

(2017) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : W.P. No. 7979 of 2016

Employee Provident Fund Authority	Vs	APPELLANT
D.M. Wollen Mills Pvt. Ltd.		RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
Section 7A, Section 7I, Section 7Q

Citation : (2017) LabLR 278

Hon'ble Judges : Mr. P.K. Jaiswal and Mr. Virender Singh, JJ.

Bench : Division Bench

Advocate : Sri Ravi Hegde, Advocate, for the Respondent; Sri N.M. Hansi, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Virender Singh, J. - Shri Pankaj Jain, learned counsel for the petitioner. Heard on the question of admission.

This writ petition under Article 227 of the Constitution has been filed by the Employee's Provident Fund Organization against the order dated 26/07/2016, passed by the Employees' Provident Fund Appellate Tribunal, New Delhi by which appeal filed by the respondents under Section 7-I of the Employees'

Provident Funds & Miscellaneous Provisions Act, 1952(in short ... "the Act") has been allowed.

2. Brief facts of the case are that the respondent/establishment is a Company registered under the Companies Act, 1956 and operation of the establishment is closed since 2007, on account of acute shortage of working capital. Due to recession in the market, respondent/establishment turned into a sick unit. An application under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act 1985 before the Board of Industrial and Financial Reconstruction

(BIFR) was registered in the year 1989 and lastly respondent/establishment was declared as sick industrial company. Due to late payment of funds contribution for the period from March 1999, to November 2014, the petitioner has imposed damages and interest by order dated 16/09/2015. The respondent challenged the said order by filing appeal on the ground that no adjudication has been made as to ground for imposing maximum damages under Section 14-B of the Act. The proceedings under Section 14-B of the Act is an adjudicatory one, imposition of maximum penalty cannot be mandatory.

3. To support the aforesaid ground, he cited a Full Bench decision of the Delhi High Court in the case of Roma Henny Security Services Pvt. Ltd. v. Central Board of Trustees, EPF Organisation through Assistant PF Commissioner, Delhi (North) (2013) 1 LLJ 29 Del., upholding the law laid down by the Division Bench of Delhi in System & Stamping & Anr. v. Employees" Provident Appellate Tribunal & Ors. (2008) 2 LLJ 939.

4. Learned Tribunal considering the fact that petitioner passed the impugned order not on the basis of earlier table continue to govern the assessment. The Tribunal was of the opinion that the establishment is not entitled for waiver of entire damages. Some leniency is to be given to the respondent / establishment and further petitioner/department should also be reasonably compensated so that the purpose of act should not be frustrated and assessed 25% of the assessed damages on the respondent/establishment along with assessed interest. It is this order which has been impugned in the present writ petition.

5. The petitioner contended that the EPF Act is meant to provide social and financial security to the downtrodden section of the society at the time of their retirement, death during service, medical treatment, etc. The EPF Act is a social welfare legislation which cannot be done away with and strict adherence to its provisions is mandatory. Under this Act, the employer is duty bound to make the Provident Fund contributions on time and in case of any default, the employer is liable to pay damages. Any delay in payment of the amount under Section 6 of the EPF Act causes a loss to the beneficiaries of the scheme and, therefore, damage that is sought to be recovered from the employer is for the purpose of indemnifying the beneficiaries for the loss that they have suffered. It is also contended by the petitioner that the respondent was duly afforded opportunities of representation at the time of passing of impugned order by the petitioner. The decision of the Apex Court has been cited by the petitioner in the matter of Organo Chemical Industries and another v. Union of India & Ors. [1979 (2) LLJ 0416] wherein it has been held that habitual defaulters such as respondent / establishment cannot be allowed to claim for any benefit of leniency.

6. Learned counsel for the petitioner has submitted that in the case of Roma Henny Security Services Pvt. Ltd. (Supra), the establishment did not challenged the damages. Apart from that in para - 4 of the order in the said case, it was observed by the Delhi High Court that establishment has also paid damages and, therefore, direction to calculate damages as per order of the said case could not

be given. It is also submitted that SLP is pending before the Apex Court against the order passed in Roma Henny Security Services Pvt. Ltd.(Supra). It is also pointed out that the amendment in respect of damages @ 5%, 10%, 15% and 25% has been incorporated in the year 2008. Only prior to 2008, damages @ 17%, 22%, 27% and 37% were applicable. He lastly submitted that Section 14B was introduced in the Act to provide for deterrent effect to the employees not complying with the contribution of the Act and the learned Tribunal without considering the aforesaid, passed the impugned order. Para 7 to 9 of the order passed by the learned Tribunal on 26/07/2016 is as under :

7. In case law titled as Roma Henny Security Services Pvt. Ltd. v. Central Board of Trustees, EPF Organisation through Assistant PF Commissioner, Delhi (North) (Supra), it is held by Hon"ble High Court of Delhi that up to 26/09/2008 the earlier table continue to govern the assessment, which included the element of interest under Section 7Q of the Act prevail and from 26.09.2008 onwards the damages and interest are segregated. In case in hand, more than half of period of assessment is before 26.09.2008 so respondent was supposed to assess the dues on the basis of earlier table, which included element of interest under Section 7Q of the Act.

8. Admittedly respondent passed impugned order not on the basis of earlier table continue to govern the assessment. Respondent calculate the dues applying maximum rates of 17%, 22%, 27% and 37%. Further respondent also assessed separately, interest under section 7Q of the Act so respondent was duty bound to apply rates applicable 5%, 10%, 15% and 25%. As respondent not carried out its obligation within the declared line so impugned order of respondent is to go. It is noted that respondent not dealt with the mitigating circumstances as alleged by appellant. In case in hand no mens rea for delayed payment proved on case file.

9. Keeping in view all the circumstances of the case, this Tribunal reached at a firm opinion that appellant establishment is not entitled for waiver of entire damages. Simultaneously this Tribunal also reached at a considered opinion that some leniency is to be given to the appellant establishment and further respondent department should also be reasonably compensated so that the purpose of act should not be frustrated. Therefore, the interest of justice would be met by imposing of 25% of the assessed damages on the appellant establishment along with assessed interest. (As appellant is duty bound to pay entire assessed amount of interest which cannot be reduced). In terms of the above, the present appeal is allowed and impugned order is hereby set aside. Any amount deposited by appellant against impugned order shall be adjusted. Copy of this order be sent to both the parties. File be consigned to record room after due compliance.

10. Considering the fact that the respondent/establishment declared as sick industrial company and so also looking to the financial condition of the establishment in the interest of justice imposed damages @ 25% along with

assessed interest, we are of the view that the tribunal is in power to reduce the damages. Under Section 14B of the Act, the maximum damages that can be levied are upto 100% assessed by the authority. Thus, the Tribunal has not committed any irregularity or illegality in passing the impugned order. No case to interfere with the well reasoned order passed by the Appellate Tribunal, as prayed by the authority is made out.

11. The writ petition filed by the petitioner under Article 227 of the Constitution of India has no merit and is, accordingly, dismissed.