
(1963) 08 KAR CK 0008
In the Karnataka High Court

K.S.Naik, Regional Provident Fund

APPELLANT

Vs

The Official Liquidator

RESPONDENT

Date of Decision : 29-08-1963

Acts Referred:

Companies Act, 1956 — Section 530, 530 (f)

Company Court Rules, 1959 — Rule 164

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 B, 15 (2)

Citation : (1964) 34 CompCas 338 : (1964) 1 MysLJ 35

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Judgement

1. This is an appeal under rule 164 of the company [court] rules, 1959, read with section 457[3] of the companies Act of 1956, by the Regional provident fund commissioner of Mysore at Bangalor, against the order of the officer liquidator dated 29th August 1963, to the extent it rejected the appellant's claim for preferential payment in respect of a sum of rupees 2,414.22 Out of his total claim of Rs. 79,386.74 no. being the contribution and charges payable by the company in liquidation under the Employees Provident funds act, 1952, and the Scheme thereunder made applicable to the company.

2. Notice of admission of proof in Form No. 70 prescribed under the rules dated 29th August, 1963, was served on the appellant on 31st August 1963. The appeal was filed on 4th October 1963. thirteen days beyond the time prescribed under rule 164. The appellant prays for condonation of this delay for the reasons set out in paragraph 9 of his affidavit.

3. Two reasons are stated therein. The first is that the liquidator did not in Form No. 7 indicate the period of limitation prescribed for appeal , and the second is that some time was taken up by the appellant in seeking instructions of the Central Provident fund Commissioner at new Delhi-I may at once say that the first reason is wholly unacceptable. the form prescribed under the rules does not

provide that the period of limitation for an appeal should be mentioned therein. Secondly, it is not open to any body, much less a statutory functionary, to claim ignorance of law or to fail to inform himself about the provisions of law relating to the claim which he proposes to enforce through an order of court. But the second reason appears to be, in the circumstances, acceptable, especially because the delay is not very long. I, therefore, condone the delay and entertain this appeal.

4. The claim of the appellant before the liquidator related to a period up to June 1959, and was made up of the following items:

Rs. 1. Provident fund contribution 69,526.25 2. Penal interest thereon 7,446.27
3. Administrative charges 2,088.03 4. Penal damages thereon 233.69 5. Legal charges 102.50 ----- Total 79,386.74 -----

5. There is no doubt about the accuracy of these figure. the liquidator has accepted them to be correct. He admitted the claim for preferential payment only in respect of the first two items but rejected the same in respect of times 3 to 5 on the ground that a claim for prudential payment must be made out on one or the other of the clauses of section 530 of the companies act of 1956 and that such claim in this case may be said to have been made out only in respect of the first tow items under clause [f] of sub section 530.

6. The appellant claims that all the items mentioned above are entitled to preferential payment by virtue of section II of the employee provident funds act of 1952, by force of which all the items claimed by him should be deemed to be included among the debts entitled to preferential payment under the companies act. The relevant portion of the section reads as follows.

" Where any employer being a company , an order for winding up is made, the amount due _

[a] from the employer in relation to an established to which any scheme applies in respect of any contribution payable to the Fund, damages recoverable u/s 14B accumulations required to be transferred under sub section [2] of section 15 or any charges payable by him under any other provisions of this act or of any provision of the scheme.....

Shall, when the liability therefore has accrued before the order of..... winding up is made, be deemed to be included among the debts which u/s 230 of the Indian companies, act, 193 [VII of 1913,] are to be paid in priority to all other debts in the distribution of..... the assets of the company being wound up....."

7. It is, therefore, clear that if the contribution, damages or charges claimed by the appellant come under any of the provisions of the Employees provided funds act or the scheme made thereunder applicable to the company and all of them accrued before the order of winding up was made all those items would have been entitled to preferential payment as if they were included in the debts enumerated in section 230 of the companies act of 1913.

8. The companies act of 1913 has now been repealed and replaced by the companies act of 1956. If simultaneously reference to section 230 of the 1913 Act has been substituted by a reference to section 530 of the 1956 act remained for consideration. The learned counsel for the appellant after investigation having stated that no such substitution appears to have been made by any legislative amendment, the question for consideration is whether the appellant could, even in the absence of such an amendment, claim that the amounts claimed by them are entitled to preferential payment as if they are included in the list of debts enumerated in section 530 of the Companies act of 1956.

9. The answer to the questions, I think, to be found in section 8[1] of the general clauses act, which reads as follows:

Where this act, or any Central act or Regulation made after the commencement of this act repeals and re enacts, which or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

10. The said provision of the General clauses act follows the provision of 38[1] of the English Interpretation act, 1889 [52 and 53 victoria, chapter 63]. The principle as stated in Craies on statute law, at pages 361 and 362, is that in the case of statutes which repeal earlier statutes and re enact their provisions or in the case of consolidation acts, the repeal is generally for the purpose of rearrangement and there is no moment at which the substance of the older enactment ceases to be in force. Where they also effect certain amendments they are generally intended to remove doubts, resolve ambiguities, or bring about conformity with modern practice. ordinarily in the case of consolidating statutes, one should begin with the presumption that no substantial departure from the previous state of the law is intended. Where, however, there are clear amendments which change to law, effect, of course, will have to be give n to the amendments. hence, the rule of interpretation that, unless a different intention appears in the consolidating statute, references in other natures to the provisions of repealed enactments should be read as references to those provisions as re enacted in the consolidating statute.

11. The companies act of 1956 is an act to consolidate and amend the law relating to companies. It repealed, among other statutes, the Companies act of 1913. Though in certain important respects change were made in the law, the general structure and features of the company law have remained substantially the same most of the provisions of the previous act having been re enacted in substantially the same form in the consolidating act.

12. The provisions of section 230 of the 1913 act are re enacted in section 530 of the 1956. There appear form the provisions of section 530 no intention to take away the priority payment available to the sums or amounts mentioned in section II of the Provident funds act. On the contrary, to the extent the

legislative intent appears to foster the welfare of employees, the changes made in section 530 of the 1956 act while re enacting section 230 of the old act appear actually to give large field for the operation of that intent rather than restrict it.

13. I, therefore, accept the argument that reference to section 230 of the companies act of 1913 in section II of the provident Fund act must be read as a reference to section 530 of the Companies Act. of 1956.

14. The next question is whether all the items claimed by the appellant come within section II of the Provident funds Act.

15. Contribution to provident fund is expressly stated in the said section II. What is described as penal interest thereon is obviously damages recoverable u/s 14B of the provident funds act; in the tabulated statement filed by the claimants before the liquidator the said item is described as penal interest at 6,3/4 per cent. per annum u/s 14B." Administrative charges are a percentage of the contributing to the fund fixed by the Central government in consultation with the Central board having regard to the resources of the fund available for meeting its normal administrative expense. The said percentage constituting the administrative charges is also required to be collected by the employer liable to make the contribution and paid into the fund. Damages for default or delay in payment of the administrative charges are recoverable u/s 14B.

16. So far, however, as the fifth item, viz. legal charges Rs. 102.50 is concerned, neither the averments in the affidavit nor arguments on behalf of the appellant in court have indicated the provision of either the act or the scheme under which the same is recoverable.

17. It has therefore to be held that all the items claimed by the appellant except the legal charges of Rs. 102.50 are entitled to preferential payment.

18. I, therefore, allow the appeal in part and direct that, excepting payment, or Rs. 102.50 described as legal charges, the rest of the claim of the appellant be paid out in priority as a debt included in section 530 of the 1956 ACT.

19. I make no order as to costs. Appeal allowed in part.