

(2012) 07 CAL CK 0216
In the Calcutta High Court
Case No : Writ Petition No. 19719 (W) of 2004

DBLAB Limited

APPELLANT

Vs

Employees" Provident Fund Organisation and Another

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7I
Employees State Insurance Act, 1948 — Section 85B

Citation : (2012) 07 CAL CK 0216

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Partha Bhanja Choudhuri, Mr. Anant Kumar Shaw, Mr. Sabyasachi Mukhopadhyay, Mr. Maninak Chakraborty, Mr. Puspall Chakraborty and Mr. Sanjay Sammadar, for the Appellant; S.C. Prasad, for the Respondent

Judgement

Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art.226 dated December 6, 2004 is questioning an order of the Regional Provident Fund Commissioner-II, West Bengal, the A & N Islands and Sikkim. A copy of the order was forwarded to the petitioner by a memo dated November 24, 2004 (WP p.51). The order was passed under s.14B of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952. The Commissioner initiated the s.14B proceedings by issuing a notice dated June 16, 2004 (WP p.20). With the notice details to show how the employer was in default on contributions, etc. were provided to the petitioner. The amounts proposed to be levied were also mentioned in the statement.

2. The petitioner participating in the proceedings and not disputing that there was delay in depositing the contributions, etc. for March 1983 - February 2000 defended itself citing collapse of business, sick condition of the company, and laches on the part of the previous management during March 1983 - June 1986.

Its case was that it took over the management only in May 1988. These were stated in its reply dated August 16, 2004 (WP p.35).

3. After hearing the authorised representative of the employer and considering the submissions and the case stated in the reply, the Commissioner passed the order levying Rs. 50,669 damages. The provisions of s.7I of the Act entitled the petitioner to appeal against the order to the Tribunal. It did not appeal. It questioned the order by filing this WP without stating why it chose not to appeal.

4. By an order dated January 28, 2005 the WP was admitted and an interim order was passed according to prayer (h). By the interim order the respondents were restrained from taking any step on the basis of the impugned order and also from initiating any criminal proceeding against the petitioner.

5. Mr. Bhanja Chaudhuri appearing for the petitioner has argued as follows. Existence of mens rea or actus reus to contravene the provisions of Act and the schemes was a pre-condition for levying damages under s.14B of the Act. For contravention, if any, committed by the past management the present management could not be held guilty. In any case, the proceedings were initiated illegally, because the arrears had been paid before they were initiated.

6. Mr. Bhanja Choudhuri has relied on the Supreme Court decision in Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another, for the mens rea or actus reus proposition, and a large number of Single Bench and Division Bench decisions of this Court and other High Courts in support of the existence of arrears proposition and his submission that, on the facts, the Commissioner ought to have considered the question of waiving the penalty.

7. Mr. Bhanja Chaudhuri was given opportunity of considering the Supreme Court decision in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, . After considering the decision he has said that it was given considering the provisions of s.14B existing before 1991 only when the word "penalty" was inserted therein. He has also said that contributions not collected by the past management were collected by the present management long after the due dates.

8. In Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, damages were levied under s.14B of the Act. The employer contended that since there was no intentional delay in depositing the contributions, damages could not be levied.

9. The Supreme Court considered the provisions of s.14B and held that the provisions of the section permitted levy of damages for delay in depositing contributions, etc. It was held that once an employer is in arrears with the contributions, etc., s.14B steps in and calls upon the employer to pay damages by way of penalty; and that the Commissioner given the discretion only to reduce the percentage of damages, had no power to waive the penalty altogether.

10. The admitted position is that in none of the decisions relied on by Mr. Bhanja

Chaudhuri the law stated by the Supreme Court in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, 5 was noticed.

11. Hence the Single Bench and Division Bench decisions of this Court and other High Courts that the s.14B proceedings cannot be initiated unless the arrears exist at the date they are initiated, and that on the facts of a given case damages can be waived, cannot be accepted as stating the correct position of law. The decision of the Supreme Court is very clear that damages under s.14B can be levied for delay in depositing contributions, etc., and that the Commissioner has no power to waive the penalty altogether.

12. The decision of the Supreme Court in Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another, was given in the context of s.85B of the Employees' State Insurance Act, 1948. The decision in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, was not considered in that case.

13. Hence even though the provisions of s.85B of the Employees' State Insurance Act, 1948 and s.14B of the Employees' Provident Funds and Miscellaneous Provisions in Act, 1952 are pari materia, I am unable to accept that the principles stated in Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another, can be read to dilute the effect of the principles stated in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others,

14. I am, therefore, unable to accept that in the absence of proven mens rea or actus reus to contravene the relevant provisions of law by the employer, penalty cannot be levied from him under s.14B of the Act. Insertion of the word "penalty" in s.14B in 1991 does not make any difference; for even before 1991 damages levied thereunder were treated as penalty, and it is evident from the decision in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, For these reasons, I dismiss the WP. No costs. Certified xerox.