

(2007) 07 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No"s. 33336, 34582, 38172 and 38173 of 2002

Khoday's Systems Ltd. and Others

APPELLANT

Vs

Regional Provident Fund Commissioner (Enforcement) and
Another

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

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

Citation : (2008) 116 FLR 32 : (2007) 6 KarLJ 216 : (2008) 1 LLJ 329

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : N. Manohar, for the Appellant; Ashok Haranahalli and P.S. Dinesh Kumar for R1 and Shashikanth, for R2, for the Respondent

Final Decision : Dismissed

Judgement

H.V.G. Ramesh, J.—These petitions have been taken up together for disposal as common question of law is involved. In these petitions, petitioners have sought to declare Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 as unconstitutional and violative of Article 14, 19(1)(g) and 20(1) of the Constitution and to strike down the provisions of Section 7Q of the Act in the matter of levying rate of interest for the delay in payment of contribution being violative of principles of natural justice, discriminate arbitrary and unreasonable and to quash the order passed by the 1st respondent u/s 7Q of the Act and for issuance of a writ of mandamus directing the respondent to consider the hardship and to cancel the interest imposed as per Section 7Q of the Act and for such other orders.

2. Facts will be referred to in respect of WP 34582/2002. Petitioner is a company incorporated under the provisions of the Companies Act having commenced its activities in the field of software development in August 1999. Petitioner is said to have voluntarily approached for the coverage of the establishment as per the provisions of the Act and is said to have made arrangements to pay contribution

on 18.3.2000. According to the petitioner, it being a new establishment, has taken sufficient time to settle down in its business and the petitioner was able to remit the contribution only on 4.8.2001 and 24.4.2001 in respect of the contribution payable for the period from 20 March 2000 to 20 March 2001 due to shortage of funds. However, thereafter petitioner is said to have paid the contribution regularly. Meanwhile, the respondent authority is said to have initiated proceedings u/s 14B of the Employees Provident Fund & Miscellaneous Provisions Act ("Act" for short) having issued a show cause notice on 3.5.2002 proposing to levy damages for the delay in payment of contribution for the period from 1999-2000 to 2000 to 2002 to which, the petitioner furnished an explanation vide letter dated 3.6.2002 and also requested the respondent not to levy any damages, but the impugned order at annexure-B dated 17.6.2002 came to be passed having imposed damages of Rs. 9,16,503 and levied interest in sum of Rs. 3,11,811/- at the rate of 12% p.a. for the delayed remittance of contribution as per annexure-D. Hence, this petition.

3. Heard the counsel for the petitioners and the Learned Counsel Sri Ashok Haranahalli representing the Provident Fund Commissioner.

4. It is the submission of the petitioners' counsel that when specific provision under the Act is provided u/s 14B to award damages for delayed payment, which is also inclusive of interest, the provision u/s 7Q of the Act to pay interest on the amount during the period of non-remittance is violative of principles of natural justice and it is excessive and arbitrary thereby imposing double burden on the petitioners and apart from paying damages double the amount of contribution, they have to pay interest thereby it amounts to payment of 112% damages including interest over and above the amount to be contributed. Further according to him, this establishment is still in the stage of development and it had taken considerable time to settle down in business as such, without taking into consideration the hardship, heavy damages were imposed and also petitioner was also asked to pay interest at the rate of 12%.

5. Simultaneously it is also submitted, when there is a provision u/s 14B of the Act to impose damages for delayed remittance/payment of the contribution by the management towards provident fund, to pay interest once again as per Section 7Q of the Act would be arbitrary and violative of the constitutional mandate.

6. Per contra, counsel for the respondent contended that this provision would be invoked only in case of any failure of contribution on time and if there is any irregularity, necessarily it gives scope for assailing in a writ proceeding. Even in the usual course, the amount of interest would have been charged on the amount of contribution charged and paid to the beneficiary. If there is any default by the employer, necessarily it will be against the interest of the beneficiary much less even the provision u/s 14B to award damages being discretionary, it is not necessary that the damages has to be awarded when the Employer Pays the interest. Only on such materials available, damages would be

awarded and even the procedure contemplated as per Section 14B contemplates compliance of principles of natural justice and also provides for appellate jurisdiction to the Central Board. Accordingly, he substantiated the stand of the respondent and also the imposition of damages as against the petitioners.

7. In the light of the arguments advanced, let me consider whether Section 7Q of the Act is unconstitutional and violative of the provisions of Article 14, 19(1)(g) and 20(1) of the Constitution.

8. The scheme of the Act provides for institution of compulsory provident fund for the benefit of the employees of any factory and other establishments. Of course such a scheme has been framed based on the recommendation by the high level committee constituted and also from time to time taking into consideration the various suggestions and recommendations. The Standing Labour Committee is said to have taken a decision for the enactment of the Act as well as recommended for enhancement of the rate of provident fund contribution to protect the interest of the employees. It would be apt to extract the provisions of Section 7Q and Section 14B of the Act which reads as under:

Section 7Q Interest payable by the employer:

The employer shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

Section 14B Power to recover damages:

Where an employer makes default in the payment of any contribution to be 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 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 for rehabilitation has been sanctioned by the Board for Industrial & financial Reconstruction established u/s 4 of the

Sick Industrial Companies (Special Provisions) Act, 1985 subject to such terms and conditions as may be specified in the Scheme.

9. The object of the Act as noted is to protect the interest of the employees and when such contribution is being made and recovered from the salary/wages of the employees, it is the bounden duty on the part of the employer as well to contribute its contribution and to pay towards the fund as a matter of security for life of the employee as is envisaged under Article 21 of the Constitution. The very Scheme provided for contribution and any lapse in remitting such contribution from time to time in the usual course should earn interest as when such an amount is deposited by way of Fund at a future date to be withdrawn by the employee on retirement, necessarily it should earn interest and keeping it idle will be detrimental to the interest of the employee. In such circumstances, the provision u/s 7Q is introduced as a regulatory measure thereby directing the employer to systematically deposit the funds and it cannot be either termed as discriminatory or as against the freedom of trade and profession of the employer much less it does not amount to any such imposition by way of violation of Article 20(1) of the Constitution as is canvased by the petitioners. There is also no question of punishing the same person twice by way of imposing penalty. What is contemplated u/s 7Q is only payment of interest whereas Section 14B refers to payment of damages on such failure to pay the contribution regularly. These are two distinct aspects which cannot be held and treated as a concept of double jeopardy. Section 7Q only contemplates payment of interest on failure to make contribution well in time as in the usual course deposit would have necessarily earned interest and that interest would be paid by the concerned Department/Government.

10. In so far as imposing of damages is concerned, it is also a matter of regulatory measure to discipline the employer to avoid any such lapse and if such a stringent measure is taken and contemplated under the Act, that cannot be termed either as arbitrary or violative of the freedom of profession. However, at the discretion of the authorities, the damages may or may not be awarded Only in extreme circumstances when there is criminal default by the employer, such stringent measures would be taken.

11. In the instant case, noted, except directing the petitioners to pay interest at 12% as contemplated u/s 7Q of the Act, no damages has been awarded. Further more, even if such a damage is awarded, that would be done only after giving due opportunity to the party to have his say in the matter and thereafter, the matter would be adjudicated. Apart from that, there is also a provision for appeal to the Central Board assailing the order of imposing of any such damages. When all safe guards are provided under the Act, question of either terming Section 7Q of the Act as unconstitutional may not arise as it stands to reason. More over, in the case on hand since there is default on the part of the employer/petitioner to make contribution regularly as a matter of obligation, the employer was called upon to pay interest as contemplated u/s 7Q and although action was sought to

be taken u/s 14B of the Act, no such damages was imposed on the petitioner. In the circumstances, there is no merit in the contention of the petitioners in all these petitions.

12. In the result, while declaring that Section 7Q of the Act is very much constitutional and it stands the test of reasonableness under Articles 14, 19(1) (g) and 20(1) of the Constitution, the petitions are dismissed.