

14.12.2023
Court No. 13
Item No. 170
AP

WPA 18965 of 2023

**Abhijit Dasgupta and Anr.
Vs.
Regional Provident Fund Commissioner and Anr.**

Mr. Shib Shankar Banerjee

.... For the Petitioners

Mr. Rajib Ray
Ms. Oishanee Ghosh

... For the Respondent Nos.1 & 2.

1. The writ petition has been filed challenging an order dated 31st May, 2023 in Diary No.147/2017 passed by the concerned authority under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act 1952).

2. By the said impugned order the petitioners, who are admittedly promoters, directors and shareholders of the employer establishment have been made personally liable for provident fund dues of their employees.

3. Mr. Shib Shankar Banerjee, learned counsel for the petitioners, has urged before this Court that notwithstanding, the alternative remedy of an appeal under Section 7-I of the EPFA 1952, the writ petition must be entertained by this Court in view of the extreme impropriety of the impugned order and ex facie illegality. Such illegality and impropriety according to learned counsel is as follows:-

(a) Several High Courts have held that a Director of a company cannot be held liable for provident fund dues in his personal capacity. Reference in this regard is made to the following cases:-

(i) ***Vimalkumar Ravji Shah Vs. Employees Provident Fund Organisation*** reported in ***2009 (5) Mh.L.J. 209***.

(ii) ***Harish F Shah Vs. Employees Provident Fund Organization*** reported in ***2011 SCC OnLine Guj 4849***.

(iii) ***Supreme Paper Mills Limited and Ors. Vs. State of West Bengal and Anr.*** reported in ***2019 SCC OnLine Cal 879***.

(iv) ***Atulya Yogendra Mafatlal Vs. Regional Provident Fund Commissioner and Anr.*** reported in ***2008 SCC OnLine Guj 593***.

(v) ***Vijay Aggarwal Vs. The Recovery Officer, Employees Provident Fund & Misc. Provisions Act, 1952 and Anr.*** reported in ***2009 SCC OnLine P&H 7274***.

(vi) ***Employees' State Insurance Corporation Vs. S.K. Aggarwal and Ors.*** reported in ***(1998) 6 SCC 288***.

(vii) ***Satish Kumar Jhunjunwala Vs. The State of West Bengal*** reported in **2008 SCC OnLine Cal 189**.

(viii) ***R. Balachandran and Anr. Vs. The Regional Provident Fund Commissioner and Ors.*** dated 7th September, 2011 passed by the Madras High Court.

(ix) ***Employees' State Insurance Corporation, Chandigarh Vs. Gurdial Singh and Ors.*** reported in **1991 Supp (1) Supreme Court Cases 204**.

(x) ***Ashoke Sadhya & Anr. Vs. State of West Bengal & Anr.*** reported in **2015 SCC OnLine Cal 885**.

(b) The company has already been struck off from the records of the ROC under powers exercised by the first authority under Section 7A of the EPF Act 1952 read with Section 248 of the Companies Act, 2013.

(c) The writ petitioners are themselves employees in the records of the respondents and have accumulated dues to the extent of Rs.17,00,000/-. The same could be set off or treated as security for preference of an appeal under Section 7-I of the EPF

Act of 1952, according to which plea can be raised before the Appellate Authority.

(d) It is further argued that the writ petitioner No.2 is 83 years old suffering from various ailments and requires funds for her treatment and is in no position to put in any amount as preliminary deposit which is a pre-condition of an appeal under Section 7-I.

4. Specific reliance is placed on a recent decision of the Supreme Court in the case of ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.*** reported in **2023 SCC OnLine SC 95** particularly paragraph 4 to 8 thereof.

5. This Court has carefully considered the arguments advanced by the learned counsel for the petitioner as also the respondents. This Court finds that as to whether or not the Director of Company are liable for the Statutory liability of the company is itself, a question of fact which has to be determined after appropriate evidence is received.

6. Admittedly, the establishment was a family controlled company. It was founded by the husband of the petitioner No.2 and the father of the petitioner No.1. There are substantial indication before this Court that if the corporate veil is lifted or pierced, the actual persons in the direct control and management of the establishment would be revealed.

7. Family controlled companies are often accustomed to act as per the wishes and dictates of the family members. These are matters that have to be ascertained after receiving appropriate evidence. A perusal of the orders impugned reflects that it is not a case where there is absolutely no evidence whatsoever to support the findings of the first authority.

8. A Writ Court does not sit in appeal over the findings of a quasi-judicial authority. It is the decision making process, which is assessed and tested under Article 226 and not the decision itself.

9. Indeed, as already observed in the ***Godrej Sara Lee Ltd. (supra)*** a writ petition must be maintainable in respect of any order passed by any statutory authority. It is the entertainability of the writ petition and in some cases the maintainability itself that has to be assessed. When the statute itself provides the remedy of statutory appeal or a forum to challenge and test the propriety of the decision of the first authority.

10. It is equally well-settled that a mandatory pre-deposit albeit onerous, to maintain an appeal is by itself not a ground for entertaining of a writ petition. The Hon'ble Supreme Court has upheld the provision of pre-deposit in respect of a number of statutes, for maintaining an appeal before the Statutory Appellate Authorities or Tribunals.

11. In that view of the matter, this Court is not inclined to entertain the instant writ petition since the writ petitioners has the avenue of an appeal under Section 7-I of the aforesaid Act of 1952.

12. It is made absolutely clear that this Court has not entered into the merits and propriety of the decision of the first authority and has only considered the same for the purpose of testing entertainability of the writ petition.

13. With the aforesaid observations, the writ petition is dismissed.

14. There shall be no order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)