Form J(1)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

WPA 285 of 2023
Pradip Chandra
Vs.
Regional Provident Fund Commissioner & Ors.

With

WPA 287 of 2023
Jyotirmoy Goutam
Vs.
Regional Provident Fund Commissioner & Ors.

With

WPA 288 of 2023
Moumita Bhowal
Vs.
Regional Provident Fund Commissioner & Ors.

With

WPA 289 of 2023
Tapas Paul
Vs.
Regional Provident Fund Commissioner & Ors.

With

WPA 290 of 2023
Barun Kumar Sarkar
Vs.
Regional Provident Fund Commissioner & Ors.

With

WPA 291 of 2023
Subhasish Poddar
Vs.
Regional Provident Fund Commissioner & Ors.

For the Petitioner	**: Mr. Bikramaditya Ghosh, Ms. Supriya Singh**
For the respondents	**: Mr. Bhaskar Roy Mahashaya**
Heard & Judgment On	**: 31st January, 2023.**

Mr. Bhaskar Roy Mahashaya, learned Advocate has entered appearance on behalf of the respondents by filing Vokalatnama. The Vokalatnama be taken on record.

In the bunch of writ petitions mentioned above a common question of law and fact are involved. Therefore, this Court proposes to disposes the above mentioned writ petitions in a composite order as follows:-

The writ petitioners carry on business as proprietors of various business concerns. In the backdrop of Covid-19 pandemic the Central Government initiated a scheme under the name and style of Aatmanirbhar Bharat Rojgar Yojana (ABRY) and invested huge amount of money in an endeavour of boosting creation of new jobs in formal sectors. The petitioners in all the above mentioned writ petitions are having small business entities that struggled employee, permanent employees for the financial burdens that may be encumbered upon it. In order to disburse provident fund contributions to permanent employees and to employ employees of permanent nature the petitioners have applied under ABRY scheme. Upon due verification of documents the respondent authorities found that the petitioners have legitimate business concerns to avail the benefits of the said scheme and proceeded to disburse certain amount of money to the relevant PF Accounts of the employees having Universal Account Number (UAN). After disbursement of fund to the accounts of the employees directly the respondent authorities sent a notice to the petitioners directing them to file further documents. The petitioner, being a sole proprietorship firms do not have all such documents at their disposal. Moreover, the respondents cannot claim further documents after disbursement of PF contribution being the employers' share for verification. Therefore, the petitioners were not able to furnish certain documents to the concerned authority. Subsequently, on 9th December, 2022 the Assistant P.F Commissioner (Compliance) issued recovery notice to the petitioners directing them to refund the amount which was disbursed under ABRY schemes in favour of the employees of petitioner's business fund. It is alleged in the said recovery notice that that the petitioners have obtained the benefit of the said scheme by producing false and fabricated documents.

Mr. Bikramaditya Ghosh, learned Counsel on behalf of the petitioners submits that ABRY scheme was conceptualized by the Central Government to generate new employment in the formal sector having ten or more employees in the establishment. It is submitted by Mr. Ghosh that notice was issued to the petitioner for verification of documents and only after being satisfied on verification of documents, the petitioners were granted 12% of employees' contribution as well as 12% of the employers' contribution i.e., total of 24% of both share as incentive from the Central Government by furnishing a declaration as mandated under the scheme. Subsequently, the petitioners were directed to produce certain documents. They produce documents as were available to them. There was no adjudication by the Enforcement Authority. It is also submitted by Mr. Ghosh that the Assistant P.F Commissioner cannot recover government money by giving recovery notice even assuming that the petitioners are liable to pay the amount that were availed by them, it can only be recovered through a process of Public Demand Recovery Act. It is also urged by the learned Advocate for the petitioners that the respondents never made an allegation that the documents that were submitted by the petitioners were fabricated. Therefore, recovery notice issued by the respondent No.3 is bad in law and liable to be quashed.

Learned Advocate on behalf of the respondents, on the other hand, submits that after initiation of ABRY benefit it was informed by the Zonal Office, Pune that certain UANs of members were tagged with multiple member IDs concurrently and have availed PF advances. Many of those establishments had been registered after announcement of ABRY scheme various employees in those establishments were registered with identical mobile numbers and even those registered numbers were not traceable. Such establishments have illegally claimed ABRY scheme benefits and a portion of which have been withdrawn by the enrolled employees. Therefore, the competent authority has decided that audit and necessary verification should be conducted with respect to the establishments, which have been registered with EPFO through Shram Suvidha Portal or MCA Portal after 1st October, 2020 and have availed ABRY benefits to ascertain whether the establishment really exists for a defined business activity as declared for registration under EPF & MP Act, 1952 and whether persons are employed and wage payment is made in such establishment to employees including new employees. This notification obligates the respondents to inspect the documents. Therefore, notices were issued to the writ petitioners.

Learned Advocate for the respondents also refer to the office memo dated 2nd July, 2021 enumerating ABRY scheme guidelines.

This memo was also issued after the scheme came into force. Therefore, the petitioners were asked to produce certain documents as they failed to produce required documents, recovery notices were issued.

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record this Court finds that the notice dated 29th July, 2022 directing the petitioners to produce certain documents and subsequent recovery notice was issued without giving any opportunity to the petitioners of hearing. Therefore, the writ petition are disposed of directing the respondent No.3 to issue notice upon the petitioners asking them to produce the requisite documents required vide office memo dated 2nd July, 2022 issued by the EPF Organization and after giving opportunity of hearing over the documents the respondent No.3 is at liberty to issue necessary orders in this regard. If the respondent No.3 finds that the petitioners availed of the benefit of the scheme without complying with necessary guidelines and by filing false documents it is open for him to issue recovery notice afresh.

In view of the above order, impugned recovery notice dated 9.12.2022 is set aside.

All the writ petitions are accordingly disposed of, however, without any costs.

The petitioners are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)