

(2004) 09 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 13175 (W) of 2003

Mitra S.K. Private Ltd. and Another	Vs	APPELLANT
The Regional Provident Fund Commissioner (1) and Others		RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(2A),
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Citation : (2005) 1 CALLT 433 : (2005) 105 FLR 529 : (2005) 2 LLJ 810

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay, Soumitra Mukherjee and Aniket Mitra, for the Appellant; Shiv Chandra Prasad, for the Respondent

Final Decision : Allowed

Judgement

Amitava Lala, J.—On 21st April, 1993 the Regional Provident Fund Commissioner (1) in exercise of the power conferred u/s 79 of the Employees' Provident Fund Scheme relaxed the applicability with effect from 1st May, 1993 subject to the conditions as contended in the enclosure therein which will also be treated to be the condition/directions during the period of relaxation. One of such conditions is that the Annual Return in Appendix-"BB (specimen copy enclosed) shall be submitted each year within six months after closing of the financial year. On 18th October, 2002, the concerned Asstt. Provident Fund Commissioner (RX) W.B. issued a show cause notice taking a view that the petitioners have failed to submit the Audited Balance-sheet of the Provident Fund Trust and Appendix - "B" for the years 1999-2000 and 2000-2001 within the stipulated time in contravention of the conditions governing such relaxation. The petitioners' company by its letter dated 6th November, 2002 replied to the show cause notice by saying that considering the intervening Puja holidays preferably one month period is required to submit the Audited Balance-sheet of the Provident Fund Trust and Appendix - "B" for the year 1999-2000 and 2000-2001. It has been

further informed that the delay and inconvenience, if any, is caused for shifting the office building. The Audited Balance-sheet of the Provident Fund Trust for the year 2000-2001 will be ready by March, 2003. A further request was made in keep the show cause notice in abeyance and not to take any penal step. On 27th March, 2003, final order was passed. Two aspects of the order are very much important for the purpose of due consideration although in the show cause notice the default has been shown for the years 1999-2000 and 2000-2001 but in the final order is passed in respect of the years 2000-2001 and 2001-2002. About contravention of notification dated 22nd August, 1983, no ground has been shown in the show cause notice. But for such alleged violation, conditions of relaxation were withdrawn. Certain directions were given consequence to the payment of additional charges and interest for depositing the same in the account of the Provident Fund Authority in any Branch of the State Bank of India etc. On 15th February, 2003, the petitioners' company informed to the authority that the Audited Balance-sheet for the year 1999-2000 has already been deposited with the office of the respondents. The Audited Balance-sheet for the year 2000-2001 will be deposited by April, 2003. However, the same was deposited. Now, the question arises before this Court that whether the final order has been passed by the authority concerned correctly or not? And whether or not the condition of non-furnishing the return is intentional or unintentional? Section 14 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, prescribes the provision of imposition of penalties. Sub-section (2A) of the said Act says that whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted u/s 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees. Therefore, in case of any contravention u/s 17 of the Act, the authority concerned can take step u/s 14(2A) of the said Act. Section 17 of the said Act prescribes the power to exempt. Admittedly, such power of exemption has not been finally resolved as yet. It is an interregnum period to test the bona fide. Therefore, the question of intentional or unintentional action is the germane for the purpose of due consideration.

2. The learned counsel appearing for the respondents categorically contended that Section 14 is neither applicable nor Sub-section (2A) alone in this particular case. If I accept such submission, it will be seen that the penalties will be imposed to whom "whoever, for the purpose of avoiding any payment to be made by himself". Therefore, the Court will take into account as to whether the intentional avoidance is there or not. If it is not found, in that case unnecessary harassment will not be caused to a litigant. In this case, not only the explanation has been given, but, the return was also given with the particular for all these years. If such action is seen along with wrongful action for the year which was not a part and parcel of the show cause notice, then no positive inference can be

drawn in favour of the Provident Fund authorities. A reasonable time should be accepted for the return until and unless time schedule is fixed. Therefore, such reasonable time should be a period of six months fixed or at the end of the assessment year for the same. Under paragraph 79 of the Scheme, it has been directed that notwithstanding anything contained in this Scheme, the Commissioner may in relation to a factory or other establishment in respect of which an application for exemption u/s 17 of the Act has been received, relax, pending the disposal of the application, the provisions of this Scheme in such manner as he may direct. Therefore, it is a discretionary power to condone the defects, if any, then there is no wrongful intention on the part of the petitioners in filing the return.

3. The learned counsel appearing for the petitioners cited a Division Bench judgment reported in Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, wherein it has been held that the proceeding for non-payment of the Provident Fund dues and prosecution can be restrained in view of the payment. Although it was not created, but, by such a principle has been laid down. I find justifiability of passing such order. A person, although, having been law abiding when for an unusual circumstance face certain difficulties to comply with formalities, which subsequent squared up should not be equated with habitual defaulter. From another judgment reported in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , I find that the Supreme Court held that the Court is oblivious of law, when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory, but, it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative. Therefore, the concept of reasonable time has been accepted by the Court of law. The learned counsel appearing for the respondents repeatedly contended that in case of such violation, it would be fit and proper to disapprove the Scheme and the relaxation, if any, should be rejected. I am of the view that the discussion as above does not prescribe the Court to pass a negative order as against the petitioners.

4. Therefore, taking into totality of all aspects of the matter, I am of the view that both the orders, being Annexure - "P/4" and Annexure - "P/9" to the writ petition, should be set aside and, accordingly, these are set aside. Thus, the writ petition stands allowed and the same is disposed of accordingly. There will be no order as to costs.

5. However, this order will not prevent the authority concerned to proceed in accordance with law in respect of the submission of the Audited Balance-sheet etc. in merit.

Let urgent xerox certified copy of this order, if applied for, be given to the learned counsel for the parties within the period of a fortnight from the date of putting the requisites.