
(1994) 07 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 2206 of 1987

Darjeeling Dooars Plantation Ltd. and Another	APPELLANT
Vs	
Regional P.F. Commissioner and Others	RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17B

Citation : (1995) 70 FLR 573 : (1995) 1 LLJ 939

Hon'ble Judges : P.K. Majmudar, J;N.K. Bhattacharya, J

Bench : Division Bench

Advocate : Dilip Kumar Dhar, R.P. Mukherjee and K. Mondal, for the Appellant;
Ram Chandra Prasad, for the Respondent

Final Decision : Allowed

Judgement

Nripendra Kumar Bhattacharya, J.—The present appeal is directed against the judgment and/or order dated May 2, 1988 passed in Matter No. 2206 of 1987 by the Hon"ble Mr. Justice Babulal Jain, J. discharging the rule and vacating the interim orders.

2. In their writ petition before the trial Judge the writ petitioner alleged that the petitioner No. 1 purchased Bundapani Tea Estate from Ramjhore Tea Estate and all the right, title and interest of the said Tea Estate Co. Ltd. vested in petitioner No. 1 with effect from January 1, 1975. Since then the petitioner No. 1 has been running the said Tea Estate. The petitioner No. 1 received a notice dated March 18, 1986 from respondent No. 1, Regional Provident Fund Commissioner, West Bengal, directing the petitioner to show cause as to why damages are not to be levied for default in payment of the dues to the provident fund for the month of September, 1968 to November 1968, March 1970 to January 1973 and May 1973 to February 1974. The said notice is u/s 14-B of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (which term will be referred to hereinafter as the Act).

3. The notice and or letter has been annexed to the writ petition as Annexure B. The Manager of the petitioner No. 1 by a letter dated March 31, 1986 informed the respondent No. 1 that the matter relates to pre-purchase period and the present management of the petitioner No. 1 was in no way responsible for such payment of dues so all correspondences regarding the same should be made, with M/s. Ramjohre Tea Estate Co. Ltd. at 36A Metcalf Street, Calcutta.

4. The Respondent No. 1 by its letter dated April 10, 1986 indicated to the petitioner No. 1 that as u/s 17B of the Act the employer and any person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under the provision of the Act or the scheme as the case may be in respect of the period up to date of such transfer, the petitioner No. 1 was requested to appear before that authority on April 17, 1986. The said letter is annexed to the writ petition as Annexure C. Thereafter the hearing was adjourned from time to time.

5. Thereafter the petitioner No. 1 received a letter and/or notice from respondent No. 2 dated September 3, 1986 intimating that u/s 17B of the Act the liability to pay the amount of damages is with person to whom the establishment is transferred. Accordingly, the damages as may be levied u/s 14B are to be paid by the petitioner No. 1.

6. In the writ petition the petitioner prayed for writ of mandamus for a command upon the respondents to withdraw cancel and or to set aside the said notice dated March 18, 1986 issued by the respondent No. 1 and the letter dated September 3, 1986 issued by the respondent No. 2.

7. A rule was issued upon the writ application. The trial Judge while discharging the rule and vacating the interim orders by his judgment and order dated May 22, 1988 inter alia observed:

"In my opinion, the liability u/s 14-B of the said Act is covered within the meaning of the expression other sums due from the employer under any provisions of this Act" as used in Section 17-B of the said Act. By virtue of the said Section the petitioner No. 1 as jointly as well as severally liable along with his seller and the Provident Fund Commissioner had the option to proceed against both or either of them. It is for the petitioners to find out as to whether the petitioner No. 1 had obtained any indemnity from his seller as against such liabilities arising to the petitioner No. 1 for any periods prior to the date of the purchase. That matter as between the petitioner No. 1 and its sellers is to be governed by the terms of the contract of purchase and/or its interpretation. So far as the Provident Fund Authorities are concerned by virtue of the said Section 17-B they are at liberty to proceed even against the petitioner No. 1 alone who claims to be the present owner of the tea estate.

By this application the petitioner no. 1 has sought to challenge the three notices dated March 18, 1986 being Annexure-B to the petition, the notice dated April 10, 1986 being Annexure-C to the petition and also the notice dated September

3, 1986 being Annexure-I to the petition and/or the orders and/or the decisions contained therein.

In my opinion the Provident Fund Commissioner was and is entitled to proceed against the existing owner even though the obligation relates to the period prior to the effective date of purchase, by virtue of Section 17-B of the said Act. In that view of the matter, I do not think that there are any merits in this application."

8. Being aggrieved by that judgment and/ or decision of the trial Judge the petitioners preferred this appeal. In connection with the appeal a stay application has been filed praying for stay of operation of the order of the trial Court and stay has been granted staying the operation of the order of the trial Court.

9. The learned counsel Mr. Dhar contended for the appellant that Section 14-B envisages that a hearing should be given to the employer before levying and recovering the damages regarding default in payment of any contribution to the fund (the family Fund or the Insurance Fund,) or in the transfer of accumulations required to be transferred by him, under sub or Sub-section (2) of Section 15 or Sub-section (5) of Section 17 or in the payment of any charge payable under any other provisions of the Act or of any Scheme or Insurance Scheme or under any of the conditions specified u/s 17.

10. Mr. Dhar contended that a notice u/s 14-B is contemplated to be served upon the employer. In that section there is nothing to show that section contemplates any transfer of the establishment and any notice upon the transferee on such transfer. Mr. Dhar further submitted that Section 14-B of the Act is confined to a period before transfer, if there is any such transfer, and as such it also contemplates a notice forbearing upon the employer only before transfer of the establishment. He also contended that the expression "other sums due" as used in Section 17-B of the Act must be a quantified sum after ascertainment. He submitted that unless and until the sum is ascertained and quantified no demand can be raised upon the person to whom the establishment is so transferred. He contended further that till the "other sums due" is ascertained and quantified no demand can be made from the person to whom the establishment is so transferred. According to Mr. Dhar the notice u/s 14B as has been served upon the petitioner is illegal and is not warranted by law and as such the same is liable to be quashed.

11. Mr. Prasad on the other hand contended for the respondents that u/s 17-B of the Act the liability runs jointly and severally with the employer or the person to whom the establishment is transferred to pay the contribution and "other sums due" from the employer. He also contended that in order to ascertain their liability regarding the "other sums due" a hearing is necessary in presence of the employer or the person to whom the establishment is so transferred mat the "other sums due" can be ascertained and quantified and after such ascertainment and quantification of the amount the demand can be raised jointly

upon the owner and the other person to whom the establishment is so transferred or from either of them. He contended further that accordingly a notice u/s 14-B of the Act can be served also upon any person to whom the establishment is so transferred.

12. With anxiety and patience we have heard the submissions of the learned counsels for the parties. We are unable to accept the contention of Mr. Prasad for the following reasons.

13. Section 14B of the Act reads as follows:-

14B. Power to recover damages - Where an employer makes default in the payment of any contribution to the Fund, the Family Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under Sub-section (2) of Section 15 or Sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages not exceeding the amount of arrears as may be specified in the Scheme.

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Sub-section (2) of Section 15 reads as follows:-

"15. Special provision relating to existing provident funds - (2) On the application of any Scheme to an establishment, the accumulations in any provident fund of the establishment standing to the credit of the employees who become members of the Fund established under the Scheme shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund."

Sub-section 5 of Section 17 runs as under: -

"17. Power to exempt (5) Where any exemption granted under Sub-section (1-A), Sub-section (1-C), Sub-section (2), Sub-section (2-A) or Sub-section (2-B) is cancelled, the amount of accumulations, to the credit of every employee to whom such exemption applied, in the provident fund, the family pension fund or the insurance fund or the establishment in which he is employed together with any amount forfeited from the employer's share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service shall be transferred within such time and in such manner as may be specified in the Scheme or the Family Pension Scheme or the Insurance Scheme to the credit of his account in the Fund or the Family Pension Fund or

the Insurance Fund, as the case may be."

According to the definition as in Section 2(e) of the Act, "employer" means-

"(i) in relation to an establishment which is a factory the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948) the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager managing director or managing agent."

Section 17-B of the Act reads as under:

"17-B. Liability in case of transfer of establishment - Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period upto the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

14. A plain reading of Sections 14B, 15(2), 17(5) clearly indicates that the said Sections contemplate a period and or stage prior to any transfer of the establishment. Section 17-B of the Act on the other hand contemplates a stage post transfer. The same will be evident from the use of the expression "the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay contribution and" other sums due "from the employer". So that expression "the employer and other persons to whom the establishment is transferred", clearly indicates that the transferee does not come within the meaning of the employer as in Section 2(e) of the Act. u/s 17-B of the Act the transferee is "the other person". So there is a distinction between "employer" and "the other person". "The other person" comes only after transfer of the establishment either in whole or in part. Transfer of the establishment is contemplated u/s 17-B of the Act. The sections prior to that in the Act does not contemplate, either the transfer of the establishment or "the other person". Section 17-B does not contemplate any hearing of "the employer" and "the other person" or either of them. But Section 14-B contemplates a hearing of "the employer". The absence of the expression "the other person" in Section 14-B clearly shows that it is a stage prior to the transfer of the establishment. In other words Section 14B contemplates in its proviso notice upon "the employer", and

not upon "the other persons". The three notices dated March 18, 1986 (Annexure "B" to the petition), dated April 10, 1986 (Annexure "C" to the writ petition) and September 3, 1986 (Annexure "D" to the writ petition) are for the period from the month of September, 1968 to November 1968, March 1972 to January 1973 and May 1973 to February 1974. The said period is prior to the transfer of the establishment to petitioner No. 1. The transfer was effected from January 1, 1975. So in view of our discussion above notice u/s 14-B for the purpose of hearing of the employer is to be given upon "the employer" and not upon "the person to whom the establishment is so transferred". In the instant case the person as contemplated in Section 17-B of the Act is the present petitioner 1. So no notice u/s 14B can be served on him. The stage of Section 17B has not yet arrived. The "other sums due" has not yet been ascertained and quantified. Unless and until such sum due is ascertained and quantified which liability of the transferee shall be limited to the value of the estates obtained by him by such transferee, no demand can be raised on the transferee, in the instant case the petitioner.

15. In that view of the matter we quashed the notices dated March 18, 1986 (Annexure B to the writ petition), dated April 10, 1986 (Annexure C to the writ petition) and September 3, 1986 (Annexure D to the writ petition). The appeal is accordingly allowed. The judgment and/or order under challenge is hereby set aside. All interim stay, if any, stand vacated. We make it clear that this will not preclude the respondents from proceeding against the petitioners according to law.

Learned Counsel for the respondents prays for stay of operation of this order. Such prayer for stay is refused.

All parties shall act on a signed copy of the minutes of the operative part of this judgment upon usual undertaking.

Prabir Kumar Majundar. J.

I, agree.