Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

W.P.A. 12517 of 2023
Ripley & Company & Anr.
Versus
The Regional Provident Fund Commissioner-II, Employees' Provident Organization & Ors.

For the petitioners	:	Mr. Soumya Majumder Mr. Sandip Srimani Mr. Subhojit Roy Mr. Aditya Sarkar
For the PF Authorities	:	Mr. S.C.Prasad
Heard on	:	13.07.2023
Judgment on	:	13.07.2023

Raja Basu Chowdhury, J:

1. Challenging the order dated 17th March 2023, passed by the Appellate Tribunal under Section 7(I) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"), in EPO-2 of 2021the present writ application has been filed.

2. The petitioner no. 1 is engaged in the business of stevedoring, handling and transportation of cargo on behalf of its clients. The petitioners claim to be covered under the provisions of the said Act. Challenging the order dated 16th October 2020, passed under Section 7A of the said Act for the period August 1995 to September

2000, an appeal was filed before the Appellate Tribunal under Section 7(I) of the said Act. In connection with the aforesaid appeal, an application for waiver of pre deposit in terms of Rule 7(2) of the said Act was filed before the Appellate Authority.

3. Mr. Majumder, learned advocate appearing for the petitioners submits that the Regional Provident Fund Commissioner had previously, by orders dated 22nd October 2014 and 11th February 2015 passed under Sections 7A and 7B of the said Act, respectively had determined the liability of the petitioners. Challenging the same, an appeal was filed before the Appellate Authority which was registered as ATA no. 372 (15) 2015. It is contended on behalf of the petitioners that on the basis of the aforesaid orders, which formed subject matter of the aforesaid appeal, a sum of Rs. Rs.22,94,026/- had already been recovered from the petitioners. The said appeal was, however, allowed by an order dated 24th October 2016 by the Appellate Tribunal by, inter alia, observing as follows:-

> *"……In case there is default in remittances of statutory dues, registered contractor has liabilities to remit statutory dues, not the employer. Despite specific knowledge that M/s Econ India was having its separate PF code, respondent passed fastened the PF liability upon the present appellant establishment, which is against the provisions of the law. Liability of unregistered contractors would fall on the principle employer in view of clause 30 of the EPF scheme, 1952 but not in case of registered contractors. Accordingly, by allowing present appeal, impugned order passed by respondent set aside. However, respondent is free to initiate proceedings against M/s Econ India, as per provisions of the law. File be consigned to record room after due compliance."*

4. Since the appeal was allowed and the petitioners were entitled to refund of the sum of Rs.22,94,026/-, by a communication in writing dated 30th November 2016, the petitioners had called upon the Regional Provident Fund Commissioner to

refund the said sum consequent upon the orders dated 22nd October 2014 and 11th February 2015 being set aside by the appellate tribunal vide its order dated 24th October 2016.

5. Mr. Majumder, learned advocate appearing for the petitioners invite this Court's attention to the subsequent letter issued by the writ petitioners dated 9th March 2018, repeatedly calling upon the Provident Fund authorities to refund the sum of Rs. Rs.22,94,026/-. He says that the said sum has, till date, not been refunded.

6. In the interregnum, since a further determination had been made under Section 7A of the said Act and challenging the same the appeal had been filed being EPO-2 of 2021, the writ petitioners, while seeking waiver of the pre deposit as required under the provision of the said Act, had brought to the notice of the Tribunal the factum of non-refund of the said sum of Rs.22,94,026/- by the authorities and, had prayed for waiver of the pre deposit on the aforesaid ground.

7. Mr. Majumder submits that on the basis of the determination made under Section 7A of the said Act which forms the subject matter of challenge in the present appeal, the petitioners ordinarily would be required to pay a sum of Rs.29,59,847/- as pre deposit. He says that the respondents are holding Rs.22,94,026/- and a sum of Rs.1,97,682/- has already been realised. As such, the petitioners at best can be

called upon to pay a sum of Rs.4,68,139/-. He says that the Tribunal, while passing the aforesaid order, which is impugned in this application, did not take into consideration the aforesaid aspect at all. The aforesaid order on such ground cannot be sustained.

8. Per contra, Mr. Prasad, learned advocate appearing for the Provident Fund authorities submits that there is no irregularity on the part of the Appellate Authority in directing the petitioners to pay 75 per cent of the amount already demanded. He says that the statute recognises such pre deposit and the petitioners cannot escape their liability and cannot be permitted to maintain the aforesaid appeal without making deposit as required by the statute.

9. He, however, acknowledges that the respondents have already realised Rs Rs.22,94,026/- in connection with the previous proceedings and despite demand, such sum has, still date, not been refunded in favour of the petitioners. He says that the respondents are in the process of challenging the aforesaid order, however, till today, no proceedings had been initiated.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.

11. I find that on the basis of the determination made by the respondents vide order dated 16th October 2020, a sum of

Rs.39,46,463/- has already been determined by the respondents to be due and payable by the petitioners in respect of the determination made by them for the period August 1995 to September 2000. I find that 75 per cent of the aforesaid amount works out to Rs.29,59,847/-.

12. Admittedly, I find that the respondents are holding a sum of Rs.22,94,026/-. As such, in ordinary course, the petitioners should be entitled to the benefit of the aforesaid sum, especially when there appears to be no challenge to the order dated 24th October 2016 passed by the Employees' Provident Funds Appellate Tribunal.

13. Although, Mr. Prasad, learned advocate appearing for the PF authorities submits that steps are being taken to challenge the said order, he has, however candidly submitted that till date no proceedings have been initiated. Having regard to the aforesaid, I am of the view that the petitioners cannot be denied the benefit of the aforesaid amount, which has been retained by the respondents.

14. Having regard to the aforesaid and on the basis of the direction issued by the Appellate Authority for deposit of 75 per cent of the amount due, as determined by order dated 16th October 2020 passed under Section 7A of the said Act, I find that a sum of Rs.4,68,139/- is required to be deposited by the

petitioners after giving credit to the sum of Rs.22,94,026/- and Rs.1,97,682/-.

15. The petitioners are, therefore, directed to deposit a sum of Rs. 4,68,139/- with the Provident Fund authorities, for the appellate authority to take up hearing of this appeal.

16. Let such deposit be made within a period of three weeks from date.

17. It is further made clear that in the event the respondents challenge the order dated 24th October 2016 and succeeds in the challenge, in such event the petitioners would be required to make over the balance sum as determined by the Appellate Authority under Section 7(I) of the said Act.

18. If the aforesaid deposit is made within the time specified, the Appellate Authority shall hear out and dispose of the appeal on merits.

19. With the above directions and observations, the writ petition being WPA 12517 of 2023 is accordingly ***disposed of***.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)