
(2011) 09 MAD CK 0039

In the Madras High Court

Case No : Writ Petition (MD) No. 2703 of 2010 and M.P. (MD) No. 1 of 2010

Anna Co-operative Spinning Mills Ltd.

APPELLANT

Vs

Employee's Provident Fund Appellate Tribunal and The
Regional Provident Fund Commissioner-II

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2011) 09 MAD CK 0039

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M. Elanchezhian, for the Appellant; G.R. Swaminathan, for 2nd
Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner has invoked the writ jurisdiction of this court, to challenge the order passed by the Employees

Provident Fund Appellate Tribunal, New Delhi, vide which, the appeal filed by the petitioner against the imposition of damages u/s 14-B of the

Employees Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred to as "Act"] stands dismissed.

2. The impugned order reads as under:-

The order of the PF authority u/s 14B directing the appellant to deposit the dues is in challenge in this appeal. The case of the appellant is that the

appellant is Anna Cooperative Spinning Mill Ltd. functioning under the supervision and control of Commissioner of Handloom and Textile. It was

making the payment of PF dues in time but it sustained a loss of 700 lakhs and due to financial difficulty it was not able to pay the dues in time. The

PF authority without considering this fact passed the impugned order illegally imposing the damage and interest.

The case of the respondent is that as the company defaulted and the order of penalty and damage is proper one.

It is contended that passing of non speaking order with out considering the existing circumstances if illegal.

The learned counsel for the respondent supported the impugned order.

It is not disputed that the appellant defaulted in depositing the PF dues. Mere delay in depositing the PF dues is not sufficient to impose the

damages and interest, if the delay is satisfactorily explained and the delay is not intentional one. The only ground taken in this case for default is that

due to financial difficulty the payment could not be made in time. Financial difficulty is not a satisfactory ground for default. In the case of Sky

Machinery Ltd. v. RPFC reported in 1998 LLR 925, the Hon'ble High Court of Orissa held that, "financial crunch will not be sufficient for

waiving penal damages for delay in depositing the PF contribution." Also, in the case of M/s. Hindustan Times Limited Vs. Union of India and

Others, the lordship held that, "power cut, financial problem relating to other indebtness or delay in realization of amount paid by cheque or draft

are not relevant explanation to avoid the liability for payment of dues.

As the financial difficulty is not at all the ground to default in making the payment the same does not appear to be justified and no infirmity is noticed

in the order of the PF authority. Hence ordered, the appeal is dismissed. Copy of the order be sent to all the parties. File be consigned to record

room.

3. The learned counsel for the petitioner contends, that the impugned order cannot be sustained, as before imposing damages u/s 14-B of the Act,

the authorities had failed to take into consideration the circumstances and the motive for the delay, as in absence of mala-fide intention, it is not

permissible to impose damages u/s 14-B of the Act, merely for the delay, specially when the petitioner company was declared as a "sick

company", and was unable to pay the contribution on account of the financial difficulty.

4. It is also the submission of the petitioner, that the damages imposed are not as per the circular issued by the Commissioner, fixing the damages

u/s 14-B of the Act. This submission of the petitioner deserves to be noticed to be rejected, for the reason that subsequent to issuance of circular,

a statutory scheme is framed overriding the circular. The damages imposed are not over and above the one fixed under the scheme.

5. It may be observed here, that though it is not permissible to impose damages mechanically, at the rates fixed under the scheme, as the authorities

are under statutory obligation to consider the circumstances for the delay. It is within the competence of the authority to impose lesser damages or

waive it, as the rates fixed under the scheme are only a guideline and not binding regulation. The petitioner, however, cannot get any advantage of

this, as no point was raised by the petitioner before the appellate authority.

6. The only ground taken was regarding financial difficulty, in not depositing the contribution.

7. The Honourable Supreme Court has laid down, that it is not open to a party to raise a plea for the first time before the High court, which was

not taken before the learned tribunal or the courts, whose orders are under challenge.

8. The reading of the impugned order referred to above shows, that the only ground taken was financial difficulty, which was rightly rejected, in

view of the settled law.

9. No ground is made out to interfere with the impugned order. "Dismissed".

10. Consequently, connected Miscellaneous Petition is closed. No costs.