
(2013) 05 GUJ CK 0040
In the Gujarat High Court
Case No : S.C.A. No. 8429 of 2013

Asstt. Provident Fund Commissioner	Vs	APPELLANT
AC Nielsen Org Garg Pvt. Ltd.		RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 138 FLR 185 : (2013) 3 LLJ 397 : (2013) 3 LLN 212 : (2013) LLR 653

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : N.K. Majmudar, for the Appellant;

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.—Heard Mr. N.K. Majmudar, learned advocate for the petitioner authorities.

1.1 Challenge in this petition is made to the order dated 18.3.2013 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 424(05) 2012.

1.2 The respondent had challenged the order passed by the petitioner authority before the Tribunal. In the said proceedings, the Tribunal held that no willful default was committed by the respondent in remitting the P.F. dues and therefore the respondent is granted relief by it, by the impugned order.

2.1 Learned advocate for the petitioner authority, Mr. Majmudar vehemently submitted that the respondent had already committed default in making payment, and under those circumstances, power which is vested in the petitioner authority was duly exercised by him and there was no occasion for the Tribunal to interfere with the same. It is contended that having done so, the Tribunal has committed grave error, which calls for interference by this Court.

2.2 Learned advocate for the petitioner has also relied on the decision of Hon'ble

the Supreme Court of India in the case of Regional Provident Fund Commissioner Vs. The Hooghly Mills Company Ltd. and Others, .

3.1 I have gone through the order passed by the Tribunal. The facts and reasons recorded by it are perused in detail. The Tribunal, after recording elaborately the facts and reasons, in paragraphs 21 and 22 recorded as under:

21. It is not in dispute that the employer not only deposited the contribution but has also deposited interest accrued thereon. In view of these facts, it is difficult to say as to how the Organisation has suffered any pecuniary damages for the late deposit of contribution. Secondly, earlier no such default was ever committed by the Appellant.

22. In view of the facts and recording made by the respondent in the impugned order, it is made clear that there was no willful default committed by the appellant in remitting the P.F. dues; hence the penal damages should be more or less compensatory in nature. The appeal preferred by the appellant to this extent has succeeded. After hearing the arguments and counter arguments, this tribunal has come to the decision that the respondent has failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions hence the penal provision in the damages has to be ignored and has to consider only the compensatory clause has to be invoked. Hence, keeping in view the reasons and circumstances in which the default in remittance of PF dues occurred, ends of justice be met by restricting the damages leviable to Rs. 30,00,000 (Rupees Thirty Lacks) as compensation. Hence, I order accordingly. Copy of the order be sent to the parties. The file be consigned to the record room.

3.2 Considering the totality of the facts and reasons as available in the impugned order passed by the Tribunal, in my view, there was no occasion for the petitioner authority to be aggrieved by that order. The petitioner authority does not deserve any relief in this petition and the petition needs to be rejected. The authority relied by the learned advocate for the petitioner as referred above, would not take the case of the petitioner authority any further, in the peculiar facts as recorded in the impugned order, as well as what is recorded in the subsequent part of this order.

4.1 From the pleadings and the arguments advanced on behalf of the petitioner authority before this Court, a picture has emerged where I have found that the litigation taken out by the petitioner authority is not a bona fide litigation. There is one more reason to hold so. It is recorded that, today this petition is listed in the cause list at Serial No. 21. At Serial No. 22, Civil Application No. 4830 of 2013 in Special Civil Application No. 13617 of 2012 is also listed, which is between the same parties, which has bearing on this petition.

4.2 In the said petition, this Court [Coram: Hon"ble Smt. Justice Abhilasha Kumari], while issuing notice on 11.10.2012, recorded submission of the petitioner therein the respondent herein, as under.

Heard Mr. Dipak R. Dave, learned advocate for the petitioner. It is submitted by him that in spite of the stay order granted by the Employees' Provident Fund Appellate Tribunal ("the Tribunal", for short), respondent No. 1 has, in wilful defiance of the order of the Tribunal effected illegal recovery through the Banker of the petitioner from the Bank Account of the petitioner. It is further submitted that respondent No. 1 has entered into correspondence with the learned Presiding Officer of the Tribunal, though he is party to the proceedings before the Tribunal in the pending appeal and is defended by a lawyer. Not only that, the learned Presiding Officer has entertained the letter of respondent No. 1 and has even replied to it.

Issue Notice returnable on 23.10.2012.

In addition to the normal mode of service, Direct Service is also permitted.

The above petition is being examined separately.

4.3 In the said petition, the present respondent had moved an application, being Civil Application No. 4830 of 2013, praying therein that the amount deposited by the respondent therein (the petitioner authority of this petition), be permitted to be withdrawn, since even on merits the appeal is allowed vide order dated 18.3.2013, which is the subject matter of the present petition. On the said Civil Application, the stand was taken by the petitioner authority that the said order dated 18.3.2013 is being challenged and therefore, no relief be granted on the Civil Application. The said challenge is the present petition. On these additional grounds also, I find that the present petition lacks bona fide.

4.4 In this factual background, rejecting this petition simplicitor, would be too lenient a view in favour of the petitioner authority and therefore cost also needs to be awarded.

For the reasons recorded above, this petition is rejected, with cost of Rs. 10,000. Petitioner authority is directed to pay the said amount of cost of Rs. 10,000 (Rs. Ten thousand only), which shall be deposited in Gujarat State Legal Services Authority, Gujarat High Court, within a period of two months from today.