22.09.2023.
Item No.49
Court No.550
Saswata

W.P.A.18746 of 2023
Pravakar Nayak
Versus
The Regional Provident Fund Commissioner, Howrah & Ors.

Mr. Ravi Ranjan Kumar
Mr. Saket Sharma
...For the petitioner in WPA 18746 of 2023
Ms. Aparna Banerjee
...For the respondent no.1
Ms. Amrita Pandey
Ms. Anamika Pandey
Mr. Ghanshaym Pandey
Ms. Sneha Singh
...For the respondent nos. 2 and 3

1. The present writ petition has been filed, *inter alia,* praying for release of provident fund and pension in favour of the petitioner.

2. By an order dated 30 August 2023 this Court while admitting the writ petition had also granted liberty to the provident fund authority being the respondent no.1 herein to file affidavit in opposition.

3. Time to file such affidavit was extended by order dated 13th September 2023, Ms. Banerjee, learned advocate appearing for the respondent no. 1 has filed the affidavit-in-opposition today in Court. Let the same be taken on record.

4. By placing reliance on the aforesaid affidavit, it is submitted that although, the respondent no.3 / Delta Limited, was granted an exemption under Section 17(1) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act") by the appropriate

Government, yet by an order dated 17th December 2014 issued by the appropriate Government in exercise of powers conferred under Section 17(4) of the said Act, the exemption granted under Section 17(1) of the said Act was cancelled. According to Ms. Banerjee, although, it was obligatory for the Trustees, Delta Jute & Industries Limited, Workers P.F, an exempted trust fund, (hereinafter referred to as the "trustees") and the Delta Limited (hereinafter referred to as the "company") (both being the respondents herein) to forthwith act in compliance with the provisions of Section 17 (5) of the said Act and to transfer the provident fund accumulations of the respective employees as per paragraph 28 of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the Scheme of 1952) to the provident fund authority, the same has not been done.

5. On the contrary, the company had filed a writ petition, challenging the said order of cancellation, which was registered as WPA 2953 of 2015. By placing reliance on an order dated 16th February 2015, she submits that in the light of the interim order of stay granted by a Coordinate Bench of this Court in connection with WPA 2953 of 2015, no further steps could be taken by the provident fund authority to enforce the provisions of Section 17(5) and paragraph 28 of the Scheme of 1952. The same, however, did not absolve the company and the

trustees to file returns with the provident fund authority. Ms. Banerjee submits that although, the provident fund authority had taken steps to have the aforesaid order vacated and had filed an application for vacating, the provident fund authority could not succeed.

6. By relying on the order dated 7th June 2023, it is submitted that the aforesaid writ application being WPA 2953 of 2015, had since been dismissed. Immediately upon dismissal of the said writ application, the provident fund authority had called upon the company to comply with paragraph 28 of the Scheme of 1952. Having not received any response from the company or from the trustees, the provident fund authority by a communication in writing dated 18th August 2023, had called upon both the Trustees and the said company to submit proof of compliance, as an unexempted establishment, and to transfer the past accumulations along with the statement, in view of the cancellation of the exemption under Section 17(4) of the said Act.

7. Notwithstanding the aforesaid communications, neither the Trustees nor the company had taken any steps, nor have they responded to the same. It is under such circumstances that the provident fund authority had, by a letter dated 18th August 2023, appointed M/s Vinod Singhal & Co. LLP to carry out a third-party audit of the trust fund. Although, the

said auditor had approached the trust and the company to carry out the audit, neither the company nor the trustees are cooperating with the auditor. According to Ms. Banerjee, there are several employees including the petitioner, who are yet to receive their provident fund accumulations. Having regard to the conduct of the company and the trustees, unless specific directions are issued by this Court, it would be very extremely difficult for the provident fund authority to ensure compliance of the statutory provisions, insofar as the trustees and the company are concerned, without which disbursal of the provident fund accumulations to the ex employees of the company would be impossible.

8. It is still further submitted that till date, the trustees and the company have not furnished any document to the Enforcement Officer of the provident fund authority.

9. Ms. Pandey, learned advocate appearing for the trustees and the company prays for extension of time to file the report, as directed by this Court, by order dated 13th September 2023. She says that at this stage she is unable to disclose as to when the last returns have been filed by the trustees with the office of the Regional Provident Fund Commissioner. She submits that the above information would be disclosed in the affidavit. It is further submitted that there has been change of guard, insofar as the Jute mill of the company is concerned. The jute mill has

been leased out in favour of one, M/s. Olisa Reality Pvt. Ltd. Responding to the query of this Court she submitted that till date, no application has been filed for recall of the order dated 7th June 2023. She, however, submits that her client, the trustees, at all material times, were and are ready and willing to make payment of the admitted provident fund claim of the petitioner and other ex-employees of the company.

10. Learned advocate appearing for the petitioner, however, submits that he has a legal right to claim his provident fund accumulations. The trustees, the company and the provident fund authority are duty bound and are equally responsible for ensuring disbursal of his provident fund dues. Necessary direction may be issued by this Court for disbursal of his provident fund dues and for ensuring compliance statutory provisions by the Trustees, the Company and the Provident Fund Authority.

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

12. It appears that the instant writ petition relates to release of provident fund and pension dues in favour of the petitioner. When the writ petition was admitted, it was, *inter alia,* submitted on behalf of the learned advocates appearing for the trustees and the company that although, the writ petition challenging the order of cancellation of the

exemption had been dismissed, the order dated 7th June 2023 by which the writ petition stood dismissed, is an ex parte order and they have been instructed to take appropriate steps in that matter. At the same time by placing reliance on a statement, the advocate for the trustee and the company, had acknowledged the quantum of provident fund accumulations payable to the petitioner. This Court, at that stage taking into consideration the plight of the petitioner and taking note of the stand of the company, in resisting the implementation of the order dated 17th December 2014, had directed the directors of the company, who were presently managing the affairs of the company, to file an undertaking before this Court that the admitted amount payable to the petitioner shall be paid by the company on or before 30th September 2023. The aforesaid undertaking has not been filed, instead on the returnable date it was submitted that that the obligation to pay the provident fund exclusively vests with the trustees as such it is trustees who can make the payment.

13. Since then, taking note of such stand, by an order dated 13th September 2023, this Court had directed both the trustees as also the said company to disclose, by way of a report in the form of an affidavit, the last returns filed by the company with the office of the Regional Provident Fund Commissioner and a statement showing the details

of the investment made by the trustees. The said report has also not been filed, though, an extension has been sought for today.

14. Although, the company having resisted the implementation of the order of cancellation is equally responsible with the trustees to implement the provisions of the said Act, insofar as transfer of accumulated provident fund contributions to the Provident Fund Authority, however, having regard to the stand taken by the company and the trustees as aforesaid and taking note of the order dated 17th December 2014 which has now reached finality, by reasons of dismissal of the writ application by order dated 7th June 2023, I am of the view that no fruitful purpose would be served by granting an extension to the company or the trustee to file the report, as I propose to dispose of the writ petition by the following order.

15. I direct the Trustees and the Company to forthwith comply with the provisions of Section 17(5) of the said Act and transfer the entire amount lying with the trustees to the Regional Provident Fund Commissioner, Howrah Regional Office, along with the returns and the investment statement. The trustees and the company are directed to extend full cooperation to the enforcement officers of the provident fund authority and assist the auditors appointed by the provident fund authority in carrying out the third party audit as proposed by the

provident fund authority. The aforesaid process of transfer of the trust fund to provident fund authority should be completed within a period of four (4) weeks from the date of communication of this order. The provident fund authority is directed to accept the same without prejudice to its claim. The Company, trustees and the provident fund authority should also ensure compliance of the aforesaid direction within the time specified herein.

16. Insofar as the petitioner's claim is concerned, since, the trustees and the company have already admitted the claim of the petitioner, I am of the view that the provident fund authority, which is otherwise obliged, should be directed to process the petitioner's claim and disburse the provident fund accumulations payable to the petitioner, as ex-employees of the said company, subject to verification by the Regional Provident Fund Commissioner, Howrah. In the process of verification of the petitioner's claim, if any document/ application is required or needs to be executed by the petitioner, the same shall be communicated in writing to the petitioner, for him to comply with, and in such process the provident fund authority shall render full and complete assistance to the petitioner for complying with formalities, as and when required. The aforesaid process of disbursal of provident fund accumulations along with interest should be completed within a period of eight (8) weeks from the date of communication of this order.

17. With the above directions and observations, the writ petition being WPA 18746 of 2023 is accordingly ***disposed of***.

18. The other writ petitions being (item nos. 7 to 50 of today's list) pending before this Court, involving similar questions, shall be governed by the observations and directions made in this order.

19. The provident fund authority shall be obliged to process the respective applications of the petitioners in item nos. 7 to 50 of today's list being WPA 13938/2023, WPA 13941/2023, WPA 13944/2023, WPA 13948/2023, WPA 13950/2023, WPA 16181/2023, WPA 16184/2023, WPA 16311/2023, WPA 16312/2023, WPA 16313/2023, WPA 16314/2023, WPA 16315/2023, WPA 16316/2023, WPA 16318/2023, WPA 16335/2023, WPA 16337/2023, WPA 16339/2023, WPA 16341/2023, WPA 16342/2023, WPA 16343/2023, WPA 16345/2023, WPA 16346/2023, WPA 16348/2023, WPA 16349/2023, WPA 16350/2023, WPA 16351/2023, WPA 16353/2023, WPA 16354/2023, WPA 16355/2023, WPA 16356/2023, WPA 16358/2023, WPA 16359/2023, WPA 16361/2023, WPA 16363/2023, WPA 16385/2023, WPA 16406/2023, WPA 16408/2023, WPA 16410/2023, WPA 16767/2023, WPA 16770/2023, WPA 16783/2023, WPA 16784/2023 and WPA 19119/2023 in the same mode and manner as directed in this case and should complete the

process within the time specified herein by taking a decision in this matter and affecting actual disbursal of funds.

20. Insofar as the claim for pension is concerned, it shall be for the provident fund authority to process the same with the aid and assistance of the trustee and the company, who shall be bound to render all assistance. Necessary pension payment orders shall be issued, if the respective petitioners are found eligible, alternatively, to communicate the reasons for rejection. Such process must also be completed within the time specified hereinabove.

21. 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.)