

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 27817 of 2023

Dilip Kumar Choudhury & Ors.

VS.

The Regional Provident Fund Commissioner, Durgapur, EPFO & Ors.

For the Petitioners	: Mr. Piush Chaturvadi, Mr. Harisankar Chattopadhyay, Ms. Satabdi Bhattacharya, Mr. Subhendu Sanyal, Mr. Asutosh Pandey.
For the P.F. Authority	: Mr. Anil Kumar Gupta.
For the Respondent No. 5	: Mrs. Sanjukta Dutta, Mr. Ranit Ray.
Hearing concluded on	: 27.01.2025
Judgment on	: 31.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred praying for direction upon the respondents to make payment from the "Reserve and Surplus" fund to the Petitioners with accrued interest in a time bound manner by quashing the letter of refusal dated 08.03.2018 of the RPFC-I, Durgapur.

2. Learned counsel for the petitioners have relied upon a letter dated 08.03.2018 issued by the Regional Provident Fund Commissioner I. It appears from the said letter that the Regional Provident Fund Commissioner I (exemption) had been informed as follows:-

“Kindly refer to the subject and reference cited above.

In this connection, it is informed that consequent upon cancellation of exemption granted to the establishment U/S (17) (1) (a) of the EPF & MP Act 1952 as on 17.10.2011, the establishment had submitted two separate audited Balance Sheets in respect of the Trust Fund namely Hindustan Cables Employees Provident Fund for Workers and Hindustan Cables Officers Provident Fund for Officers.

*It is also observed from the Balance Sheet of Trust Fund as on 17.10.2011 that a Sum of **Rs.15,26,66,061/- (Fifteen Crore Twenty Six Lakh Sixty Six Thousand and Sixty One only)** shows Reserve and Surplus Fund in respect of Hindustan Cables Employees Provident Fund (workers) and **Rs. 12,83,73,634/- (Twelve Crore Eighty Three Lakh Seventy Three Thousand Six hundred and Thirty Four only)** also shows Reserve and Surplus Fund in Hindustan Cables Officers Provident Fund (Officers).*

The Board of trustees of both the Fund has not distributed the Reserve & Surplus Fund among the member on prorata basis as on the date of cancellation of exemption and accordingly the above mentioned Reserve and Surplus Fund had been deposited in statutory Fund.

Hence, the question of disbursement of Reserve and Surplus Fund does not arise at this stage as this is not part of contribution.

This is for kind information.

**Yours faithfully,
Sd/-
Regional P.F. Commissioner I"**

3. The Respondents have relied upon the judgment of the Supreme Court in **K.D. Sharma v. Steel Authority of India Limited and Ors., (2008) 12 SCC 481, decided on July 9, 2008,** wherein the Court held:-

"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

52. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court."

4. **The petitioners have further stated in their written notes that:-**

*“(i) Through RTI application that the HCL-BOT had in fact submitted the **Past Accumulation Statement** to the RPFC, Durgapur, **duly distributing the Reserve & Surplus amount amongst the entitled members, including your Petitioners as on 17.10.2011, on pro-rata basis as per the Trust Rules-44** which the RPFC denied in first place in his refusal letter annexed in Page 150/150A. But later on the truth came out through RTI which showed that the RPFC played with a lie.*

*“(ii) That with the revelation of **the actual fact that the HCL-BOT did distribute the Reserve & Surplus Money according to law but could not disburse the same because its power was seized**, lawfully establish the claim of the Petitioner-members over the pro-rata Reserve & Surplus amount, and it is just in law. Other Units of HCL have also paid it.”*

5. Admittedly the writ petitioners retired subsequent to the cancellation of exemption. The exemption was cancelled on 17.10.2011. The writ petitioners have admittedly retired thereafter. **It is admitted that the writ petitioners have received their provident fund dues and also receiving pension.**
6. The only claim of the writ petitioners is their share from the reserve fund under the “reserve and surplus” head.

7. The petitioners **rely upon Clause 44 of the trust deed** at page 87 of the writ application, which was in force during the period of exemption granted to the company.

8. **Clause 44 is as follows:-**

“Winding up 44. It shall be lawful for the Trustees at any time giving notice in writing to all Members of the Fund to wind up the Fund in which case the Trustees shall on expiry of the period of notice realise all securities and make up the books and after payment of all costs and expenses of winding up and otherwise the moneys of the Fund shall be distributed amongst the Members who shall be the subscribers at the time of the commencement of such winding up in proportion to the balance at the time of the making of the books standing to their credit therein.

Provided that on winding up of the Fund, the Provident Fund Accumulations of the exempted employees will be dealt with according to the direction of the Regional Provident Fund Commissioner, West Bengal.”

9. It is on the basis of the said Clause that the petitioners have raised their claim. It appears from the said Clause that on winding up and otherwise, **the (money) of the fund was to be distributed among the members, who were the subscribers at the time of commencement of such winding up, in proportion to the balance at the time of the making of the books standing to their credit.**

10. **Admittedly the exemption was withdrawn in the year 2011 but no claim was made by the subscribers at the time of the cancellation of the exemption.** It is the contention of the

petitioners that their cause of action arose after their superannuation when they received the provident fund dues between the period 2016-2018.

11. The present writ application has been preferred in the year 2023.
12. **On the other hand it is the contention of the learned counsels for the provident fund that at the time of their superannuation, admittedly the fund of the trust stood transferred to the Provident Fund Commissioner since the date of cancellation being 17.10.2011.**
13. It is thus seen that **when the provident fund dues were paid to the writ petitioners, the said amount also included their share in respect of the fund accumulated under “Reserve and Surplus” and as such there is no outstanding dues in respect of the petitioners.**
14. **The writ petition is thus dismissed.**
15. All connected applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.
17. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]