

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A.13339 of 2019

Ontrack Systems Limited

-vs-

The Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organisation & Ors.

For the petitioner : Mr. Subhankar Nag
Mr. Jaydeep Biswas
Mr. S. Das

For the P.F Authorities : Mr. A. K. Gupta,

Hearing concluded on : 10.08.2021, 17.08.2021

Judgment on : 14.09.2021

Ravi Krishan Kapur, J.:

1. The petitioner company is an establishment within the meaning of Section 2A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1985 ("the Act").
2. The primary grievance of the petitioner is directed against an order passed under section 8B of the Act. Incidentally, the petitioner also challenges the orders passed under section 7Q and 14B of the Act. It is alleged that, by a notice dated 13 March, 2014, the petitioner establishment was directed to participate in a proceeding under Sections 7Q and 14B of the Act pertaining to defaults in making

statutory payments by the establishment under the Act. The petitioner alleges that notwithstanding having made several representations on the ground that the establishment was facing acute financial problems, the respondent authorities have refused to consider the prayer of the petitioner establishment. Ultimately, in view of defaults committed by the establishment, the respondent authorities by an order dated 16 September 2014 levied damages under Section 14B of the Act assessed at Rs 48,37,497/- and interest was also assessed under Section 7Q of the Act for an amount of Rs 18,88,529/-.

3. Thereafter, upon the establishment failing to make the payments towards their provident fund dues in terms of the aforesaid orders, a recovery certificate dated 6 May 2015 was issued against the establishment whereby the Enforcement Officer requested the establishment to submit diverse documents. By a representation dated 8 May 2015, it is alleged that the bankers of the establishment had declared the establishment to be a non performing asset and that the Income Tax Department had also attached all the bank accounts of the establishment in March 2014. Subsequently, a notice for payment was also issued by the respondent authorities on 9 June 2015 to which a further representation was made by the establishment on 3 August 2015 highlighting their poor financial condition.
4. On 14 August 2017, a show cause notice was also issued to the establishment demanding an explanation as to why the directors of

the establishment should not be committed to civil imprisonment for failing to comply with the recovery certificate dated 6 May 2015. Subsequently, on 25 July 2018, the respondent authorities also issued an order of attachment under section 8B of the Act. The only ground urged by the petitioner is that the establishment was going through acute financial crisis and were unable to even pay their operational expenses. It is in this background, that the petitioner assails the consequential order of attachment issued under Section 8B of the Act.

5. It is submitted on behalf of the establishment that, the respondent authorities have failed to consider the representations made by them and to take into account the financial hardship which the establishment was undergoing.
6. On behalf of the respondent provident fund authorities, it is contended that, the establishment is a regular and habitual defaulter of the dues payable to the respondent authorities. It is further alleged that the establishment has chosen not to avail of the alternative statutory remedy provided under the Act. There has been no statutory appeal filed by the establishment challenging either of the orders passed under Section 7Q or under Section 14B of the Act. It is also submitted on behalf of the respondent authorities that in view of part payment made by the establishment subsequent to the filing of the petition there has been acquiescence on the part of the establishment in the proceedings initiated by the respondent authorities.

7. I have considered the submissions made on behalf of the parties.
8. I am of the view that notwithstanding a specific statutory appeal mechanism provided for under the Act, the establishment has deliberately chosen not to prefer any appeal challenging any of the previous orders passed by the respondent authorities. This is obviously deliberate to avoid the mandate under Section 70 of the Act and with the aim of circumventing the statutory obligation of the establishment to deposit an amount of 75% as a precondition to the filing of any appeal.
9. I find no grounds whatsoever to seek any interference with the steps taken by the respondent provident fund authorities. I also find that there has been no illegality nor irrationality nor procedural impropriety in the actions of the respondent authorities. There is no other ground urged by the petitioner which justifies even consideration of the impugned actions of the respondent authorities. The entire object of filing this petition is to procrastinate and delay the recovery proceedings initiated by the respondent authorities. It is unfortunate how a piece of social welfare legislation intended to protect a voiceless section of society is sought to be circumvented by filing such frivolous petitions.
10. It is also disturbing to note the indifferent attitude shown by the respondent authorities in recovering their dues from the establishment. Notwithstanding the fact that, there was no stay or any

kind of restraint whatsoever in these proceedings, the respondent authorities had nevertheless taken no steps in the matter during the pendency of this proceeding.

11. In view of the unmeritorious, misadventure and kite flying exercise undertaken on behalf of the petitioner to procrastinate the recovery proceedings, costs are assessed at Rs.5,00,000/- (Five lacs) payable to the West Bengal State Legal Services Authority, Kolkata towards the cause of welfare and treatment of acid attack victims within a period of four (4) weeks from date. The Advocate-on-Record on behalf of the respondent Provident Fund Authorities is directed to serve a copy of this order on the Member Secretary, State Legal Services Authority, West Bengal who is directed to seek compliance thereof insofar as the direction of costs is concerned.
12. Accordingly, WPA 13339 of 2019 is dismissed with a direction on the respondent authorities to take all possible steps as expeditiously as possible for recovery of their dues from the establishment in accordance with law.
13. Urgent certified photostat copy of this judgment, if applied for, be given to the parties upon compliance of requisite formalities.

(Ravi Krishan Kapur, J.)

Later:

After pronouncement of the judgment, Mr. Subhankar Nag, Learned Advocate appearing on behalf of the petitioner prays for stay of operation of the judgment. The prayer of stay is considered and rejected.

(Ravi Krishan Kapur, J.)