

(2016) 10 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C). No. 20549 of 2008 (U)

Cochin Malabar Estates and Industries Ltd

APPELLANT

Vs

E.P.F.

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 CLR 492 : (2017) 152 FLR 994 : (2017) LabLR 534 : (2017) 1 LLJ 79

Hon'ble Judges : P.V. Asha, J.

Bench : Single Bench

Advocate : Sri. N.N. Sugunapalan, SC, Smt. T.N. Girija, SC, Sri. Joy Thattil Itoop, SC, for the Respondent No. 2; E.K. Nandakumar, Anil D. Nair, P. Benny Thomas, K.Johan Mathai, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Smt. P.V. Asha, J. - The petitioner is challenging the order Ext.P4 passed by the first respondent-the Employees Provident Fund Appellate Tribunal, on the ground that the Tribunal did not look into the financial condition of the petitioner while directing the payment of 70% of the damages levied by the 2nd respondent.

2. The petitioner is a public limited Company owning tea and rubber plantations in the State of Kerala. According to the petitioner it has been facing severe financial crisis since the year 1998-1999 due to fall in price of tea and rubber. The condition became worse in the subsequent years; certain estates in Peerumedu area stopped functioning; wages could not be paid to its employees during this period. Accordingly there was delay in remitting their contribution to Employees Provident Fund (EPF) during the period from November 2011 to January 2003.

3. By Ext.P2 order, the second respondent thereupon initiated proceedings under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act proposing to levy damages for the delayed payment. Though, on receipt of the

show cause notice, the petitioner explained the difficulties faced by the tea estates in South India generally and in the plantations under it due to which it was unable to make the payments, the 2nd respondent passed Ext.P2 order confirming the proposal and levied damages, directing payment of a sum of Rs.22,64,120/- for the period from 11/01 to 2/03 as penal damages.

4. As against Ext.P2 order, petitioner submitted Ext.P3 appeal before the Appellate Tribunal-1st respondent. In the appeal petitioner pointed out that the delay in remittance was not international, explaining the circumstances beyond the control of petitioner on account of which the remittance could not be made. It was also pointed out that the 2nd respondent did not exercise the discretion to reduce the damages also, referring to the expressions employed in Section 14B of the Act, taking into account the financial crisis faced by almost all the tea and rubber plantations in South India.

5. The Tribunal after hearing the petitioner passed Ext.P4 order and found that the petitioner cannot escape from the liability to pay damages solely on the ground of financial constraints, particularly in circumstances that the petitioner establishment was successfully continuing tea plantation business. However the damages were reduced and directed payment of 70% of the amount assessed by the second respondent. The Tribunal had referred to the judgments of this Court in *Indian Telephone Industries Ltd. v. APFC & Ors.* (2006 [3] KLJ 698 and *M/s. Hindustan Steel Ltd. v. State of Orissa* (AIR 1970 SC253) and found that under Section 14B of the Act there was no power to exercise any discretion in the matter of waiver of damages and under paragraph 32B(c) of the EPF Scheme, the Central Board is empowered to reduce or waive damages, depending on merits, upto 50% of the damages. Referring to the judgment in *Indian Telephone Industries Ltd. v. APFC & Ors.* (supra), the Tribunal observed that this Court had not taken the view that financial crisis is a ground for non-imposition of damages and it cannot be a ground for total waiver of damages. It was thereafter that it found it proper to reduce the damages to 70% of the amount shown in Ext.P1.

6. Respondents have filed a statement in the writ petition stating that the impugned orders do not call for any interference since the discretion was already exercised by the appellate authority reducing the damages to 70%, on consideration of the factual circumstances in the case.

7. I heard the learned counsel for the petitioner and the learned Standing counsel appearing for the respondents.

8. Learned counsel for the petitioner relying on the judgment of this Court in *Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd.* [2013 (3) KLT 790], pointed out that damages was reduced to 25% in the case of the petitioner in that case, which was another Company facing financial crisis as in the case of petitioner herein. In that case that company challenged the proceedings under Section 14B imposing damages, and this Court had reduced the damages to 25% of the damages which was imposed by the respondents. In

that case the judgment of the learned Single Judge was upheld after discussing the provisions under paragraph 32A of the scheme and Sections 14 B and 7Q of the Scheme and it was found that financial constraints is also relevant consideration. In paragraph 18 this Court after discussing various judgment rendered in respect of the imposition of damages under the Scheme held in paragraph 24 as follows:

"24. On the strength of the above discussion we look at the facts of the above case. The reason stated as we have noticed is the severe financial crisis, the plantation industry as such, faced, during the period subsequent to 1998-99. The earlier period of default being 1995-97, as has been placed on record by the respondent company, was period in which this Court had stayed the payment of contribution. This aspect was not taken into account either by the Appellate Tribunal or the authorised officer. We would have normally send it back for consideration to the authorised officer but for the passage of time and the futility in remanding for "de novo" consideration the imposition of penalty relating to a decade back. It is not in dispute that the respondent company had been prompt in the earlier periods and such promptness was displayed after the company came out of its financial travails. That was held to be a mitigating circumstance even in the pre-amendment period as is clear from the extracted paragraph (supra) of Hindustan Times Limited's case. We also notice that the respondent company has paid the contributions as also discharged its liability under Section 7Q of the Act. Learned Senior counsel appearing for the respondent company also points out that the penalty imposed on them, as is evident from the calculation of damages provided by the Organisation, is at the earlier higher rates stipulated in the sliding table under paragraph 32 A of the scheme."

9. It can be seen that this Court had taken note of the financial crisis faced by the plantation industry in the State, during the period subsequent to 1998-99 and it was found that the Tribunal had not considered the circumstances under which the default happened to occur and also the fact that the Company had already paid the contributions when it started operation. According to the learned counsel for the petitioner the circumstances arising in this case are identical. The petitioner has produced Ext.P1 order dated 29.06.2007 issued by the Ministry of Commerce and Industry with respect to a rehabilitation package for closed tea gardens. This letter is issued subsequent to Ext.P4 order passed by the Tribunal. However it refers to the condition of the estate for the period prior to the date of the order. It is the case of the petitioner that payment was being made promptly when the petitioner was functioning normally. And going by the dicta laid down by this court in the judgment (supra), the damages levied on petitioner also should have been reduced. It is seen that the Tribunal did not have the occasion to take note of the seriousness of the financial crisis in the background of the rehabilitation scheme, framed by Central Government to revive the closed tea gardens communicated as per Ext.P1 letter on 29.6.2007. It did not have the occasion to consider the impact of the judgment (supra).

10. In the above circumstances, the matter is remitted to the 1st respondent Tribunal for re-consideration, for which the order Ext.P2 to the extent it reduced the damages only to 70% shall stand set aside. The petitioner is free to produce additional documents, if any, in support of its contentions in the appeal. The Tribunal shall pass fresh orders in the appeal Ext.P3 after hearing both sides.

11. Writ Petition is disposed of as above.