Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA**
**CONSTITUTIONAL WRIT JURISDICTION**
**APPELLATE SIDE**

Present :
**THE HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**WPA 16298 of 2017**

**Ganga Action Plan Contract Workers' Co-operative Society Limited & Anr.**
**Vs.**
**Regional Provident Fund Commissioner, West Bengal & Ors.**

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| For the petitioners | : | Mr. Victor Chatterjee<br>Mr. Barnamay Basak |
| For the PF Authorities | : | Mr. Rajib Ray |
| For the KMDA | : | Mr. Satyajit Talukdar |
| Heard on | : | 07.12.2023 |
| Judgment on | : | 07.12.2023 |

**Raja Basu Chowdhury, J:**

1. The instant writ petition has been filed, *inter alia*, challenging the orders passed under Section 7Q and 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"), both dated 30th March, 2017.
2. Shorn of unnecessary details, the facts are that the petitioner no. 1 is a registered cooperative society and was established, inter alia, with the object of finding suitable and profitable employment for the members by obtaining contracts for execution of public or private

work. The petitioners, at the material point of time having participated in the tender process, was awarded contract for maintenance of pumping station owned and managed by the respondent nos. 4 to 6.

3. According to the petitioners the aforesaid sewage pumping stations are under the Ganga Action Plan. It is also the case of the petitioners that the rates for execution of works are fixed by the respondent nos. 4 to 6 and a consolidated amount is paid by the said respondents which is distributed among the members.

4. Incidentally, by a coverage intimation dated 25th August 2011, the provident fund authorities had proceeded to cover the petitioners under the provisions of the said Act, with effect from August 2000. On the receipt of the said coverage intimation, the petitioners had made a representation both before the Kolkata Municipal Corporation (KMC in short) as also before the Kolkata Metropolitan Development Authority (KMDA in short) including Kolkata Metropolitan Water and Sanitation Authority (as it then was) for release of necessary funds, for the petitioners to make payment of the provident fund contributions.

5. On the basis of a decision taken by the KMC in its 161st meeting held on 9th November 2009, it was decided to afford provident fund and Employees State Insurance to its employees and it was further decided to reimburse the employer's share of contribution to the cooperative society. The aforesaid decision was communicated to the petitioners vide letter dated 5th May 2010.

6. Following the aforesaid and immediately upon receipt of the employer's share of provident fund contribution from the respondent nos. 4 to 6 the petitioners started to deposit the provident fund dues with effect from 1st April 2010. It is, however, a matter of record that a proceeding under Section 7A of the said Act was initiated on 18th December 2012 and summons in connection therewith was also served on the petitioners. On the basis of the enquiry conducted by the Assistant Provident Fund Commissioner, by an order dated 9th April 2014, the Assistant Provident Fund Commissioner, taking note of the factum of coverage of KMC under the provisions of the said Act, vide notification dated 8th January 2011 concluded that the Provident Fund Authorities cannot direct the petitioners' principal employer to deposit the provident fund contributions from 1st August 2000. It is further recorded that the establishment had no financial viability to deposit the provident fund contribution for the back period and accordingly disposed of the enquiry.

7. It, however, appears that by order dated 30th March 2017, on the basis of a proceeding initiated under Sections 7Q and 14B of the said Act, interest had been determined for the period from August 2000 to October 2016 for a sum of Rs.8,02,792/- and damages for a sum of Rs.7,61,797/-.

8. Challenging the aforesaid determination made by the provident fund authorities, the instant writ petition has been filed.

9. Mr. Chatterjee, learned advocate appearing for the petitioners by drawing attention of this Court to the order dated 9th April 2014 passed under Section 7A of the said Act submits that admittedly the Assistant Provident Fund Commissioner did not determine any contribution payable by the petitioners for the period from 1st August 2000 to October 2016 and since, no determination was made under Section 7A of the said Act, the petitioners cannot be called upon to make payment of interest under Section 7Q and no damages under Section 14B of the said Act can be imposed.

10. It is still further submitted that the petitioner no. 1 being the cooperative society is not covered under the provisions of the said Act as no notification under Section 1(3)(b) of the said Act, has also been published so as to include the petitioners within the coverage of the said Act. He further submits the aforesaid order do not segregate the claim for the period from January 2011 to October 2016, for which the petitioners and its principal employer can be made liable.

11. Mr. Ray, learned advocate appearing for the provident fund authorities, on the other hand, has strenuously argued that as to whether or not the petitioners were covered under the said Act, was never in dispute. By drawing attention of this Court to an enquiry report prepared by the provident fund authorities on 23rd May 2011, he submits that on the basis of the enquiry conducted, the enquiry officer has concluded that as on 1st August 2000, the petitioners had employed 42 employees and since, the employees of the society have

been performing their works with the aid of power, the provisions of Section 16 of the said Act do not apply. Based on the aforesaid, the coverage notice dated 25$^{th}$ August 2011 had been issued. He, however, acknowledges the fact that there has been no determination of the amount payable under Section 7A of the said Act by order dated 9$^{th}$ April 2014.

12. Mr. Ray, however, submits that regular proceedings under Sections 7Q and 14B of the said Act was initiated and all particulars were made available to the petitioners. The petitioners had participated in the said proceedings and only thereafter, the orders which are impugned in the present writ petition had been passed. He submits that there is no irregularity on the part of the provident fund authorities in passing the aforesaid orders.

13. Mr. Talukdar, learned advocate appearing for the respondent no. 5, by relying on the affidavit filed on its behalf submits that the said respondent, under no circumstances can be made liable, insofar as the payment of interest under Section 7A or damages under Section 14B of the said Act is concerned since, admittedly, the KMC is the principal employer and the respondent no. 5 has no contractual relationship with the petitioners.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. Since, the respondent no.1 to 3, despite the direction for filing affidavit, did not file any affidavit, this Court had permitted the said respondents to rely on the records.

15. Admittedly, it would transpire from the records that the petitioners were served with the coverage intimation dated 25th August 2011. Since a dispute had arisen, thereafter, pursuant to summons issued under Section 7A of the said Act on 18th December 2012, a proceeding under Section 7A of the said Act was initiated. It was noted in the order passed under Section 7A of the said Act that the KMC was not covered under the provisions of the said Act, until issuance of the notification dated 8th January 2011. Having regard to the aforesaid, the Assistant Provident Fund Commissioner had concluded that since, the said Act has been applied to the KMC from 8th January 2011, the said authority as the principal employer of the petitioner no.1 cannot not be made liable to make deposit of the provident fund contributions from 1st August 2000. It was also recorded that the petitioners do not have financial viability to deposit the provident fund contributions for the back period. Admittedly, no determination of the amount payable by the petitioners were made vide the aforesaid order. Although, the orders under Section 7Q and 14B of the said Act has been issued, the same pertains to the period between August 2000 and October 2016.

16. The aforesaid order also does not identify the amount payable on account of interest for the period between January 2011 and October 2016, the period for which the principal employer is liable. Although, Mr. Ray, by placing reliance on serial no. 29 of the appendix of the said Act, submits that the petitioner no. 1 is an establishment rendering expert service and as such, had been

covered vide notification dated 17th May 2011, there is nothing on record to substantiate the same.

17. The petitioners, however, claim to be exempted from the provisions of the said Act, by relying on Section 1(3)(b) of the said Act. This issue has also not been adjudicated at all. Having regard to the aforesaid and taking into consideration the fact that the orders passed under Sections 7Q and 14B of the said Act does not segregate the period, for which the principal employer may be liable, I am of the view that the order dated 30th March 2017 under Section 7Q of the said Act, which is impugned in the present proceedings cannot be sustained and the same is accordingly set aside.

18. Insofar as the order dated 30th March 2017 issued under Section 14B of the said Act is concerned, since the petitioners have independently filed an appeal before the Tribunal, no order is passed in relation thereto. It shall be open to the learned Tribunal to proceed with the appeal and dispose it off.

19. The respondents, however, shall also be at liberty to initiate appropriate proceeding under Section 7A of the said Act for determining liability of both the petitioners as also the principal employer for the period from January 2011 to October 2016, to the extent not previously adjudicated by order dated 9th April, 2014. It is made clear that the aforesaid order shall not debar the Provident Fund Authorities from proceeding afresh for determination of interest under Section 7Q of the said Act, provided, however, before

such determination is made, the extent of liability of the petitioner no.1 to make payment should be decided first.

20. It however appears from the record that a sum of Rs.7,61,797/- has been determined under Section 14B of the said Act. The petitioners have since, paid Rs.5,11,654/- to the Provident Fund Authorities. It also appears that when the aforesaid writ petition was admitted by an order dated 22nd June 2017, a Co-ordinate Bench of this Court while granting leave to the petitioners to challenge the order passed under Section 14B of the said Act before the Tribunal, had permitted the petitioners to deposit a sum of Rs.5,50,000/- with the learned Registrar General, for the purpose of securing the demand under Section 7Q of the said Act with a further direction, if the deposit as aforesaid is made, the same shall be invested in a short term fixed deposit in any nationalised bank.

21. From the office report dated 12th July, 2017, it would appear that the petitioners had deposited the aforesaid amount with the Learned Registrar General of this Court. In view thereof, the Learned Registrar General is directed to encash the fixed deposit prematurely, if necessary, and disburse a sum of Rs.2,91,138/- being the differential amount towards the determination made under Section 14B of the said Act, in favour of the provident fund authorities, without prejudice to the rights and contentions of the petitioners in the pending appeal. The aforesaid amount shall be retained by the respondents to the credit of the petitioners in the

pending an appeal. The balance amount lying with the Learned Registrar General shall be returned to the petitioner no.1 along with accrued interest, after deducting commission, if any.

22. With the above directions and observations, the writ petition being WPA 16298 of 2017 is accordingly **disposed of**.

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

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

**(Raja Basu Chowdhury, J.)**

Saswata
Assistant Registrar (Court)