

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. NO.33775 of 2013

M/s. SKG Pulp & Paper Mills Pvt. Ltd. & Anr.

-vs-

Assistant Provident Fund Commissioner (Compliance) & Ors.

For the petitioners : Mr. Soumya Majumder

For the Provident Fund Authorities : Mr. Anil Kr. Gupta

Heard on : 05.02.2021

Judgment on : 23.02.2021

Ravi Krishan Kapur, J.:

1. The petitioners assail the orders dated 28 May 2013 and 31 July, 2013 respectively passed under Section 7A and Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act") and the consequential actions taken pursuant thereto.
2. The petitioners are carrying on business of manufacturing kraft paper. The factory of the petitioner establishment is situated at village Sherpur, P.S.-Amta, Howrah.

3. The petitioner establishment was allotted Code no.WB/49849 under the Act. On 9 May, 2012, the respondent authorities initiated a proceeding under Section 7A of the Act against the petitioner establishment. The petitioner establishment was duly informed of the initiation of such proceedings and participated in the same. By an order dated 28 May, 2013 the Assistant Provident Fund Commissioner passed a final order determining an amount of Rs.38,87,303/- as principal payable by the petitioner establishment for the period from 1 November, 2011 to 3 March, 2013 and a further sum of Rs.6,05,532/- as interest under Section 7Q for the aforesaid period.
4. Being aggrieved by that order, the petitioner filed an application for review under Section 7B of the Act. By an order dated 31 July 2013, the review application was dismissed on the ground that there were no grounds warranting interference with the order dated 31 July, 2013.
5. Aggrieved by both the orders, the petitioners filed this petition. The single ground urged at the hearing of this petition was that of natural justice. It was said that the petitioner establishment had filed a letter dated 12 March, 2014 requesting the respondent authorities to supply a copy of the report relied on by the respondent authorities and described as “voluminous in nature” in the order dated 28 May, 2013. Since this report had not been supplied, it was submitted on their behalf that there had been a violation of natural justice. By an interim order dated 6 March, 2018, the respondent authorities were

restrained from realizing the amount stated in the communication dated 22 August, 2013 from the petitioner establishment.

6. On behalf of the respondent authorities it was urged that this petition was liable to be dismissed and there were no grounds whatsoever warranting any interference with the impugned orders. It was urged that having filed a review application and not taken recourse by way of an appeal under Section 7I of the Act the petitioners were estopped from enlarging the scope of this petition. It was urged that the scope of a review application being more limited than that of an appeal, the Court ought to be circumspect whilst entertaining any other disputes raised by the petitioners at this stage. Moreover, it was urged by the respondent authorities, that the petitioners had deliberately chosen to file a review application to circumvent the precondition of depositing the mandatory 75% as stipulated under section 7-0 of the Act. In any event, it was submitted on behalf of the respondents that there was no merit on the grounds of natural justice urged by the petitioner establishment and the same was belated, afterthought and malafide.
7. It was further also that the petitioner establishment had been duly provided with the computation sheets and calculation of the provident fund dues as assessed under Section 7A of the Act in their order dated 28 May 2013. Accordingly, it was submitted on behalf of the respondent authorities that the petition was liable to be dismissed and the respondent authorities granted liberty to take expeditious steps for recovery of their dues.

8. I have heard the parties and have considered the pleadings filed on their behalf. As noted earlier, the only ground urged before me by the petitioners seeking interference with the impugned orders is that of natural justice. It was submitted on their behalf, that the impugned order under Section 7A of the Act records that the respondent authorities had taken into account a voluminous report prepared by them and this report had never been submitted to the petitioners. Accordingly, the impugned orders were liable to be set aside.
9. I find from the pleadings that this aspect of natural justice and in particular the demand for the voluminous report relied on by the respondent authorities was made for the first time in a supplementary affidavit filed on behalf of the petitioners on 31 March, 2014. In this context, it is pertinent to mention that this point was neither raised in the review application nor in the writ petition. On the contrary, [at page-5 of the review application] the only point which was raised by the petitioner establishment was that “notice of hearing had been served on the petitioner establishment for the period January 2011 to March 2012 but an order was passed for the period January 2011 to March 2013 which could not be accepted in the eye of law as it violates the principles of natural justice and was in excess of jurisdiction”. Significantly, this point was not urged before me at the time of hearing of this petition. There was no other aspect of natural justice complained of in the review petition by the petitioners. I also find that the point of voluminous records not having been made

available to the petitioner establishment and of there being any violation of the principles of natural justice had not been pleaded in the writ petition. This point apparently surfaced for the first time in a supplementary affidavit filed on behalf of the petitioner.

10. As a proposition of law, it is well settled that a petitioner cannot be permitted to make out a new case or to take a new ground in a supplementary affidavit for which there is no factual foundation or basis in the original writ petition. In the absence of an amendment to the original writ petition, I am of the view that a Court ought not to take into consideration a plea newly raised by way of a supplementary affidavit and which particularly has no factual foundation in the writ petition. Ordinarily, the parties ought not to be permitted to travel beyond their pleadings and make out a new case on the basis of a supplementary affidavit (*Bharat Bhari Udyog Nigam Ltd. vs Jessop And Co. Ltd. Staff* (2003) 4 CompLJ 333 Cal). Such procedure not only diminishes the value of pleadings and prevents the parties from being taken by surprise and being prejudiced but also prevents the Court from being misled by a piecemeal presentation of facts.

11. In any event, I find no substance nor merit in the point of natural justice urged by the petitioners. It appears from the records of the proceedings before the respondent authorities that the petitioner establishment had been provided an ample and adequate opportunity and had appropriate notice of the proceedings initiated by the respondent authorities. Actually, I find that the establishment was

represented but chose to be indifferent. They refused to co-operate with the respondent authorities. They chose not to provide the authorities with any information or records pertaining to their business. They deliberately and intentionally did not assist the authorities in providing them with the relevant materials sought for. The impugned order dated 28 May, 2005 clearly records that the petitioner establishment had full and proper notice of the enquiry conducted by the respondent authorities. However, it could not justify or substantiate the details of information supplied to them. Infact, it would seem that the petitioner establishment failed to offer any compliance or information of their workers and contractors.

12. It is settled law that the scope for interference in a review application is much narrow than an appeal. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that a Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous [*Hari Vishnu Kamath v. Syed Ahmad Ishaque and others*: [1955]1SCR1104]. I also find from a perusal of the impugned orders that both the orders are reasoned orders and an adequate, full and proper opportunity of hearing had been afforded to the petitioner establishment. In fact, in the order dated 28 May, 2013 passed under Section 7A of the Act it has been found that the petitioner establishment was “*a chronic defaulter*” and “*had sought to suppress the factual position before the inspecting authority*”. Moreover, it was

also found that the petitioner establishment had consistently made “*belated payments*” towards their provident fund dues. Additionally, the impugned order passed under section 7B clearly records that an “*appropriate and adequate opportunity was duly afforded to the petitioner establishment*”.

13. For the foregoing reasons, I am of the view that there is no illegality or perversity or contravention of any law in the impugned orders which warrants any interference by this Court. The writ petition being WPA 33775 of 2013 stands dismissed. Interim orders stand vacated.
14. Certified copy of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)