

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

08 07.01.2025
Sc Ct. no.2

WPA 14841 OF 2024

M/s Secure Offset Private Limited & Anr.

Vs.

Union of India & Ors.

Mr. Soumya Majumder
Mr. Kinnor Ghosh.

.... For the Petitioners

Mr. Sunil Singhania
Mr. Partha Chakraborty.

.... For the Respondent
No.1

Ms. Debjani Ghosal

.... For the Respondent
Nos. 2 & 3

Affidavit-of-service, filed in Court today, is taken
on record.

Mr. Soumya Majumder, learned senior counsel
appears for the petitioners.

Mr. Sunil Singhania, learned counsel with Mr.
Partha Chakraborty, learned counsel appears for
respondent No. 1.

Ms. Debjani Ghosal, leaned counsel appears for
respondent Nos. 2 and 3.

Through this writ petition the petitioners have
challenged a demand notice dated **March 28, 2024**
issued by the Provident Fund authority under **Section**
7Q of the Employees' Provident Funds and
Miscellaneous Provisions Act, 1952 (for short the

1952 Act), **Annexure - P11** at **page 72** to the writ petition.

Learned senior counsel for the petitioners submits that, the order passed under **Section 7Q of the 1952 Act** is not an appealable order under the statute and, as such, this writ petition is maintainable.

Referring to the correspondence and communication at **pages 35 to 71** to the writ petition, learned senior counsel submits that the petitioners have already raised a preliminary objection with regard to the applicability of the provisions of the said 1952 Act upon the petitioners. To show that this preliminary objection is within the knowledge of the authority, Mr. Majumder has referred to an order dated **January 18, 2017, Annexure - P6** at **page 34** to the writ petition passed by respondent No. 3 but the point has not yet been decided and the Provident Fund authority is proceeding against the establishment under the provisions of the said 1952 Act.

Ms. Debjani Ghosal, learned counsel appearing for the Provident Fund authority has placed a communication before this Court dated **September 19, 2023** issued by the respondent No. 3 to the petitioners, same is taken on record, wherefrom it appears that the authority has decided that provisions of 1952 Act is applicable upon the petitioners. She further referring to her written instruction sent to her by her clients

submits that, however, there was no proceeding initiated against the petitioners in terms of **Section 7A of the 1952 Act** with regard to the applicability of the Act hence no final decision has been taken on the issue. However, by the said letter dated **September 19, 2023** the Provident Fund authority has specifically communicated the petitioners that the said 1952 Act shall apply.

Mr. Majumder, learned senior counsel appearing for the petitioners has denied and disputed the submissions made on behalf of the Provident Fund authority to the effect that no such letter dated **September 19, 2023** was issued to or served upon the petitioners.

After considering the rival contentions of the parties and upon perusal of the materials on record this Court thinks it fit that the respondent No. 2 being the jurisdictional authority shall first decide the said preliminary objection raised by the petitioners.

Accordingly, the respondent No. 2 shall treat the said preliminary objection already raised by the petitioners to be an objection raised under **Section 7A of the 1952 Act** and then upon issuing a prior hearing notice to the petitioners of at least **seven days** shall decide the issue after granting an opportunity of hearing to the petitioners and by passing a reasoned order in accordance with law.

This exercise shall be carried out by the respondent No. 2 positively within a period of **four weeks** from the date of communication of this order and the reasoned order then shall be communicated to the petitioners within a further period of **one week** from the date of the reasoned order to be passed.

In the event the reasoned order confirms the applicability of 1952 Act, then all the steps already initiated by the Provident Fund authority shall be considered and accepted as valid steps in accordance with law and the authority shall be free to proceed in connection therewith strictly in accordance with law. Similarly, if the petitioners are aggrieved with the decision of the respondent No. 2 they may take recourse to law in respect of all the proceedings already initiated by the Provident Fund authority.

In the event the 1952 Act is decided to be applicable by the Provident Fund authority then the petitioners shall be at liberty to proceed with the pending statutory appeal preferred by the petitioners under **Section 7 I** of the 1952 Act from the order passed under **Section 14B** of the 1952 Act.

It is already made clear that, this Court has not gone into the merits of the rival contentions of the parties and the parties shall be free to urge whatever points they wish to urge before the respondent No. 2 with regard to the applicability of the said 1952 Act.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above terms, this writ petition, **WPA 14841 of 2024** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)