:-
Mr. Abhrajit Mitra, Senior Advocate
...present through VC
Ms. Rajshree Kajaria, Advocate through VC
Mr. Satadeep Bhattacharyya and
Mr. Saptarshi Mukherjee, Advocates
…present in Court

-Vs-

Union of India & Ors.

........Respondents

Mr. Anil Kumar Gupta, Advocate present in Court
..for Provident Fund Organisation

Md. T.M. Siddiqui, Advocate present in Court
.. for the State

**Coram: THE HON'BLE JUSTICE RAJESH BINDAL**

**THE HON'BLE JUSTICE ANIRUDDHA ROY**

**ORDER**

**Rajesh Bindal, J.**

**1.** The present intra-court appeal has been filed challenging the order dated February 22, 2021 passed by the learned Single Judge with a grievance that the prayer for withdrawal of the writ petition was rejected and direction was issued for furnishing the list of assets of the appellants in court.

**2.** The issue in dispute is regarding recovery of the provident fund dues of the employees working with the petitioners. The number is stated to be about 3,000. The petitioners are exempted establishments and a trust has been created for deposit of the provident fund dues of the employees. But as per the information furnished by the learned counsel of the Employees Provident Fund Organisation the exemption certificate issued to the petitioners was cancelled on December 17, 2014. Challenging the same WP 2953(W) of 2015 was filed by the petitioners and the same is pending in this court with interim stay granted in their favour.

**3.** From the recovery certificate it is evident that the amount due from the petitioner No.1 is Rs. 6,04,21,408.54 and a sum of Rs. 1,50,45,754.88 is recoverable from the petitioner No.2. For deposit of the provident fund dues of the employees working in the aforesaid establishment, Delta Jute and Industries Limited Workers' Provident Fund has been set up.

**4.** The writ petition was filed by the petitioners challenging the recovery notice dated February 19, 2020 issued by the Employees Provident Fund Organisation to the Axis Bank for attachment of the account of M/s Delta Limited, for recovery of the provident fund dues. Further prayer was made seeking direction to the respondents to take immediate steps in terms of the proposal submitted by the petitioners vide its communication dated October 1, 2018. It provides that a plot, close to the factory of the petitioners be attached and sold for recovery of the dues. It was also mentioned in the aforesaid letter that the property is mortgaged to IDBI Bank. Meaning thereby, it was not free from encumbrance.

**5.** The revenue recovery certificate issued to the petitioners on September 14, 2018 was also challenged praying for restraining the respondents from taking forcible steps for recovery of the amount.

**6.** A perusal of the show cause notice issued to the Directors of the petitioner No.1 company dated October 15, 2019 shows that the amount is due from the year 2006 onwards. The details thereof are as under:

| SL. No | RRC No. & Date | Period involved | Category | Amount of Dues |
|---|---|---|---|---|
| 1 | WBHLO4458/0000079/01/04/ /2019/501/35/72 dated 01.04.2019/08.04.2019 | 04/2017 to 03/2018 | 14B | 4,21,515=00 |
| | | | 7Q | 3,31,599=00 |
| 2 | RRC No.WB/HWR/Ex-Compliance & Jute/79/766 dated 14.09.2018 | 02/2006 to 12/2013 | Contribu-tions | 7,54,67,163=00 |
| | | Total Dues | | 7,62,20,277=42 |

**7.** The matter was listed before the Single Bench on January 05, 2021.

**8.** The learned counsel for the petitioners sought adjournment for taking instructions from the writ petitioner.

**9.** On January 07, 2021 the learned counsel for the petitioners submitted that they are willing to pay the amount due in instalments. Rs.50 lakhs will be paid immediately. Balance amount will be paid in monthly instalments of Rs. 10 lakhs each, along with current amount due towards the provident fund. The stand taken by the learned counsel for the Provident Fund Organisation was noticed to the extent that 50% of the amount due from the petitioners, is on account of employees' contribution and the petitioners should be directed to pay at least that amount immediately and thereafter the balance can be paid in instalments. Adjournment was sought by the learned counsel for the petitioners on January 27, 2021.

**10.** The stand taken by the learned counsel for the petitioners was again that the amount can be paid in instalments and the number of instalments will be intimated on the next date of hearing.

**11.** On February 22, 2021 the learned counsel for the petitioners made a request for withdrawal of the writ petition apparently for the reason that they were not interested to pay the provident fund dues, 50% of which is the amount deducted from the wages paid to the employees and utilised for running the business by the petitioners, while not depositing in the trust.

**12.** The learned Single Judge rejected the prayer made by the petitioners for withdrawal of the writ petition noticing the fact that the case pertains to recovery of provident fund dues of the low paid employees working in the petitioners' establishment and directed the petitioners to file affidavit on or before February 24, 2021 regarding the assets of the company.

**13.** We have perused that order. Challenging first part of which, the present writ petition has been filed.

**14.** The argument raised by the learned senior counsel for the appellants is that any person approaching the court has absolute right to withdraw the writ petition and there cannot be any direction issued against him in the writ petition filed by him. No interim order was passed in favour of the petitioners by the learned Single Judge. In support of his argument reliance was placed upon judgment of the Supreme Court in ***Shaik Hussain Vs. M.G. Kannaiah,*** **reported at** ***(1981) 3 SCC 71***.

**15.** He further submitted that it was not public interest litigation pending in this court as none of the workers had approached this court for redressal of their grievance. It was a writ petition filed by the present appellants, which they wanted to withdraw. There was no bar on the Employees Provident Fund Organisation to take appropriate steps in accordance with law for recovery of the amount. In fact, such steps have already been taken.

**16.** At the time of hearing Balance Sheets of Delta Limited for the financial years 2018-19 and 2019-20 were produced. A perusal thereof shows that the turnover of M/s Delta Limited for the year 2018-19 was Rs. 58,85,10,620/- whereas for the year 2019-20 the same increased to Rs. 139,98,70,948/-.

**17.** As far as Meghdoot Projects Limited is concerned, there was no turnover for the financial years 2018-19 and 2019-20. The huge amount of the provident fund is stated to be due against the aforesaid company as well.

**18.** On the other hand, Mr. Gupta, learned counsel appearing for the Employees Provident Fund Organisation submitted that the petitioners are, in fact, guilty of misappropriation of the amount deducted from the salary/wages of the employees working with them as the same has been utilised for business purposes instead of depositing the same with the trust. Even from May, 2019 onwards the amount of provident fund is not being deposited by the appellants with the trust. Number of steps were taken for recovery of the amount. Communications were sent to IDBI Bank, Central Bank of India, State Bank of India, Kotak Mahindra Bank and Axis Bank for attachment of the accounts and remittance of the amount to the Employees Provident Fund Organisation but practically nothing has been received. Arrest warrants were also issued and communicated to the police authorities but no effective steps were taken by police. Response was received from In-Charge, Manikpur Police Post under Sankrail Police Station, stating that they could not succeed despite repeated efforts. Similar response was received from Ekbalpore Police Station, stating that arrest of the accused could not be made by the police as they are not co-operating with them. Further reference was made to a communication dated April 26, 2019 to the Revenue Department for attachment of the property, as offered by the petitioners, for recovery of the amount due. But even that was also not responded to.

**19.** He further submitted that the writ petition was sought to be withdrawn by the appellants, as this court sought for the details of the properties owned by the appellants. It was made clear to them that they will have to pay the provident fund dues specially the amount deducted from the salary/wages of the employees concerned immediately and thereafter prayer of the appellants for payment of the balance amount in instalments could be considered. The prayer for withdrawal being not bonafide, the learned Single Judge has rightly declined the same.

**20.** When the case was taken up for hearing, finding that the requests made by the Employees Provident Fund Organisation for arrest of the accused and for attachment of the property, the concerned departments of the State were not responding, request was made to the learned Government Pleader to assist the court.

**21.** The learned counsel for the State submitted that he will seek instructions about the steps taken by the authorities concerned regarding recovery of the Provident Fund dues and whatever action is required to be taken in accordance with law, the same will be taken.

**22.** The matter was listed before the learned Single Judge on February 24, 2021 and the same was adjourned to March 3, 2021 requiring the Regional Provident Fund Commissioner-I to file affidavit stating the steps taken for realisation of the provident fund dues in pursuance to notice dated February 19, 2020, which has been impugned in the writ petition.

**23.** Heard learned counsels for the parties and perused the paperbook.

**24.** As far as right of the appellants to withdraw the writ petition, in the case in hand is concerned, we find that considering the facts as has been briefly noticed above, the learned single Judge has rightly declined the same. The issue under consideration before the court pertains to recovery of the provident fund dues of the employees working with the appellant No.1 company. These are stated to be about 3,000. The appellants are exempted establishments under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') as they have created their own trust for depositing the provident fund dues, in the name of Delta Jute and Industries Limited Workers' Provident Fund Trust (for short, 'the Trust'). Creation of Provident Fund Trust by the appellants for depositing the provident fund dues of their employees, does not mean that they are immune from complying with the provisions of the Act. A perusal of the documents placed on record with the present appeal shows that the amount is due from the appellants from 2006 onwards. Part of this had been deducted from the salary/wages of the employees working with them. That means the amount so deducted and used for the business purpose instead of depositing the same with the trust. As a result of non-deposit of the provident fund amount by the appellant with the trust, the employees, who may have retired during the interregnum or may be requiring partial withdrawal of the amount, may be facing lot of difficulty. Even during Covid-19 Pandemic withdrawal from the provident fund account was also permitted so that the low paid employees could survive. The intention of the appellant No.1 is further evident from the fact that the turnover of the company has increased from Rs. 58,85,10,620/- to Rs. 139,98,70,948/- from 2018-19 to 2019-20 but still no efforts were made for depositing the provident fund dues. Intention seems to be to avoid deposit of that amount with the Trust. Even before this court the stand taken by learned counsel for the appellants was that they can increase amount to be deposited a little bit from Rs. 50 lakhs offered earlier but cannot deposit 50% of the demanded amount.

**25.** There are documents available in the paper-book showing number of notices issued to the appellants for deposit of the PF dues and also communications to the police authorities for arrest of the directors of the company, but none yielded any result. Police authorities are also sleeping over the matter, for the reasons best known to them, but need to be explained in Court. Action of the provident fund authorities in not being pro-active for recovery of the huge amount of arrears from the appellants pertaining to the low paid employees working with them, also requires consideration. Central Board of Trustees, has been given responsibility to safe guard the interest of low paid employees.

**26.** The judgment in ***Shaik Hussain's*** *case* (supra) relied upon by the learned Senior counsel for the appellants for the plea that the petitioner has an absolute right to withdraw the writ petition is clearly distinguishable. It was noticed therein that there were no other parties except the formal parties like the Regional Transport Authority. Instead of permitting the appellants to withdraw the writ petition therein, where challenge had been made to some order passed by the RTA, the matter was adjudicated upon on merits. In the case in hand, the case does not limit to the right of the appellants herein only as the issue pertains to hard earned money of the low paid employees working with the appellants, which are about 3,000 in number. Substantial amount deducted from the salaries/wages of the employees was utilised for promoting its business and not deposited with the trust. It is so evident from increase in turn over of the appellant No. 1 from Rs. 58.85 crores to Rs.139.98 crores during the financial years 2018-19 and 2019-20.

**27.** Prayer for withdrawal of the writ petition was made when this Court, with a view to get rightful due of the low paid employees, took steps in that direction. Hence, it cannot be said to be exclusive right of the appellants to pray for withdrawal of the writ petition. We do not find any merit in the submissions made by the learned counsel for the appellants that he had absolute right to withdraw the writ petition when the court asked the appellants to submit a plan for deposit of arrears of provident fund, as there was no challenge to the issue on merits against the proceeding initiated for recovery of provident fund dues where appropriate orders determining the amount were passed way back. Offer made by the appellants was that they can deposit Rs. 50 lakhs immediately and balance in monthly instalments of Rs. 10 lakhs each. It may be noticed that total amount due from the appellants is Rs. 7.54 crores, about 50% thereof would be amount deducted from the salary/wages of the employees. Further on account of delayed payment of PF dues, the appellants are also liable to pay interest @ 12 % p.a. in terms of Section 7Q of the Act, which itself will come out to about Rs. 7/8 lakhs per month. This is besides the current dues. As per information furnished by the counsel for the EPFO, the appellants are again in default since May 2019 onwards. The intention of the appellants seems to be to delay the process of recovery, as they had been successful till date. The property offered for attachment and sale for recovery of the PF dues is already mortgaged with the bank.

**28.** We know that there are large number of low paid employees in the State of West Bengal. The exempted establishments may not be isolated to the appellants herein. Default also may be a culture. As is evident from the facts of the case in hand even the officers of the Employees Provident Fund Organisation, who have been entrusted the responsibility to take care of the hard earned savings of the low paid employees also may be keeping quite or made to sleep over. To take care of interest of the low paid employees, we direct that the writ petition pending in this court before the learned Single Judge be treated as petition filed in public interest and it will be taken up to consider the larger issue of non-deposit of the employees' provident fund by the establishments either with the Employees Provident Fund Organisation or with the Trusts created by them. Issue is required to be taken up so that thousands of low paid employees in the State of West Bengal are not deprived of their hard earned money and may not remain under the mercy of either their employers or the officers of the Provident Fund Organisation. Conduct of the Police and Revenue department in the State of West Bengal is required to be examined, where they failed to discharge their duty in assisting the EPFO in recovering PF dues of the low paid employees.

**29.** WP 2953 (W) of 2015 filed by the appellants herein seeking to challenge the notification dated December 17, 2014 cancelling the exemption granted to them, which is pending consideration in this court be also listed before the same Bench along with the present WPA 4597 of 2020 after intimation to the learned counsels for the parties appearing therein.

**30.** Let the matter be placed before the Hon'ble The Chief Justice for constituting an appropriate Bench for listing of WPA 4597 of 2020 and WP 2953 (W) of 2015.

**31.** The Employees Provident Fund Commissioner, Kolkata is directed to furnish the details pertaining to all the establishments covered under the Act, who are in default to deposit the provident fund amount deducted from the salaries/wages paid to the employees. Details of all the exempted establishments and the upto date status of deposit of PF dues of the employees with those Trusts, be furnished in Court.

**32.** In case they are in default, the steps taken for recovery thereof and also the mechanism in place to regularly monitor deposit of PF dues by the exempted establishments with the trusts created by them. Whether the system to monitor is using technology or still manual returns are being filed. Issue is also required to be considered, as to whether pattern of investment of the money deposited with exempted trusts is monitored by the EPFO or not?

**33.** The present appeal is accordingly dismissed with costs of Rs.1 lakh, which shall be deposited by the appellants with the West Bengal State Legal Services Authority within a period of four weeks from the date of the receipt of copy of this order.

**(RAJESH BINDAL)**
**JUDGE**

**(ANIRUDDHA ROY)**
**JUDGE**

Kolkata

02/03/2021

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gd/ssd