

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 30 of 2018

SKOL Breweries Ltd.

....

Appellant

Mr. Narendra Kishore Mishra, Senior Advocate

-versus-

Regional Provident Fund

....

Respondents

Commissioner and Another

Mr. Santosh Kumar Pattnaik, Senior Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

20.10.2022

Order No.

Dr. S. Muralidhar, C.J.

03. 1. The challenge in the present appeal is to an order dated 13th December, 2017 passed by the learned Single Judge rejecting the Appellant's writ petition i.e. W.P.(C) No.13457 of 2006 on the ground that the Appellant had an efficacious alternative remedy of statutory appeal under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act).
2. The background facts are that the Appellant, which is admittedly covered under the EPF & MP Act, was issued a notice dated 17th January, 2005 under Section 7-A of the EPF & MP Act by the Assistant Provident Fund Commissioner (Respondent No.2) on the ground that there was a significant drop in monthly membership and remittances over months. Following the said notice, an order was passed by Respondent No.2 on 30th December, 2005 holding the

Appellant liable to make contribution to the tune of Rs.1,09,580/- for the period from June, 2004 to November, 2004.

3. Aggrieved by the above order which was passed under Section 7-A of the EPF & MP Act, the Appellant filed an application for review under Section 7-B (1) of the EPF & MP Act. Even before review could be taken up for decision a summons which was received from the recovery officer. The Recovery Officer also passed an order on 11th August, 2006 proposing to take coercive action, if the Appellant failed to make payment of the demanded sum. In the circumstances, the Appellant filed W.P.(C) No.11076 of 2006 in which notice was issued and interim protection was granted.

4. During the pendency of the said writ petition, review petition filed by the Appellant was taken up for hearing. On 6th September, 2006 the said review petition was rejected on the ground that it had not raised any fresh issue apart from one which had already been taken into account when the order was passed in the Section 7-A proceedings.

5. Aggrieved by the rejection of its review petition, the Appellant filed W.P.(C) No.13457 of 2006 since the Appellant was of the view that under Section 7-I read with Section 7-B(5) of the EPF & MP Act, no appeal was maintainable against an order rejecting the review petition under Section 7-B of the EPF & MP Act.

6. The learned Single Judge by the impugned order dated 13th December, 2017 has dismissed W.P.(C) No.13457 of 2006 on the ground that in terms of the doctrine of merger, the order under review under Section 7-B of the EPF & MP Act merged with the earlier order under Section 7-A of the EPF & MP Act, which in any event was appealable.

7. This Court has heard the submissions of Mr. N.K. Mishra, learned Senior Counsel appearing for the Appellant and Mr. S.K. Pattnaik, learned Senior Counsel for the Respondents.

8. Sections 7-B and 7-I of the EPF & MP Act read as under:

“7-B. Review of orders passed under Section 7-A.-

(1) Any person aggrieved by an order made under sub-section (1) of Section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that:

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under Section 7-A.

7-I. Appeals to Tribunal.- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority under the proviso to sub-section (3), or sub-section (4), of Section 1, or Section 3, or sub-section (1) of Section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and accompanied by such fees, as may be prescribed”

9. Further, Para 79-A of the EPF Scheme provides as under:

“79-A. Filing application for review.— Any person aggrieved by a order made under sub-section (1) of section 7-A and who desires to obtain a review of such order may apply for a review of that order, as provided in sub-section (1) of Section 7-B of the Act in Form-9 to the officer who passed such order:

Provided that no application for review of an order will be entertained by the concerned officer, unless the application for review is submitted within 45 days from the date of making such order.”

10. It is plain that there are two options available to a party that is aggrieved by an order passed under Section 7-A of the EPF & MP Act. One is to file an appeal as provided under Section 7-I of the EPF & MP Act the other is to file a review under Section 7-B of the Act. If the latter course is chosen then no further appeal lies against an order rejecting the review petition. This is plain from a reading of Section 7-I (1) of the EPF & MP Act which in parenthesis expressly excludes an order rejecting an application for review from the purview of Section 7-I (1) of the EPF & MP Act. With there being a clear statutory bar to maintaining an appeal against an order rejecting a review petition, the Appellant could not have been relegated to that remedy. Such an appeal was clearly not maintainable.

11. In the facts and circumstances of the present case, given the express bar under Section 7-I(1) of the EPF & MP Act, the doctrine of merger would only mean that the order under Section 7-A of the

EPF & MP Act has merged with the order under Section 7-B of the Act and therefore, what remains is only the order under Section 7-B of the Act against which no appeal is maintainable.

12. For the aforesaid reasons, the impugned order of the learned Single Judge is hereby set aside. The writ petition i.e. W.P.(C) No.13457 of 2006 is restored to the file of the learned Single Judge in the roster bench, where it will be listed for directions on 7th December, 2022. The interim order passed in the writ petition will continue till such time.

13. Since the pleadings are already complete in the writ petition, the learned Single Judge is requested to proceed to dispose of the writ petition on merits as expeditiously as possible preferably within a period of six months.

14. The writ appeal is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.