

IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No. 3050 of 2012

In

Company Petition No. 12 of 1998 (P)

M/s Refractory Specialities (India) Ltd. Petitioner

CORAM: HON'BLE MR. JUSTICE D.N. PATEL

For the Official Liquidator : Mr. H.K. Mehta, Advocate
Mr. Swadhin Barua, In person
For the E.P.F.C. : Ms. Banani Verma, Advocate
For Union of India : Md. Mokhtar Khan, ASGI

64/Dated: 26th April, 2013

1. The present interlocutory application has been preferred by the Employees Provident Fund Commissioner, Ranchi. By virtue of this interlocutory application, the applicant prays for lodging claim before the Official Liquidator to the effect that from the sale of property of the company, in liquidation, the provident fund amount of the employees of the said company should be paid.

2. Learned counsel appearing for the Official Liquidator submitted that detailed counter affidavit has been filed opposing this interlocutory application. It is submitted by the Official Liquidator that on 19th July, 2007, the claims were invited through publication in the local daily newspaper. The claim was not lodged by this applicant, in time. The last date for lodging the claim was 27th August, 2007.

3. No reasons have been assigned by the applicant, in this interlocutory application, for belated claim. The properties of the company in liquidation have been sold away and the sale proceeds have been distributed by the Official Liquidator. It ought to be kept in mind by the Regional Provident Fund Commissioner, Ranchi that he is in loco parentis position and he is a custodian of the interest of the employees of the company, in liquidation. Such a lethargic approach cannot be tolerated. It appears that no reasons have been given for his belated claim, in this interlocutory application. This Court has called the Assistant Solicitor General of India to convey to this Court who is the Secretary concerned in the Union of India and who is appointing the Regional Provident Fund Commissioner at the State of Jharkhand at Ranchi, because this type of approach cannot be tolerated by the person who is holding such a high administrative post. Because of this approach of the Regional Provident Fund Commissioner, Ranchi, several workmen are losing

their claims. I therefore direct the Secretary, Ministry of Labour, Government of India, New Delhi as well as the Commissioner of Provident Fund, New Delhi to take proper action against such type of Regional Provident Fund Commissioners who are not lodging claims of the workmen, in time, especially under Section 529-A of the Companies Act, 1956.

4. In this matter, very old is the claim of the workmen. Last date of lodging claim was in the month of August 2007. Much time has been lapsed and no reasons are coming from the office of the Regional Provident Fund Commissioner, Ranchi. This is a very serious matter and it is expected from the high ranking officers i.e. the Secretary, Ministry of Labour, New Delhi and Commissioner, Provident Fund, New Delhi to take administrative decision or policy decision, giving proper guidance to the Regional Provident Fund Commissioner, so that such type of eventuality may not be repeated and multifariousness of the proceedings can also be avoided.

5. In view of the interlocutory application, I hereby direct the Official Liquidator to join the Union of India (notice to be served through the Secretary, Ministry of Labour, Government of India, New Delhi) as a party respondent.

6. Amendment shall be carried out today by red ink.

7. Notice to the newly joined party. Md. Mokhtar Khan, learned Assistant Solicitor General of India is waiving notice on behalf of the newly joined party.

8. This Court has called the Regional Provident Fund Commissioner, Ranchi after recess and, therefore, the matter will be taken up after recess.

9. This matter is further taken up after recess. Mr. Saurabh Suman Prasad, S/o Shri Jogendra Mohan Prasad, Regional Provident Fund Commissioner I/c of Compliance, Legal and Recovery, Ranchi is present in the Court. He is unable to point out any reason for not lodging claim in time, as stated hereinabove. The public notice was given in the month of July 2007 inviting claims from the sale proceeds of the property of the company, in winding up. No claim was lodged by this applicant in time, thereafter, the property of the company, in liquidation was auctioned. Sale proceed was distributed in accordance with law and as per the order passed by this Court. Now, nothing is left out to give to this Regional Provident Fund Commissioner. Moreover, it is submitted by the Official Liquidator that no property is left out of the company, in liquidation to be auctioned so that the claim of the Regional

Provident Fund Commissioner, Ranchi can be satisfied. In this set of circumstance, I see no reason to entertain this interlocutory application.

10. It appears that there is lethargic approach on the part of the applicant. Had a claim been lodged in time, the amount could have been distributed to this applicant also, but, as on today as stated by the Official Liquidator there is no amount with the Official Liquidator from the sale proceeds of the property of the company in liquidation. Only because of delay in filing this claim, the provident fund amount could not be distributed. It appears that the claim of the applicant is Rs. 2,47,471. Now, this amount cannot be given to the applicant for the reasons stated hereinabove. This Court deprecates this approach on the part of the office of the Regional Provident Fund Commissioner at Ranchi.

11. Thus, it appears that only because of this approach on the part of the office of the Regional Provident Fund Commissioner, Ranchi, this claim could not be satisfied. I therefore direct that initially this amount of Rs. 2,47,471/- will be deposited within eight weeks by the Union of India, towards the dues of Provident Fund of the employees. Thereafter, the Union of India shall deduct the amount of Rs. 2,47,471/- from the salary and/or pension of the Regional Provident Fund Commissioner or such other officers who are responsible, after holding inquiry. Provident Fund Commissioner, New Delhi shall file compliance report to this Court in September 2013. By simple dismissal of this interlocutory application, the dues of the workmen cannot be dismissed. The claim of the dues of the workmen cannot be dismissed as no property is left out with the company in liquidation. This is only option left out with this Court. The exercise of deduction of the amount from the salary and/or pension from the Regional Provident Fund Commissioner or Commissioners or such other responsible officer shall be completed within period of four months from today. This order will be communicated by the Assistant Solicitor General of India, who is present in this Court, to the Secretary, Ministry of Labour, Government of India, New Delhi as well as to the Provident Fund Commissioner, New Delhi.

12. I.A. No. 3050 of 2012 is, accordingly, disposed of.

13. Registry of this Court is also directed to send initially the copy of this order by FAX to the Secretary, Ministry of Labour, Government of India, New Delhi as well as to the Provident Fund Commissioner, New Delhi and thereafter by registered post A/D.

14. This matter shall be listed only for getting compliance report on 4th October, 2013.

Ajay

(D.N. Patel, J.)