

(2006) 04 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petition No. 11090 (W) of 2004

Hooghly Mills Company Limited and Another

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14,
14(1A), 14B, 15(2), 17
Representation of the People Act, 1951 — Section 7(1C)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (2006) 3 CALLT 587 : (2006) 3 CHN 749 : 111 CWN 710 : (2006) 3 LLJ 721

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Partha Sengupta, Souniya Majumdar and Sudeshua Bagchi, S. Sengupta, for the Appellant; Sambuddha Chakraborti, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The petitioners have challenged the legality and/or validity of the order dated 9th June, 2004 passed by the Regional Provident Fund Commissioner (II), West Bengal, Sikkim and Andaman & Nicobar Islands determining damages u/s 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 on account of delayed payment of the petitioners' dues for various periods between October, 1999 to October, 2000 and from November, 2000 to July, 2002.

2. Admittedly by a Notification dated 23rd December, 1967, the Central Government in exercise of the powers u/s 17(1)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) granted exemption to the said Company subject to the conditions specified in Schedule II annexed to the said Notification. By virtue of the said exemption, the provisions of the Employees' Provident Fund Scheme, 1952 framed u/s 5 of

the said Act does not apply to the petitioners" company which framed a scheme creating a trust, and a Board of Trustees for management of the Trust Fund. It is also an admitted position that the petitioners" company is still enjoying the said exemption.

3. Admittedly the petitioners" company could not pay its provident fund dues for various periods during October, 1999 to October, 2000 and from November, 2000 to July, 2002 within due date.

4. Accordingly, damages u/s 14B of the said Act was levied upon the petitioners on such delayed payment of provident fund dues in accordance with the provisions of Para 32A of the Employees" Provident Fund Scheme, 1952, Para 5(1) of the Employees" Pension Scheme, 1995 and Para 8A of the Employees" Deposit Linked Insurance Scheme, 1976.

5. The order of imposition of such damages which was passed by the Regional Provident Fund Commissioner-II on 9th June, 2004 is under challenge in this writ petition.

6. Mr. Partha Sengupta, learned Advocate, appearing for the petitioners, challenged the propriety of the said order on various grounds.

7. Mr. Sengupta complained that sufficient opportunity of hearing was not given to the petitioners in connection with the said proceeding. Mr. Sengupta further complained that the basis of the calculation and/or the details thereof, has not been supplied to the petitioners and as a result thereof the petitioners are unable to verify the correctness of such determination.

8. Mr. Chakraborty, learned Advocate, appearing for the Provident Fund authorities, refuted the said submissions of Mr. Sengupta by submitting that in spite of giving sufficient opportunity, the petitioners did not appear in connection with the said proceeding on 11th May, 2004 and on 28th May, 2004. As a result, the concerned authority had to determine the quantum damages payable by the petitioners ex parte. The allegation to the effect that details of such calculation were not given to the petitioners, was also denied by the Provident Fund authorities. Mr. Chakraborty pointed out from the impugned order itself that the details of the calculation were given to the petitioners along with the impugned order.

9. Mr. Chakraborty further submitted that even the representation which was submitted by the petitioners on 28th May, 2004 claiming waiver of damages, was considered by the Regional Provident Fund Commissioner at the time of passing the impugned order. As such, the petitioners cannot have any grievance against the said determination,

10. In view of the aforesaid submission of Mr. Chakraborty which is also supported by the materials on record, this Court does not find any substance in the aforesaid submissions of Mr. Sengupta.

11. Apart from the aforesaid grounds of challenge, Mr. Sengupta raised a very interesting and serious question with regard to the extent of applicability of Section 14B of the said Act in case of delay in payment of contribution by an establishment enjoying exemption u/s 17(1)(a) of the said Act.

12. By referring to Section 17 of the said Act, Mr. Sengupta submitted that in exercise of the power u/s 17 of the said Act, the appropriate Government may grant exemption from operation of all or any of the provisions of the Employees' Provident Fund Scheme, 1952 to an establishment subject to satisfaction of the conditions as contained in clauses (a) and (b) thereunder in consultation with the Central Board.

13. Mr. Sengupta pointed out from Section 17 of the said Act that the said provision does not authorize the appropriate Government to grant exemption from operation of any of the provisions of the said Act. Thus, all the provisions of the said Act remain operative even in case of an exempted establishment.

14. Mr. Sengupta contended that Section 17(1A) which was introduced in the said Act with effect from 1st October, 1988 by the Amending Act 33 of 1988 gives certain relaxation to the exempted establishment with regard to applicability of certain provisions of the said Act, viz., Sections 6, 7A, 8 and 14B in case of its default in complying with the provisions of the said Act and/or the conditions specified in the notification granting such exemption to the establishment. By emphasizing much stress on the expression "so far as may be", Mr. Sengupta submitted that by using the said expression in Section 17(1A) of the said Act, the legislature has made it clear that the provisions of Sections 6, 7A, 8 and 14B of the said Act as a whole has no universal application, in case of default, committed by an exempted establishment.

15. As a matter of fact, the fate of this writ petition depends upon the interpretation of Section 17(1A) of the said Act with reference to the use of the expression "so far as may be" in the said section.

16. Mr. Sengupta took me through various provisions of the said Act including the definition of "contribution", "fund", "scheme" etc., so that a reasonable meaning can be given to the said expression.

17. The provisions on which reliance was made by the learned Advocates of both the sides are set out hereunder:

Section 2(c) "Contribution" means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies; Section 2(h) "Fund" means the provident fund established under a Scheme;

Section 2(ia) "Insurance Fund" means the Deposit-linked Insurance Fund established under Sub-section (2) of Section 6C;

Section 2(kA) "Pension Fund" means the Employees' Pension Fund established

under Sub-section (2) of Section 6A;

Section 2(1) "Scheme" means the Employees' Provident Fund Scheme framed u/s 5;

Section 6. Contributions and matters which may be provided for in Schemes.-The contributions which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent of his basis wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten per cent", at both the places where they occur, the words "twelve per cent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupees, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1.-For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2.-For the purposes of this section, "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."

Section 8. Mode of recovery of moneys due from employer.-Any amount due-

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect to any contribution payable to the Fund or, as the case may be, the Insurance Fund damages recoverable u/s 14B, accumulation required to be transferred under Sub-section (2) of Section 15 or under Sub-section (5) of Section 17, or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable u/s 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified u/s 17 or in respect of the contribution payable by him towards the

Pension Scheme under the said Section 17,

may, if the amount is in arrear, be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf in the same manner as an arrear of land revenue.

Section 14B. Power to recover damages.-Where an employer makes default in the payment of any contribution to the Fund, the 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 of the 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 by way of penalty 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:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a Scheme of rehabilitation has sanctioned by the Board of Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

Section 17. Power to exempt.-(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, (exempt, whether prospectively or retrospectively, from the operation) of all or any of the provisions of any Scheme-

(a) any (establishment) to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other (establishment) of a similar character; or

(b) any (establishment) if the employees of such (establishment) are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other (establishment) or a similar character:

Provided that no such exemption shall be made except after consultation with

the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme.

Section 17(1A)-Where an exemption has been granted to an establishment under Clause (a) of Sub-section (1),-

(a) the provisions of Sections 6, 7A, 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable u/s 14 as if the said establishment had not been exempted under the said Clause (a);

(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under Clause (b) shall-

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

(v) perform such other duties as may be specified in the Scheme.

Section 17(4) -Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply,-

(a) in the case of an exemption granted under Sub-section (1) with any of the conditions imposed under that sub-section or Sub-section (1A) or with any of the provisions of Sub-section (3);

(aa) in the case of an exemption granted under Sub-section (1C) with any of the conditions imposed under that sub-section; and

(b) in the case of an exemption granted under Sub-section (2), with any of the provisions of Sub-section (3);

(c) in the case of an exemption granted under Sub-section (2A), with any of the conditions imposed under that sub-section or with any of the provisions of Sub-

section (3A);

(d) in the case of an exemption granted under Sub-section (2B), with any of the provisions of Sub-section (3A).

18. By referring to Sections 6, 6A and 6C of the said Act, Mr. Sengupta submitted that contribution, which the employer of an establishment is required to pay under the said Act, consists of three types of payments. One part of such contribution is remitted to the fund; another part of such contribution is remitted to the pension fund established under Sub-section (2) of Section 6A of the said Act and the other part of the said contribution is remitted to the insurance fund established under Sub-section (2) of Section 6C of the said Act. Mr. Sengupta pointed out that the mode of formation of the pension fund and the insurance fund has been prescribed in Section 6A and Section 6C of the said Act respectively.

19. Mr. Sengupta further pointed out that the mode of formation of the "Fund" has also been prescribed under the Act. Section 2(h) defines "Fund" which means the provident fund established under a scheme. Section 2(1) of the said Act defines "Scheme" which means the employees' provident fund scheme framed u/s 5. According to Mr. Sengupta the conjoint reading of Sections 2(h) and 2(1) of the said Act suggests that "Fund" is formed under the Employees' Provident Fund Scheme framed u/s 5 of the said Act. Such fund is controlled by the Employees' Provident Fund Commissioner. But, in case of an exempted establishment, fund commonly known as "Trust Fund" is constituted under the scheme framed by the establishment as per the notification by which exemption is granted. Such fund is managed and controlled by the Board of Trustees. Mr. Sengupta contended that the Provident Fund authority does not retain any control over the management of the Trust Fund so long as the establishment enjoys exemption. As such the Provident Fund authority cannot impose and/or recover damages for delayed payment of contribution to the "Trust Fund".

20. Learned Advocates of both the sides submitted that there is no direct authority on the question which is raised before this Court for answer. As such, this Court is required to answer the said question with reference to various provisions of the said Act, keeping in mind the purpose of such legislation.

21. For appreciation of such submission of Mr. Sengupta, reference may be made to Section 8 of the said Act which deals with recovery of moneys due from employers of different types of establishment. Clause (a) of Section 8 of the said Act provides for recovery of the arrear amount from an employer in relation to an establishment to which any scheme or the insurance scheme applies in respect of any contribution payable to the fund or, as the case may be, the insurance fund damages recoverable u/s 14B, accumulation required to be transferred under Sub-section (2) of Section 15 or under Sub-section (5) of Section 17, or any charges payable by him under any other provision of this Act or any provision of the scheme or the insurance scheme. Clause (b) of Section 8 of the said Act

provides for recovery of the arrear amount from the employer in relation to an exempted establishment in respect of any damages recoverable u/s 14B or any charges payable by him to the appropriate Government under any provisions of this Act or under any of the conditions specified u/s 17 or in respect of contribution payable by him towards the pension scheme under the said Section 17.

22. Thus, it appears that two different provisions have been made for recovery of arrears; one in respect of an establishment which does not enjoy exemption and the other in respect of an exempted establishment. On plain reading of the said provisions, it appears to this Court that the Central Provident Fund Commissioner or such other officer as may be authorised by him, may recover any dues either on account of non-payment of the contribution payable to the fund or on account of non-payment of insurance fund, damages recoverable u/s 14B, accumulation required to be transferred under Sub-section (2) of Section 15 or under Sub-section (5) of Section 17, or any charges payable by him under any other provision of this Act or any provision of the scheme or the insurance scheme, as an arrear land-revenue.

23. But in case of an exempted establishment, the Central Provident Fund Commissioner or such other officer authorized by him can recover only those arrears which are specified in Clause (b) of Section 8 of the said Act, as arrear land revenue.

24. Clause (b) of Section 8 does not provide for recovery of any arrear payable by an exempted establishment in respect of its contribution towards fund, viz., the Trust Fund. The said provision makes it clear that recovery of arrear contribution to the fund cannot be made by the Provident Fund authority from an employer in relation to an exempted establishment. This provision makes it clear that the Provident Fund authority does not retain its control over the management of the Trust Fund in respect of an exempted establishment. The only power which the Provident Fund authority enjoys is the power of revocation of exemption u/s 17(4) of the said Act under certain specified circumstances. As a necessary corollary it follows that the Provident Fund authority which does not have any control over the management and/or recovery of the arrear contribution to the Trust Fund, cannot recover the damages u/s 14B of the said Act for delayed payment of contribution to the Trust Fund maintained by the Board of Trustees of an establishment enjoying exemption u/s 17(1)(a) of the said Act.

25. Let me now examine as to whether the Provident Fund authority can impose damages for delayed payment of contribution towards Pension Fund and Insurance Fund or not.

26. Mr. Sengupta, however, very candidly submitted that the Provident Fund authority retains the power of imposition of damages u/s 14B of the said Act even in case of delayed payment of contribution by the exempted establishment

towards the Pension Fund and Insurance Fund.

27. I have indicated above that contribution consists of three parts. One of such parts is remitted to the fund as per Section 6 of the said Act; another part is remitted to the Pension Fund as per Section 6A of the said Act and the other part is remitted to the Insurance Fund as per Section 6C of the said Act. The Provident Fund authority retains its control over management of the Pension Fund as well as Insurance Fund even in case of an establishment enjoying exemption u/s 17(1)(a) of the said Act inasmuch as exemption from operation of the Pension Scheme and Insurance Scheme cannot be granted u/s 17(1)(a) of the said Act. As such, damages can be recovered by the Provident Fund authority even from the exempted establishment for delayed payment of such portions of the contribution which is remitted to Pension Fund and Insurance Fund. But since the Provident Fund authority does not retain its control over the Trust Fund of an exempted establishment, the Provident Fund authority cannot recover damages for delayed payment of that part of the contribution to the Trust Fund.

28. This is the reason for which the legislature has used the expression "so far as may be" in Section 17(1A) of the said Act. If the legislature had the intention to apply those provisions contained in Sections 6, 7A, 8 and 14B in their entirety, then the legislature would not have used the expression, viz., "so far as may be" in Section 17(1A) of the said Act. Legislature never uses any expression in any provision of law as a surplusage. Therefore, the expression "so far as may be" cannot be treated as surplusage and as such a meaningful meaning should be given to the said expression.

29. Let me now consider the effect of inclusion of the said expression from another angle.

30. If the legislature had the intention to apply those provisions in their entirety, then the legislature would not to have singled out those four provisions from Section 17 of the said Act which provides application of the entire Act to an exempted establishment and further would not have included those four provisions with the rider "so far as may be" in Section 17(1A) of the said Act.

31. Under such circumstances, this Court has come to the conclusion that the legislature did not have the idea to apply the provisions of Sections 6, 7A, 8 and 14B universally in their entirety in respect of an exempted establishment. This Court holds that the said expression "so far as may be" was used in Section 17(1A) of the said Act with a definite idea of restricting the application of those provisions to the contribution towards Pension Fund and Insurance Fund and/ or other charges which are recoverable u/s 8(b) of the said Act from an exempted establishment.

32. However, Mr. Chakraborty by relying upon a decision of the Hon^{ble} Supreme Court in the case of Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, submitted that the expression "so far as may be" has to be construed to mean that those provisions may be

generally followed to the extent possible. Relying upon the said decision, Mr. Chakraborty submitted that the Provident Fund authorities has the power to recover damages u/s 14B of the said Act as a whole for non-payment of contribution by the petitioners.

33. Mr. Chakraborty further submitted that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is a beneficial piece of legislation which was enacted for the benefit of the employees. As such, the expression "so far as may be" used in Section 17(1A) of the said Act cannot be given any restricted meaning which will be prejudicial to the interest of the employees.

34. Mr. Chakraborty further submitted that the circumstances under which such exemption can be granted is provided in Section 17 of the said Act which provides that when it is found that the employer gives better benefits to its employees than the benefits available under the said Act or the Scheme thereunder, then only such exemption can be granted to the employer of such an establishment. Thus, if it is held that the Provident Fund authorities cannot recover damages from the exempted establishment on account of its delayed payment of provident fund dues, then ultimately the fund will be weaker which will not enure to the benefit of the employees of the exempted establishment. As such, the expression "so far as may be" should be given a very liberal construction, so that the object of the said Act is not frustrated.

35. Before proceeding further, I like to record here that the damages which is recovered u/s 14B of the said Act does not go to the hands of the individual affected employee. In case of delayed payment, loss of the individual affected employee is compensated by payment of interest u/s 7Q of the said Act. Since damages u/s 14B of the said Act is not recovered for compensating the losses of the individual affected employee, the expression "so far as may be" vised in Section 17(1A) of the said Act, does not require liberal interpretation.

36. Let me now consider the effect of the citation in the case of Dr. Pratap Singh and Anr. (supra),

37. On consideration thereof, this Court finds that the Hon'ble Supreme Court in the said decision considered the meaning of the expression "so far as may be" in the context of applicability of the provisions of the Criminal Procedure Code relating to searches in connection with a proceeding under Foreign Exchange Regulation Act. Thus, the meaning of the said expression was considered by the Hon'ble Supreme Court in an altogether different context where the applicability of the procedural law was under consideration. The Hon'ble Supreme Court held that the methodology prescribed for carrying out the searches provided in Section 165 of the Criminal Procedure Code will be applicable to the extent possible in case of a proceeding under the Foreign Exchange Regulation Act, 1973.

38. The expression "so far as may be" was given a different meaning by the Constitutional Bench of the Hon'ble Supreme Court in the case of Dr M. Ismail

Frauqui and Others Vs. Union of India (UOI) and Others, . In the said decision, the Hon"ble Supreme Court held that the expression, viz., "so far as may be" used in Sub-section (3) of Section 6 of Acquisition of Certain Areas at Ayodhya Act, 1993 is indicative of the fact that all or any of the provisions of Sections 4, 5, 7 and 11 of the said Act may or may not be applicable to the transferee under Sub-section (1) of Section 6 of the said Act.

39. Thus, the meaning which was given by the Constitutional Bench of the Hon"ble Supreme Court to the said expression "so far as may be" in the aforesaid decision, if is applied to the present case, then it goes without saying that the expression "so far as may be" which is used in Section 17(1A) of the said Act is indicative of the fact that all or any of the provisions in Sections 6, 7A, 8 and 14B of the said Act may or may not be applicable to an establishment enjoying exemption in case of default.

40. I have carefully considered the other decision of the Hon"ble Supreme Court in the case of N.K. Jain and others Vs. C.K. Shah and others, a cited by Mr. Chakraborty, but I find that the said decision does not help this Court in any way to resolve the dispute raised in this application for the following reasons:

Firstly, the scope and/or ambit of application of Section 14B of the said Act was neither the subject-matter of challenge therein nor the Hon"ble Apex Court had the occasion to decide anything on the said issue.

Secondly, though the said judgment was delivered by the Hon"ble Apex Court in 1990, but the effect of Section 17(1A) of the said Act which was introduced in the said Act by way of amendment in 1988, was kept beyond consideration. The Hon"ble Apex Court made it clear in paragraph 5 of the said decision that the effect of Section 14(1A) was considered by the Hon"ble Apex Court in the context of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, as it stood in 1974. The said Act has undergone seachange after 1974. The amendment which was made in 1988 introducing Section 17(1A) which deals with the consequences of delayed payment by the exempted establishment, has a great impact. Section 14B itself was amended in 1988. The effect of the amended provisions was consciously kept beyond consideration, as the offence which was complained of in the said case had taken place in 1974 for which notice of cancellation of exemption was issued on 15th September, 1975.

Lastly, the Hon"ble Supreme Court, by taking note of the opening words of Section 2 of the said Act, viz., "in this Act, unless the context otherwise requires", held in the said decision that the words "contribution", "scheme", "fund" occurring in the said section should be in the context be otherwise interpreted as to apply to a private scheme also and if there is a default in contribution by the exempted establishment, the same amounts to contravention of Section 6, punishable u/s 14(1A). The said decision gives an indication that the words "contribution", "scheme", "fund" can be given different meaning in different context. What would be the meaning of the words "contribution",

"scheme", "fund" in the context of Section 17(1A) of the said Act so far as imposition of damages u/s 14B is concerned, was neither considered nor discussed by the Hon'ble Supreme Court in the said decision. If the same meaning is given to the words "contribution", "fund", "scheme" in the context of Section 14B, then the expression, viz., "so far as may be" in Section 17(1A) should be held as surplusage which this Court is unable to hold for the reasons as aforesaid.

41. Mr. Chakraborty also referred to another decision of the learned Single Judge of this Court in the case of Krishna Kumar Agarwala and Ors. v. Kelvin Jute Co. Ltd. Workers' Provident Fund Trust and Ors. reported in 2002 Lab. IC 3006 wherein it was held that Section 14 and Section 14B attract the application of this Act even in respect of exempted fund.

42. On consideration of the said decision, this Court finds that the applicability of Section 14 and Section 14B of the said Act in case of an exempted establishment, was not an issue in the said writ petition. Paragraph 2 of the said decision indicates the issue which was subject-matter of consideration in the said decision. In paragraph 2.1 it was recorded that the bone of contention that requires determination in the said case was whether the Kelvin Trust is liable to transfer to the Waverly Trust the P. F. accumulation for the period till 30th June, 1986 of the employees of Broadloom Division, who were transferred to Waverly along with the transfer of the unit and had become members of Waverly Trust. That was the issue which the learned Single Judge was called , upon to answer in the said case and in fact the said issue was answered by the learned Single Judge in the said decision. The observation which was made in the said decision regarding the applicability of Sections 14 and 14B of the said Act in case of an exempted establishment, is nothing but a passing remark and/or casual observation which has no binding effect. As such, this Court is unable to accept the said decision as a precedence on the issue regarding applicability of Section 14B of the said Act in case of an exempted establishment.

43. That apart, the issue which is involved in this writ petition is different altogether. Here in the instant case it is nobody's case that Section 14B has no application at all. Even Mr. Sengupta also submitted that damages can be recovered u/s 14B even from the exempted establishment for delayed payment of that part of the contribution which is required to be remitted to the Pension Fund and/or Insurance Fund.

44. Besides all these, this Court cannot forget to record that when exemption from operation of the Employees' Provident Fund Schemes, 1952 has been granted to the petitioners, then how damages can be recovered from the petitioners by applying Rule 32A of the said Scheme.

45. This Court, thus, does not find any reason for detracting from the conclusion which was arrived at by this Court in the preceding paragraphs wherein the use of the expression "so far as may be" appearing in Section 17(1A) of the said Act

was discussed.

46. Before concluding, I must discuss another submission of Mr. Chakraborty. Mr. Chakraborty submitted that the point regarding the partial applicability of Section 14B of the said Act was never taken by the petitioners as a ground of challenge in the writ petition. As such, the submission which was advanced in this regard from the bar, should be ignored by this Court in view of the decision of the Hon"ble Supreme Court in the case of Subrata Acharjee and Others Vs. Union of India and Another, .

47. I have considered the said decision carefully. It appears therefrom that the vires of the provision which was introduced by Act No. 38 of 1992 in Sub-section (1C) of Section 7 of the Representation of the Peoples Act was sought to be challenged before the Hon"ble Supreme Court for the first time in the said appeal wherein the vires of the 72 Amendment Act was only the subject-matter of challenge. In such context, the Hon"ble Supreme Court did not permit the parties to challenge the vires of the provision which was introduced by Act No. 38 of 1992 in Sub-section (1C) of Section 7 of the Representation of the Peoples Act before the Hon"ble Supreme Court.

48. It is settled law of the land that a pure question of law can be urged by a party even before the Hon"ble Supreme Court for the first time provided the consideration thereof does not require any further adjudication of the disputed facts. Thus, a pure question of law can be urged at any point of time before any forum. The said principle which was laid down by the Constitutional Bench of the Hon"ble Supreme Court in the case of State of Madras and Another Vs. K.M. Rajagopalan, still holds the field.

49. Thus, this Court does not find any substance in the submission of Mr. Chakraborty in this regard.

50. Under such circumstances, this Court holds that the impugned order cannot be sustained in law as the concerned authority demanded damages from the petitioners not only on account of delayed payment of contribution to the Trust Fund but also on account of delayed payment of contribution to the pension fund and insurance fund.

51. The impugned order, thus, stands set aside.

52. The Provident Fund authority may, however, ascertain damages u/s 14B of the said Act afresh for delayed payment of contribution to the Pension Fund as well as the Insurance Fund.

53. The writ petition, thus, stands allowed with the above observations.

54. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

Jyotirmay Bhattacharya, J.