

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2019

BEFORE

THE HON'BLE MR. JUSTICE R. DEVDAS

WRIT PETITION NO.1590 OF 2018 (L-PF)

BETWEEN:

M/s. Decathlon Sports India Private Limited,
Survey No.78/10, A2 0-Chikkajala Village,
Bellary Road,
Bengaluru – 562 157.
Represented by its Authorized Signatory,
Mr. Vinay Kumar R.

...Petitioner

(By Sri. Dhananjay Joshi, Advocate)

AND:

1. The Regional Provident Fund Commissioner-I,
Annapoorneshwari Complex,
Survey No.37/1, 6th Main,
Singasandra,
Hosur Main Road,
Bengaluru – 560 068.

2. The Hongkong and Shanghai Banking
Corporation Limited,
No.7, M.G.Road,
Bengaluru – 560 001.

(Represented by Director)

...Respondents

(By Smt. Nandita Haldipur, Advocate for R1;
Smt/Kumari. Anisha Aatresh, Advocate for
Khaitan and Co., for R2)

This Writ Petition is filed under Article 227 of the Constitution of India praying to set aside the impugned order, dated 08.11.2017 at Annexure-A passed by the Hon'ble Central Government Industrial Tribunal, Bengaluru in the petitioner's appeal, EPF/ITB/Sr.No.02/2017; and etc.,

This Writ Petition coming on for *Orders*, this day, the Court made the following:

ORDER

R. DEVDAS J., (ORAL):

Though the matter is coming up for hearing on Interlocutory Applications, the matter is heard and disposed of finally.

2. The petitioner-M/s. Decathlon Sports India Private Limited is an establishment under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('the Act' for brevity) and the Employee's Provident Fund Scheme, 1952 framed thereunder. It is the contention of the learned counsel for petitioner that the petitioner has been remitting provident fund contribution regularly in respect of eligible employees without any default since 2005. He further contends that the first respondent-Regional Provident Fund

Commissioner-1 initiated an enquiry against the petitioner for failing to pay provident fund on entire wages attracting provident fund deduction and not paying provident fund in respect of certain components of the wages i.e., Special Allowance, Medical Allowance, Conveyance etc.,

3. The first respondent proceeded to pass an order declaring that the said allowance and other similar allowances being paid to the petitioner-employee are required to be considered as part of the wages for the purpose of the provident fund deduction and directed the petitioner to pay a sum of Rupees 1,24,03,755/- (Rupees One Crore Twenty Four Lakh Three Thousand and Seven Hundred and Fifty Five Only) towards contribution to the employees provident fund for the period April 2014 to March 2016. Being aggrieved, the petitioner approached the Central Government Industrial Tribunal, Bengaluru. It is submitted that the petitioner also filed an application under Section 7-O of the Act for waiver of pre-deposit pending consideration of the appeal. The learned

counsel for the petitioner contends that even as the appeal was pending before the Tribunal, the first petitioner issued an order of attachment under Section 8F of the Act, while directing second respondent-The Hongkong and Shanghai Banking Corporation Limited to pay the determined amount from out of the fund lying in the account of the petitioner in the second respondent-Bank. When the issue was brought before the Tribunal, the first respondent undertook that it will not take coercive steps until next date of hearing i.e., 3.10.2017. Thereafter, the undertaking was extended to the next date.

4. Curiously, the second respondent-Bank impleaded itself before the Tribunal and filed an affidavit stating that the determined amount will be placed on hold pending adjudication of the appeal.

5. The learned counsel for the petitioner submits that the Tribunal, instead of passing orders on the application filed under Section 7-O of the Act regarding pre-deposit,

permitted the Bank to be impleaded and directed the Bank to continue to hold the determined amount until further orders. Being aggrieved, the petitioner is before this Court.

6. Having heard the learned counsels and on perusing the writ papers, this Court is of the opinion that the respondent-Bank was not obliged to make a submission that it will hold the determined amount on behalf of the first respondent herein when the matter is at large before the Tribunal. As and when the Tribunal passes orders which would entail the first respondent to recover the determined amount, the first respondent will, at that stage, be permitted to issue such directions to the Bank. The grievance of the first respondent is that the Tribunal has not considered the application under Section 7-O of the Act filed by the appellant before the Tribunal. In that regard, a request is made to the Tribunal to consider and pass orders on the application filed under Section 7-O of the Act by the petitioner herein.

7. The undertaking given by the Bank that it would hold the determined amount until further orders is made easy. As a result, the restrictions placed on the operation of the bank account is hereby vacated. The petitioner is at liberty to operate its account with the second respondent-Bank. As and when the Tribunal passes any order which would entail the first respondent to recover any money, the first respondent may in turn pass any orders or issue direction to the respondent-Bank at the relevant point of time.

8. With this, the petition is partly allowed in terms of the observations made above. In the facts and circumstances of the case, the Tribunal is requested to consider and pass orders on the application filed under Section 7-O of the Act within a period of three weeks from the date of receipt of the certified copy of this order.

**Sd/-
JUDGE**

RB