

(2006) 05 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) 3401 of 2006

Hello Mineral Water P. Ltd.

APPELLANT

Vs

Assistant P.F. Commissioner

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

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

Citation : (2006) 05 DEL CK 0207

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Atul Nanda, Rameez Hakan and S.K. Arora, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Disposed Off

Judgement

Gita Mittal, J.—Inter alia, by this writ petition the petitioner has challenged the jurisdiction of the Regional Provident Fund Commissioner to impose interest u/s 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in addition to a levy of damages u/s 14B of the enactment. It is contended that Section 7Q merely prescribes the rate of interest which is to be levied which is a factor to be considered while exercising jurisdiction u/s 14B and does not enable the concerned official to impose or levy interest over and above what has been assessed as damages u/s 14B. The submission Therefore is that the interest component, is at the most, a constituent of what may be considered while arriving at an appropriate figure of damages which a party may be called upon to pay u/s 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1957. The factors which may be considered to constitute the penalty which may be imposed on a party u/s 14B of this statute fell for consideration before the Apex Court in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, where the court held that the penalty could constitute of the following three factors : (a) the loss of interest to the employees account ; (b) penalty and; (c) administrative charges.

2. Based on this submission, it is contended that the impugned order dated 12th May, 2005 passed against the petitioner imposing damages to the extent of Rs. 28,20,811/- u/s 14B of the statute and an additional liability of interest u/s 7Q to the extent of Rs. 8,91,142/- is wholly without jurisdiction.

3. The petitioner has submitted that in view of the challenge to the impugned order being passed on a lack of jurisdiction, an objection to the maintainability of the writ petition on the ground of availability of the alternative remedy of a statutory appeal u/s 7I of the Employees Provident Fund and Miscellaneous Provisions Act would be without substance. In this behalf, the petitioner has placed reliance on several pronouncements of the Apex Court including *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, 7 Judges decision in the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, *Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another*, *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, *Union of India (UOI) and Another Vs. State of Haryana and Another*, *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, *Ram and Shyam Company Vs. State of Haryana and Others*, *Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another*, *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, *Union of India (UOI) and Another Vs. State of Haryana and Another*, *STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS*, (2001) 10 SCC 740, *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, and *Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others*, .

4. In my view, the issues raised by the petitioner require consideration. Issue notice to the respondent to show cause why rule nisi be not issued. Mr. R.C. Chawla, Advocate accepts notice and prays for time to file a reply. Let reply, if any, be filed within six weeks. Rejoinder thereto may be filed before the next date of hearing.

5. List this matter before the Registrar (Administration) for completion of pleadings on 21st August, 2006.

CM No. 2940/2006

Issue notice.

6. Mr. R.C. Chawla, Advocate accepts notice.

7. It is contended on behalf of the petitioner that the petitioner has since deposited a sum of Rs. 11 lakh with the respondent on account of the demand raised by the respondents vide the impugned order dated 10th May, 2006,

subject to the petitioner depositing the remaining amount out of Rs. 28,20,811/- which has been assessed by the respondent towards the damages u/s 14B of the Employees Provident Fund and Miscellaneous Provisions Act and furnishing security for the amount of Rs. 8,91,142/- which has been assessed as the interest liability of the petitioner u/s 7Q of the enactment to the satisfaction of the Registrar of this court within a period of our weeks from today, there shall be a stay of recovery by coercive measures pursuant to the order dated 10th May, 2005.

8. The respondent shall keep this amount of Rs. 28,20,811/- in a fixed deposit receipt till disposal of the writ petition and appropriate orders in this behalf shall be passed at the time of final disposal. Learned counsel for the parties submit that this application can be disposed of in the above terms. It is ordered accordingly.