06.06.2023
Item No.28
Ct. No.1
RP/gsd

WPA 4597 of 2020
With
IA No.CAN 1 of 2021
CAN 2 of 2022
CAN 3 of 2022
CAN 4 of 2023

Delta Limited
vs.
Union of India & ors.

Ms. Anamika Pandey
Ms. Amrita Pandey

... for the petitioner

Mr. Soumya Majumder
Mr. Abhishek Haldar
Mr. Barnamoy Basak
... for the applicants in CAN 1 of 2021&
CAN 4 of 2023

Mr. Shiv Chandra Prasad
Mr. Nikhil Kr. Gupta
... for the P.F. Authority

Mr. Kishore Datta
Ms. Samita Show
... applicants in CAN 3 of 2023

Mr. Abhrajit Mitra
Mr. Savrapriya Mukherjee
Mr. Aniruddha Agarwala
... for the Baranagore Jute Factory

1. This writ petition has been filed by the petitioner, which is a company, admittedly a defaulter in payment of dues under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952. The sum and substance of the relief sought for is to permit the petitioner to pay the outstanding dues in installment.

Consequently the petitioner seeks for withdrawal of the orders passed by the respondent Provident Fund Authority dated 14th September, 2018 which is Special Revenue Recovery Certificate issued by the Provident Fund Authority. Admittedly, there are arrears payable by the employer/writ petitioner in respect of its dues payable under the scheme, contribution towards the share recovered from the monthly salary of the employees. It is noteworthy to mention that exercise of discretion by a Court under Article 226 of the Constitution of India has well defined restrictions. There may be cases where the Court may be inclined to exercise discretion considering the peculiar facts and circumstances of the case. However, whenever the matter concerns statutory dues and if the special statute does not provide for any discretion being granted to a defaulter, the question would be whether a writ Court exercising power under Article 226 of the Constitution can issue direction which would be contrary to the provisions of the Act and the scheme framed thereunder. The answer to the said question should be a definite no. The dues payable by the writ petitioner are statutory dues and the provisions of the Act and the scheme are very clear as what are the dues and liabilities of an employer. Furthermore, on facts, we find that there is nothing exception for this Court to exercise any discretion in favour of the writ petitioner, more so, when the certificate issued by the authorities reflected that more than Rs.7 crores is dues and payable. Learned Advocate appearing for the petitioners submits that as on date the dues is not Rs.7 crore but it is little over than Rs. 5 crore as part payments have been made in the interregnum. In any event, it is an admitted fact that the writ petitioner is a defaulter.

2. In the result, we are of the view that the relief as sought for in the writ petition

cannot be granted. Accordingly, the writ petition stands dismissed.

3. The respondent/Provident Fund Authority is at liberty to proceed further and recover the dues in accordance with the statutory provision.

4. The third parties have filed application in this writ petition being CAN 1 of 2021, CAN 2 of 2022, CAN 3 of 2022 and CAN 4 of 2023. Since the writ petition has been dismissed on the ground that the writ petitioner is not entitled for the relief, as sought for, the merits of the contentions advanced in the said applications filed by the third parties are not gone into and are left open.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)