(2017) 02 BOM CK 0043

In the Bombay High Court

Case No : Civil Appellate Jurisdiction Writ Petition No. 8510 Of 2015

Central Board of Trustees, EPF APPELLANT

Vs

M/s. Sanjay Maintenance Services Pvt. Ltd. RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, Section 7A, Section 7I

Citation : (2017) 2 CLR 25

Hon'ble Judges : K.K. Tated, J.

Bench : Single Bench

Advocate : Mr. V.K. Wasnik, Advocate, for the Petitioner; Mr. A.P. Wachasunder i/ b Mr. Navin Lund, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Tated, J.—Heard learned Counsel for the parties.

2. By this Petition under Article 226 and 227 of Constitution of India, the petitioner challenges the order dated 30.6.2014 passed by Employees Provident Fund Appellate Tribunal, New Delhi in ATA 814(9) of 2013 modifying the order dated 1.11.2013 passed by Asst. Provident Fund Commissioner, Bandra, Mumbai under section 7-I of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) reducing damages under section 14B to 25%.

3. In the present proceeding, Employees Provident Fund Commissioner by its order dated 1.11.2013 under section 14B of the said Act imposed damages to the extent of Rs.13,48,335/-.

4. Being aggrieved by the said order, respondents preferred Appeal before the Appellate Tribunal. The Appellate Tribunal after considering the financial crises of the respondent and judgment of the Kerala High Court in the matter of M/s. Sreekamakshy Agency (P) Ltd. v. EPFAT decided on 20.12.2012 and judgment of

Madras High Court in the matter of Shanti Garments Pvt.Ltd. v. RPFC, (2003)(1) LLJ 467 (Mad) and judgment of Kerala Hon''ble Court in the matter of Employees'' Provident Fund Organisation v. M/s. Sreekamaksy Agency (P) Ltd., (2013) LLR 833 (Division Bench) held that respondent to pay only 25% damages as imposed by the authority under section 14B.

5. The learned Counsel for the petitioner submits that bare reading of section 14B of the said Act, shows that the Appellate Authority has no right or power to reduce damages once it is imposed under section 14B of the said Act. In support of that contention, he relies on the judgment of Delhi High Court in the matter of Apex Security and Detective Force Pvt. Ltd. v. Central Board of Trustees, EPF Organisation dated 8.5.2013 in Writ Petition (C) 2022 of 2011. He relies on paragraph 14 of the said judgment. On the basis of these submissions and the authorities, the learned Counsel for the petitioner submits that impugned order passed by the Appellate Tribunal dated 30.6.2014 is required to be set aside.

6. On the other hand, the learned Counsel for the respondent submits that the issue involved in the present Writ Petition is already covered by the Division Bench of this court. He submits that appellate authority has power to reduce damages imposed under section 14B of the said Act considering the financial crises of the Company. In support of this contention, he relies on the judgment in the matter of Employees'' Provident Fund Commissioner, Nagpur v. M/s. Manoharbhai Ambalal, (2011)(3) Mh.L.J. 908. Paragraph 5 reads thus:

"5. The learned Single Judge has rejected the contention of the appellant and has came to the conclusion that the Tribunal has been vested with the powers to hear an appeal and must be taken to have been also vested with the power to reduce the damages. We are in agreement with the judgment of the learned Single Judge. Indeed, section 7-I of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") confers power on the Tribunal to hear an appeal and dispose it of in accordance with law, even where the appeal is against an order under section 14B for recovery of damages. It stands to reason that the Tribunal, which is invested with the power to decide an appeal from an order directing recovery of damages and to set aside the order if found illegal, it must be held to have the lesser but equally important power to reduce the quantum of damages. Indeed, there is no dispute that section 7L of the Act which confers power on the Tribunal specifically confers the power to modify, to reduce or annul the order appealed against, including the power to pass such orders thereon as it thinks fit. Section 7-L of the Act reads as follows 7-L. Orders of Tribunal (1) A Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a

view to rectifying any mistake apparent from the record, amend any order passed by it under subsection (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal :

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this subsection, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law."

7. The learned Counsel for the respondent also relies on the Division Bench judgment of this court in the matter of Regional Provident Fund Commissioner v. M/s. Sawant Foods Products Ltd. dated 21.9.2015 in Letters Patent Appeal No.42 of 2014 in Writ Petition No.3218 of 2011. He also relies on the judgment of the Apex Court in the matter of Assistant Provident Fund Commissioner, EPFO and Ors. v. The Management of RSL Textiles India Pvt. Ltd.,. Paragraph 3 of the said order reads thus:

"3. This issue is now wholly covered against the Appellants in the decision rendered by this Court in Mcleod Russel India Limited v. Regional Provident Fund Commissioner, Jalpaiguri and Ors. reported in (2014) 15 SCC 263, wherein it has been held in paragraph 11 that "..... the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages Under Section 14-B, as also the quantum thereof since it is not inflexible that 100 per cent of the arrears have to be imposed in all the cases. Alternatively stated, if damages have been imposed Under Section 14B, it will be only logical that mens rea and/ or actus reus was prevailing at the relevant time."

8. On the basis of these submissions and the authorities, the learned Counsel for the respondent submits that the issue raised by the petitioner in the present petition is already covered by the Division Bench as well as Apex Court and therefore, there is no question of entertaining the present Writ Petition.

9. I have heard both the sides.

10. The main objection raised by the petitioner in the present Writ Petition is that the Appellate Authority cannot reduce quantum of damages imposed under section 14B of the said Act. His contention is that once damages are imposed, that is required to be paid by the company. He submits that there is no question of considering the financial crises of the company at the time of considering the imposition of damages. That is not the case at present. The Division Bench of our Hon''ble Court as well as Apex Court specifically held that at the time of imposing damages, authority have to consider the mens rea as well as financial crises of the company and that is considered by the authority in paragraph 7 and 8 of the

impugned order.

11. Considering these facts, I do not find any substance in the present Writ Petition. Writ Petition stands rejected.

