Form No. J.(2)
Item No.7

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 19.07.2023

DELIVERED ON: 19.07.2023

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 10557 of 2016

North 24-Parganas Co-operative
Agricultural and Rural Development Bank Limited
Vs.
The Union of India & Anr.

Appearance:-

Mr. Pabitra Charan Bhattacharya .....for the petitioner

Mr. Satyendra Aggarwal .....for the Provident Fund Authorities

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. North 24-Parganas Co-operative Agricultural and Rural Development Bank Limited (for short 'the Bank') filed this writ petition challenging the order of the Regional Provident Fund Commissioner, Barrackpore dated June 1, 2016. By the said order, the Bank was directed to pay a sum of Rs. 1,45,97,661/-(Rupees one crore forty five lakhs ninety seven thousand six hundred and sixty one) .

2. The proceeding under section 7A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the '1952 Act') was initiated against the Bank alleging default in payment of

employees provident fund and allied dues since September 1979. Summons under section 7A of the 1952 Act was issued and an opportunity of hearing was afforded to the petitioner/Bank. Thereafter the Regional Provident Fund Commissioner passed an order dated December 31, 2014 determining the dues in respect of the petitioner/Bank as Rs. 1,70,49,681/- (Rupees one crore seventy lakhs forty nine thousand six hundred eighty one) out of which the petitioner/Bank has already deposited a sum of Rs. 24,52,020/- (Rupees twenty four lakhs fifty two thousand twenty) leaving a balance of Rs. 1,45,97,661/- (Rupees one crore forty five lakhs ninety seven thousand six hundred sixty one) to be paid within 50 days of receipt of the said order. Thereafter in exercise of powers under section 7B of the 1952 Act, the order dated December 31, 2014 was sought to be reviewed.

3. The Regional Provident Fund Commissioner upon hearing the learned advocates of the respective parties, disposed of the review proceedings upon holding that there is no cogent reason to interfere with the order passed under section 7A of the 1952 Act on December 31, 2014.

4. Mr. Bhattacharya, learned senior counsel representing the petitioner submits that the petitioner/Bank being an establishment registered under the Co-operative Societies Act, 1912, the provisions of the 1952 Act do not have any manner of application to the petitioner/Bank. In support of his contention, he places reliance upon the provisions laid down under section 16(1)(a) of the 1952 Act.

5. Mr. Bhattacharya further submits that pursuant to a certificate proceeding being initiated, the sum of Rs. 1,45,97,661/- (Rupees one crore forty five

lakhs ninety seven thousand six hundred sixty one) has already been realised from the petitioner/Bank.

6. Mr. Satyendra Aggarwal, learned advocate representing the provident fund authority submits that the petitioner on an earlier occasion filed W.P. 4097(W) of 2011praying for a writ of mandamus commanding the respondents to show cause as to why the respondent authorities shall not treat the petitioner exempted from the provisions of the 1952 Act. He submits that such writ petition stood dismissed by a judgment dated May 3, 2012.

7. He thus submits that after dismissal of the said writ petition, it does not lie in the mouth of the petitioner/Bank to contend that the provisions of the 1952 Act cannot be applied to the petitioner/Bank.

8. Heard the learned advocates for the parties and perused the materials placed. It appears from the statements made in the writ petition that the Board of Directors of the petitioner/Bank decided to deposit the contributions to the Employees Provident Fund Organisation from January 2007, which continued up to 2008. It further appears therefrom that the month-wise statements/returns were also filed and a sum of Rs. 24,52,020/- (Rupees twenty four lakhs fifty two thousand twenty) was admittedly deposited with the Employees Provident Fund Organisation. Before the Regional Provident Fund Commissioner, learned advocate representing the petitioner/Bank submitted that the employees were applying for exemption of their dues as per the 1952 Act and the Board of Directors was considering their representations.

9. The Regional Provident Fund Commissioner, after taking into consideration the submissions of the learned advocates of the respective parties and upon considering the report dated May 17, 2013 of the Area Enforcement Officer, which revealed that the Bank concerned was working with the aid of power, observed that although the Bank employed less than 50 persons but no documentary evidence was produced by the petitioner/Bank in support of their claim that the Bank was running without the aid of power.

10. Section 17 of the 1952 Act states that the appropriate government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme:

(a) any [establishment] to which such Act applies if, in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other [establishment] of a similar character, or

(b) any [establishment] if the employees of such [establishment] are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to the employees in any other [establishment] of a similar character.

11. Upon reading the provisions laid down in Section 17, this Court is of the considered view that the power to exempt can be exercised in respect of an establishment to which the 1952 Act applies.

12. A Co-ordinate Bench of this Court by a judgement dated May 3, 2012 in W.P. No.4097 (W) of 2011 after taking into considerations the reliefs claimed therein observed that there is nothing to show that the petitioner/Bank ever disputed the applicability of the Act and the schemes framed thereunder to such establishment. The Co-ordinate Bench further noted that since the petitioner stopped compliance after some time and did not deposit contributions from September 1, 1979, the provident fund authority issued summons under Section 7A of the 1952 Act. The Co-ordinate Bench further noted that the petitioner/Bank wanted exemption from the conditions of the 1952 Act and in order to be favoured with such exemption, it was required to submit the requisite application therefor. It would be relevant to extract the relevant portion of the said order:-

> *"The Court:- The petitioner in this WP under art.226 dated February 28, 2011 is seeking the following principal reliefs:-*
> *"a) A writ in the nature of mandamus commanding the respondents, their men, agents and servants specially the respondent nos.2 and 3 to show cause as to why the respondent authorities shall not treat the petitioner exempted from the Employees Provident Fund and Miscellaneous Provisions Act, 1952.*
> *b) A writ in the nature of mandamus commanding the respondent authorities to refund the entire amount of Rs.26,65,333.00 deposited so far with interest at the rate of 9.5% per annum".*
>
> *By a letter dated February 7, 2007 the Regional Provident Fund Commissioner, West Bengal informed the petitioner that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the schemes framed thereunder were applicable to its establishment.*

Allotting the requisite code number the RPFC directed the petitioner to pay statutory and other allied dues with effect from September 1, 1979.

The case stated in para. 7 of the WP shows that from January 2007 the petitioner started depositing contributions in the statutory fund.

Since the petitioner stopped compliance after sometime and did not deposit contributions from September 1, 1979, the authority issued summons under s.7A of the Act for determining its liability. There is nothing to show that it ever disputed applicability of the Act and the schemes framed thereunder to its establishment.

In response to the summons, in stead of appearing before the authority, the petitioner submitted a letter dated March 29, 2010 asking the RPFC to refund the deposited amount on the grounds that the amount was to be invested by it in a nationalised bank. Since the demand was not met, it gave a lawyer's notice and then brought this WP.

Mr. Bhattacharjee appearing for the petitioner has submitted that the petitioner was never served with any coverage letter, and that the provisions of the Act and the schemes framed thereunder were not applicable to the establishment of the petitioner.

In the opposition filed by the respondents it has been stated that the s.7A proceedings were initiated on September 22, 2009 for determination of dues payable from September 1, 1979 from which date the provisions of the Act and the schemes framed thereunder were applicable to the establishment of the petitioner.

Over the course of hearing Mr. Kundu appearing for the respondents has produced a copy of the coverage letter dated February 7, 2007. It is, therefore, evident that the petitioner has deliberately suppressed this letter. The respondents ought to have produced the letter with their opposition.

No explanation has been given why the coverage letter was issued only on February 7, 2007 when, according to the RPFC, the provisions of the Act and the schemes framed thereunder were applicable to the establishment of the petitioner with effect from September 1, 1979.

If the provisions of the Act and the schemes framed thereunder were not applicable to its establishment, then the petitioner ought to have raised the applicability question and thus created an obligation of the RPFC to decide the question in proceedings initiated under s.7A of the Act.

In stead of taking this natural lawful course, the petitioner chose to approach the High Court under art.226 alleging that the RPFC did not meet its demand for refund. It also wanted exemption. For this, it was required to apply. There is nothing to show that it submitted the requisite application."

13. The Regional Provident Fund Commissioner rightly held that the prayer of the establishment to be excluded from the purview of the 1952 Act simultaneously with the prayer for exemption under section 17 of the 1952 Act is patently self-contradictory as exemption under section 17 can be sought only by the establishment already covered by the 1952 Act.

14. In the review proceeding, the Regional Provident Fund Commissioner observed that the petitioner/Bank failed to produce any document either during the proceedings under section 7A or under section 7B of the 1952 Act to show that the employees of the establishment and/or employer had contributed to a fund, which can be treated as a kind of provident fund as mentioned under section 15 of the 1952 Act. On such ground, the Regional Provident Fund Commissioner observed that there is no cogent reason to interfere with the order passed under section 7A of the 1952 Act on December 31, 2014.

15. The Provident Fund Commissioner after taking note of the submissions of the respective parties and the materials on record, passed the orders dated December 31, 2014 and June 1, 2016.

16. After hearing the learned advocates for the respective parties, this Court is of the considered view that the petitioner/Bank has failed to satisfy that the provisions of the 1952 Act cannot be applied to the petitioner/Bank.

17. The orders passed by the Regional Provident Fund Commissioner dated December 31, 2014 are reasoned orders. It is well-settled that judicial review is not a review against the decision but a review of the decision making process. This Court is of the considered view that there is no

infirmity in the decision making process warranting interference under Article 226 of the Constitution of India.

18. For the reasons as aforesaid, the writ petition stands dismissed.

19. There shall be, however, no order as to costs.

20. After this order was dictated, Mr. Bhattacharya submits that the petitioner/Bank has made some payments, which, according to him, is a double payment. The petitioner will be at liberty to raise such issue with regard to the alleged double payment before the authorities and if such a representation is made, the authorities shall consider and dispose of the same in accordance with law.

21. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab AR(Ct.)