(2014) 10 KL CK 0146

In the High Court Of Kerala

Case No : Writ Appeal No. 1338 of 2014

Employees Provident Fund Organisation APPELLANT

Vs

BPL Limited RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

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

Citation : (2014) 10 KL CK 0146

Hon'ble Judges : P.D. Rajan, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Thomas Mathew Nellimoottil, SC, P.F, Advocate for the Appellant; M. Gopikrishnan Nambiar, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—BPL Limited (the first respondent in the Writ Appeal and the petitioner in the Writ Petition) defaulted in payment of the employer''s contribution to the employees'' provident fund within time. The Company paid the contribution later, but delay occurred. The contribution payable was for the period from April 2003 to August, 2004.

2. As per Ext. P3 order dated 18.2.2005, the Assistant Provident Fund Commissioner, Calicut imposed a penalty under Section 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'') read with para 32A of the Employees'' Provident Funds Scheme. It is submitted that depending upon the extent of delay, the penalty varied from different periods and the maximum penalty imposed was 37%, the maximum provided under para 32A of the Scheme then in force. Challenging Ext. P3 order, BPL Limited filed appeal before the Employees Provident Fund Appellate Tribunal. The Tribunal dismissed the appeal as per Ext. P5 order dated 8.12.2010. BPL Limited approached this Court in W.P. (C) No. 7698 of 2011 challenging Exts. P3 and P5 orders. The learned single Judge, by the judgment dated 20.2.2013, reduced the damages to 25% of the amount assessed under Section 14B. The judgment of the learned single Judge is challenged in this Writ Appeal by the

Employees Provident Fund Organisation.

3. It is well settled that the assessing authority has discretion in imposing damages by way of penalty under Section 14B of the Act read with para 32A of the Scheme. It is also well settled that various factors which disabled the assessee from paying the dues within the prescribed time is also a relevant factor to be taken into account. The authorities below mechanically imposed damages by way of penalty without properly applying their mind and it is evident on a perusal of Exts. P3 and P5 orders. The learned single Judge held that there was unprecedented financial crisis in the electronic industry at the relevant time and that discretion should be exercised to reduce the penalty by way of damages under Section 14B of the Act.

4. In the Writ Petition, it is stated that BPL Limited is a public limited company which was engaged in manufacture of televisions and other electronic items. The colour television business of BPL Limited, which was an integral part of its entire operation faced stiff competition from the various international brands entering the Indian market and, as a result, the company had to stop the manufacture of colour televisions during the year 2005. It is further stated that the Company incurred a loss of 214.58 crores for the period of eighteen months ending 30.9.2003. It is stated that during the period 2000-2001 to 2003-2004, the Company passed through one of the worst financial crisis in its 42 years of operation. The details from the audited Profit and Loss Account of the Company for the said period were furnished in the Writ Petition. On account of adverse financial condition, the Company delayed payment of wages to its employees, as a result of which, there was delay in remittance of contribution. The Company (BPL Limited) filed a detailed reply to the notice issued by the assessing authority. The Company also produced records like Balance Sheet and Profit and Loss Account in order to show that the Company was incurring huge financial loss. It is contended that the assessing authority did not properly consider the objections filed by BPL Limited and the contentions put forward by them. There is no finding that the Company (the employer) was guilty of contumacious conduct or had acted dishonestly or in utter disregard of statutory provisions. It is also pointed out in the Writ Petition that in similar appeal petitions, the numbers of which have been furnished, filed by the Company challenging similar orders under Section 14B of the Act, damages by way of penalty was assessed by the Appellate Authority at 22% inclusive of interest. That order was produced as Ext. P6 in the Writ Petition. The writ petitioner further stated in the Writ Petition that provident fund contributions are being remitted on a regular basis thereafter.

5. None of the materials produced by the writ petitioner was taken into account by the authorities below. The learned single Judge thought it fit to reduce the penalty to 25% of the penalty assessed by the authorities below.

6. In Harrisons Malayalam Ltd. Vs. The Regional Provident Commissioner and Others, , a learned single Judge of this Court held: (1) Merely because there is delay in payment of contributions, liability to pay damages does not arise

automatically, but the same shall be decided by applying mind objectively to the merits of each case and not by resorting to mere arithmetic calculation of damages as per the structured formula under para 32A of the Scheme; (2) Para 32A of the Scheme serves only as a guideline for imposition of damages and it is not a structured formula of invariable application in all circumstances without reference to the reasons for delay. Para 32A is purely in the nature of guidelines and not a rigid formula; (3) By the Amendment of 1988, the compensatory portion in Section 14B was segregated making Section 14B purely punitive, leaving the compensatory part of damages under the unamended Section 14B to be taken care of by the newly introduced Section 7Q; (4) The fact that the Company was in dire financial straits and the wages of the employees, from which the employees'' contribution had to be deducted and paid, had not been paid to the workmen, for whose benefit the Act itself was enacted, were relevant considerations which had to be taken into account by the assessing authority while quantifying the damages under Section 14B; (5) The facts that for the past, the assessee was prompt in payment of contributions and for the current period, the employer is prompt in payment of the provident fund contribution are certainly factors which are relevant in the matter of quantification of damages under Section 14B; (6) An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation.

7. The judgment of the learned single Judge in Harrisons Malayalam Ltd. Vs. The Regional Provident Commissioner and Others, was confirmed by the Division Bench in Regional Provident Fund Commissioner Vs. Harrisons Malayalam Ltd., .

In the light of the settled principles as mentioned above, it cannot be said that the view taken by the learned single Judge is erroneous or unsustainable. We do not find any ground to interfere with the judgment of the learned single Judge. The Writ Appeal is, accordingly, dismissed.