

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 15878 of 2023

**M/s. Modern Nursing Home
-Versus-
The Employees Provident Fund Organization, Government
of India & Ors.**

For the petitioner : Mr. Sanjay Saha, Adv.,
Ms. Sk. Kiran, Adv.

For the Provident Fund
Authorities : Ms. Aparna Banerjee, Adv.

For the respondent no.7 : Mr. Suman Chattopadhyay, Adv.

Heard on : 31.07.2023

Judgment on : 31.07.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, questioning the authority of the respondent Authorities to initiate proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act").

2. Mr. Sanjay Saha, learned Advocate representing the petitioner, submits that although, no order under Section 7A of the said Act has been passed, however, summons has duly been issued by the Regional Provident Fund Commissioner calling upon the petitioner to appear before him in connection with the proceedings under Section 7A of the said Act. It is submitted that at no point of time there were more than six employees employed by the petitioner.
3. Notwithstanding the aforesaid, a PF Code had been allotted and the petitioner was forced to pay a sum of Rs.3,000/- towards provident fund contributions. It is also the petitioner's case that at present there are not more than seven employees and as such, the initiation of proceedings by the respondents for determination of provident fund contributions payable by the petitioner is bad in law and without jurisdiction.
4. Ms. Aparna Banerjee, learned Advocate, enters appearance on behalf of the Provident Fund Authorities. She has placed before this Court an application submitted by the petitioner before the Office of the Regional Provident Fund Commissioner, being a proforma, for coverage under the provisions of the said Act. By placing reliance on the aforesaid application/

proforma she submits that the petitioner had not only disclosed that the employment strength of the petitioner was 20 in number but had also given particulars of the names of such employees and the amount of wages paid to them. It is on the basis of the aforesaid application/proforma that the respondents had allotted a provident fund code number.

5. By producing a letter dated March 31, 2011, issued by the Provident Fund Commissioner, Sub-Regional Office, Jangipur, she submits that the Provident Fund Authorities had duly intimated the petitioner with regard to the aforesaid coverage and the allotment of the code number.

6. Let the aforesaid documents, as placed by Ms. Banerjee, before this Court, be retained with the records. Ms. Banerjee submits that the present application has been filed to delay the determination of provident fund contributions payable by the petitioner. The present application deserves to be dismissed with costs.

7. Heard learned Advocates appearing for the respective parties and considered the materials on record. I find that the writ petitioner in the present writ application has, inter alia, admitted that in the year 2011 the

Provident Fund Authorities had allotted a provident fund code number to the petitioner. Although, it has been argued that such allotment of code number was made forcefully, no contemporaneous documents have been disclosed by the petitioner in the writ application to demonstrate that the petitioner had objected to such allotment of code number.

8. From the documents placed before this Court by Ms. Banerjee, it would appear that the petitioner itself, through its Proprietor, Basiruddin Sk, had applied for allotment of code number by submitting a proforma for coverage, under the provisions of the said Act. The Acquittance Roll for the month of December 2010, has also been annexed to such application. From such Acquittance Roll which is counter-signed by the respective employees, it would be apparent that around twenty employees were working with the petitioner in the month of December 2011. It is on the basis of the aforesaid proforma that the Provident Fund Authorities had issued the letter dated March 31, 2011 and had called upon the petitioner to make payment of the Employees' Provident Fund Contributions from January 2011 onwards. There is no challenge to the aforesaid communication.

9. Having regard to the aforesaid and taking into consideration the fact that the petitioner itself, through its Proprietor, in the year 2010, had applied for being covered under the provisions of the said Act, on the basis of its employment strength, cannot be permitted to contend otherwise. The petitioner, however, has conveniently suppressed the aforesaid documents and has, inter alia, claimed in paragraph 3 of the aforesaid application that the respondents had forcefully Awarded a provident fund code to the petitioner, I find that the present application has also been affirmed by the said Basiruddin Sk himself who had made the application for being covered under the provisions of the said Act.
10. Having regard to the aforesaid, I am of the view that the petitioner is not entitled to any relief. The present application is accordingly dismissed. However, there will be no order as to costs.
11. Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Raja Basu Chowdhury, J.)