

Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-14-2012

Judge : Jayanta Kumar Biswas

Appellant : Appellant

Respondent : Respondent

Advocate for Pet/Ap. : Mr. Mitra

Judgement :

IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side Present: The Hon'ble Mr.Justice Jayanta Kumar Biswas WP No.706 of 2011 Vidula Chemicals & Manufacturing Industries LTD.& Anr.v.Employees Provident Fund ComMr.& ORS.Mr.H.K.

Mitra, senior advocate with Mr.Debdutta Sen, advocate, for the petitioners.Mr.Soumya Ray, advocate, for the UOI.

Mr.Mihir Kundu, advocate, for the PF Authority.

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The Court:- The petitioners in this WP under art.226 dated July 13, 2011 are questioning an order of an Assistant Provident Fund Commissioner (in short

APFC) dated March 18, 2011 (WP p.34).The order was passed levying damages under s.14B and directing payment of interest under s.7Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

The provisions of the Act and the schemes framed thereunder were applicable to the establishment of the petitioners.Proceedings were initiated under s.7A for determining liability of the employer during the period from March 2006 to August 2007.

It was found that the employer was liable to pay Rs.6,51,752.

Certificate proceedings were initiated.

Even then the dues were not paid.

When the Recovery Officer issued a notice dated October 13, 2008 asking the employer to show cause why warrant of arrest should not be issued, the petitioners paid the dues.

Then by a letter dated November 5, 2008 the Recovery Officer asked the employer to pay Rs.45,623 interest under s.7Q saying that the certificate proceedings would be dropped once the payment was made.

The petitioners paid the amount.

Thereafter the APFC issued a notice dated October 20/November 8, 2010 asking the employer to show cause why damages should not be levied under s.14B and interest should not be paid under s.7Q for non-payment of the dues during the period from March 2006 to August 2007 within the statutory period.

In the notice the amounts payable under s.14B and s.7Q were mentioned.

Statements showing how the amounts became due were annexed to the notice.

In response to the notice the petitioners submitted a letter dated February 9, 2011.

Relevant part of the letter is quoted below: Since the establishment named Vidula Chemicals & Manufacturing Industries Limited bearing PF Code No:WB/2491 is in

non-functioning stage and has been closed a few year back, the relevant records and documents are unavailable.

So you are requested to give us a copy of 7A order.

It is evident from the letter that the petitioners neither disputed their liability to pay damages under s.14B and interest under s.7Q for non-payment of the statutory and other allied dues during the period from March 2006 to August 2007 within the statutory period, not questioned the correctness of the figures mentioned in the several statements annexed to the notice and the amounts payable under s.14B and s.7Q (mentioned in the notice).It is evident from the impugned order dated March 18, 2011 that it was passed after hearing the authorized representative of the employer.

Apart from mentioning that the establishment had been closed and hence the employer was not in a position to pay the amounts levied under s.14B and payable under s.7Q, the authorized representative did not say any other thing.

The order reveals that the APFC levied damages and directed payment of interest according to the relevant provisions.

The petitioners had a statutory remedy of appeal under s.7I of the Act.

They did not appeal against the order.

They approached this Court straight.

Mr Mitra appearing for the petitioners has relied on Regional Provident Fund Commissioner v.

S.D.College Hashiarpur & Ors., AIR 199.SC 364.and Shanti Garments PVT.Ltd.v.Regional Provident Fund Commissioner, 2003-I-LLJ-467 (Mad).He has argued as follows.

Interest was claimed twice.

The second claim is contrary to the assurance that if the fiRs.claim was met, the proceedings would be dropped.

The authority was bound by the promise.

Particulars of the s.7A order were not supplied.

In any case, the APFC did not exercise discretion in favour of reduction and waiver.

The APFC initiating the proceedings never promised that if the fiRs.interest claim was met, the proceedings would be dropped.

The assurance was given by the Recovery Officer in connection with the certificate proceedings.

The proceedings in which the impugned order was passed were initiated after disposal of the certificate proceedings.

The subsequent proceedings had no connection with the certificate proceedings.

Hence it is wrong to say that the APFC initiated the proceedings in breach of his promise.

Besides, no-one could give an assurance that proceedings for levying damages under s.14B and ordering interest under s.7Q would not be initiated.

The question of supplying details of the s.7A order could not arise at all.

The s.7A order was accepted by the petitioners who paid the determined amount.

It was not their case that the second interest claim made in the notice initiating the proceedings overlapped the fiRs.claim.

They did not dispute the correctness of the amounts mentioned in the notice.

Even before the APFC the authorized representative of the employer did not question the correctness of the amounts levied under s.14B and ordered under

s.7Q.

The petitioners never questioned the APFCs jurisdiction to initiate the proceedings.

The order was passed after giving opportunity of contesting the proceedings.

From their letter it is evident that the petitioners did not set up any case in defence.

Closure of the establishment was an irrelevant aspect.

The APFC was not empowered to waive or reduce any part of the levied damages.

Only the Central Board, not approached, could consider it.

No-one is empowered to waive or reduce interest payable under s.7Q.

On the facts, the cited decisions are of no assistance.

For these reasons, the WP is dismissed.

No costs.

Certified xerox.

Ss/A/s.(c);ab(f) (Jayanta Kumar Biswas, J.)

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