

(2011) 03 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3978 of 2011

Jyoti Cements (P) Limited and others

APPELLANT

Vs

P.F. Commissioner and others

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 15(2), 17, 17(5), 7Q

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (2011) 131 FLR 557

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Judgement

M.N. Bhandari, J.—By this writ petition, order dated 5.10.2010, passed by Employees' Provident Fund Appellate Tribunal, New Delhi has been challenged. By the aforesaid order, the appeal preferred by the petitioners was dismissed.

It is stated that delay in payment of Provident Fund Amount cannot result in damages in ignorance of the Scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act"), more specifically Para 32-A of the Scheme and Office Memorandum dated 29.5.1990, providing Schedule for imposition of damages. A reference of the judgment in Systems and Stamping and Another Vs. Employees' Provident Fund Appellate Tribunal and Others, has been given.

2. I have considered the submissions made and perused the Judgment.

3. Before coming to the facts of this case, it would be relevant to quote provisions of section 14-B of the Act, which is quoted thus:

14-B. 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, (the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the official Gazette, in this behalf may recover (from the employer such damages, not exceeding the amount of arrears, as it may think fit to impose):

[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 for rehabilitation has been sanctioned by the Board for 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.

4. As per amended provisions, damages can be equivalent to the arrears. Prior to amendment, the maximum damage was to the extent of 25% of the arrears. Para 32-A of the Scheme was relevant before the amendment because therein table has been given providing how damages be calculated to the extent of 25% whereas now damages are upto 100%. This is even for the reason that prior to the year 1988 (another amendment), the damages were to be governed by the Scheme but by virtue of the amendment in the year 1988, said provision has also been substituted given full liberty to the authority concerned to impose damages not more than the amount of arrears. In the aforesaid background, if Para 32-A of the Scheme is applied, then damages cannot be imposed beyond 25% whereas, as per the amended provisions, the penalty can be up to the equivalent amount of arrears, say 100%. It is settled law that no scheme, rule or regulation can nullify the provisions of the Act. It seems that scheme was framed taking note of maximum limit of damages being 25%. The two amendments as discussed aforesaid, were not brought to the notice of Division Bench of Delhi High Court as would be clear from perusal of the judgment (supra).

5. So far as the imposition of amount of interest is concerned, it is definitely governed by section 7-Q and respondents cannot impose interest over and above the rate given therein. However, the Counsel for the petitioners is unable to give as to what rate of interest has been charged.

6. In the background and discussion made aforesaid, no case is made out causing for interference in the order. This is more so when issue raised herein was not even raised before the Appellate Tribunal. Rather, if the amount of interest is over and above the rate provided under the Act, petitioners are given liberty to make representation to the respondents and if any such representation is made, respondents are expected to keep the rate of interest only to the extent provided u/s 7-Q of the Act of 1952.

With the aforesaid, the writ petition stands disposed of along with stay

application.