

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty
Presiding Officer

M/s. B.C .J Hospital & Asha Prekh Reserrch Centre ...Appellant
Vs

Regional Provident Fund commissioner(Bandra) ...Respondent

Presence:

For the Appellant : Mr. Manoj Gujar, Adv.

For the Respondent : Mr. Manohar Rajput, Adv.

ORDER

The appeal challenges the orders dt 29/10/2021, received on 09.11.2021, passed by the RPFC, Bandra under section 14B and 7Q of the EPF&MP Act wherein the appellant establishment has been directed to deposit Rs 12,51,213/- and Rs 4,43,884/- as damage and interest respectively, for delayed remittance of EPF dues for the period 18/10/2000 to 24/04/2008.

A separate petitions has been filed by the appellant praying admission of the appeal and interim stay on the execution of the

impugned order pending disposal of the appeal for the grounds taken in the petitions.

Being noticed, the respondent entered appearance and the learned counsel representing the respondent participated in the hearing on admission and interim stay, as has been prayed by the appellant held on VC on 14th Oct 2022.

The learned counsel for the appellant mainly canvassed two points for challenging the impugned order i.e the mitigating circumstances pleaded during the inquiry were never considered and appreciated by the commissioner, who proceeded to pass a nonspeaking order mechanically. Furthermore, during the preceding years of the period under inquiry, the appellant had to undergo acute financial hardship and the charitable Hospital pursuant to a decision taken by the Trustees in the month of January 2016, was finally closed w. e. f. Feb 2018. Due to immense cash crunch the dues of the employees were finally settled by borrowing money from others. Most of the employees made final withdrawal of their PF Deposits. The establishment made request in writing to the Respondent to have an inspection of the establishment and take note of the closure, which was never acceded to. On the contrary the proceeding for damage and interest was initiated and the mitigating circumstances pointed out were never considered. . Though the commissioner was made aware of the said closure and all relevant documents were produced, none of those were considered and suddenly the impugned orders were passed on Oct 2021. The documents filed during the inquiry have been placed on record. The learned counsel for the appellant further argued that no finding has been rendered by

the commissioner on the mens rea of the establishment behind the delay in remittance, which makes the order illegal and nonspeaking. Though two separate orders have been passed, the same are the outcome of a composite proceeding. Hence prayer has been made for admission of the appeal in respect of both the orders and interim stay on execution of the said orders till disposal of the appeal. He further submitted that unless the impugned orders levying damage and interest would be stayed, serious prejudice would be caused to the appellant. In order to convince this tribunal that the order passed u/s 7Q is also appealable, he pointed out that pursuant to a common notice, joint inquiry proceeding was held to calculate the damage and interest. But to deprive the appellant of its right to challenge the composite order, two separate orders for damage and interest have been passed. To term the impugned orders as composite, the learned counsel for the appellant has placed reliance in the case of Arcot Textile Mills Ltd vs RPFC decided by the Hon 'ble SC.

In his reply the learned counsel for the respondent submitted that there being two separate orders passed, those can not be termed as composite orders and facts of Arcot Textile case is completely distinguishable from the facts of this case. While arguing on the benevolent provisions of EPF&M P Act he submitted against grant of stay on the operation of the impugned orders. His further argument is that before passing of the impugned orders, there was an inquiry u/s 7A of the Act for the same period and the establishment made deposit of the amount assessed u/s 7A which amounts to admission of the delay. Hence no order of interim stay need to be passed.

On hearing the argument advanced by both the counsels and on a careful reading of the judgement of Arcot Textiles, it is found that the Hon'ble Appex court have clearly observed that when two separate orders are passed, those can not be treated as composite orders. Furthermore at this stage no opinion can be formed whether a common or separate proceeding was held.

The appeal has been filed within the period of limitation and there being no other defect pointed out by the registry, the appeal as has been framed is admitted.

There is no doubt on the legal position that an appeal is a creature of the statute and the appeal for it's maintainability must have the clear authority of law. In the case of Arcot Textiles the Hon'ble SC have also held that right to appeal can not be assumed to exist unless it is expressly provided by the statute. The provision of sec 71 OF the EPF & M P Act since does not provide for appeal against order levying interest, it is not felt proper to pass any interim order of stay against the said order. On hearing the argument advanced by the counsel for both the parties an order need to be passed on the interim relief of stay as prayed by the appellant.

The factors which are required to be considered at this stage are the period of default and the amount of damage levied. At the same time as decided by the Hon'ble High Court of Bombay in the case of *Moriroku Ut India Pvt Ltd vs Union Of India reported in 2005SCCpage1* and in the case of *Escorts Limited and another vs Union Of India reported in 43(1991)DLT 207* the courts and tribunals are obliged to adhere to the question of undue hardship when such a plea is raised before it.

In this case the period of default as seen from the impugned order is from 2000 to 2008, and the amount of damage assessed is equally big. Thus, on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant. Furthermore in the case of ***Mulchand Yadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484*** the Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Hence in this case it is directed that there should be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order can not be unconditional. The appellant is directed to deposit 15% of the assessed amount of damage through challan within three weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. It is made clear that there would be no stay on the interest assessed by the commissioner as no opinion can be formed at this stage whether it is a composite order or not. Put up after three weeks i.e on **29.11.2022** for compliance of the direction.

PRESIDING OFFICER
CGIT NO.1, MUMBAI

