
(2017) 09 BOM CK 0158
In the Bombay High Court
Case No : 315 of 2011

M/s. Goa State Co-operative Milk Producers Union Ltd. APPELLANT
Vs
Regional P. F. Commissioner RESPONDENT

Date of Decision : 11-09-2017

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952, Section 14B, Section 14B, Section 17B, Section 17B - Power to recover damages - Liab

Citation : (2017) 09 BOM CK 0158

Hon'ble Judges : C. V. Bhadang

Bench : SINGLE BENCH

Advocate : A. D. Bhobe, S. Bhobe, P. P. Singh

Final Decision : Dismissed

Judgement

1. The petitioner is challenging the order dated 22/01/2004 passed by the respondent P. F. Commissioner and the order dated 01/10/2010, passed by the Employees Provident Fund Appellate Tribunal, New Delhi (Tribunal, for short), whereby the Provident Fund Authority has imposed an amount of Rs.2,69,166/- on the petitioner as under :

- (i) The Provident Fund Contributions (A/c.1) Rs. 214977=00
- (ii) The Administrative charges (A/c.2) Rs. 9871=00
- (iii) The Family Pension Fund Contributions/ EPS Contribution (A/c.10) Rs. 35276=00
- (iv) The Employees Deposit Linked Insurance contributions (A/c.21) Rs. 7535=00
- (v) The Administrative Charges on EDLI contributions (A/c.22) Rs. 1507=00

TOTAL

Rs. 269166=00

2. Indisputably, the entire amount has been deposited by the petitioner.

3. The petitioner Goa State Co-operative Milk Producers Union Ltd is an establishment to which the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the Act, for short) are applicable. The said establishment consists of Milk Dairy at Curti, Ponda together with feed plant at Usgaon, Goa belonging to Animal Husbandry Department. The said establishment of the Government of Goa was leased to the petitioner with effect from 16/05/1984 on annual lease of Rs.1/-. According to the petitioner, although the establishment was leased with effect from 16/05/1984, the actual Lease Deed was executed in the year 1986 on account of certain administrative reasons. On execution of the Lease Deed, the provident fund contribution of the employees for the period from September, 1983 to June 1987 were paid by the petitioner (transferee) in August 1987/ June 1989. The respondent sought to determine the amount of Rs.3,81,312/- towards the damages from the petitioner under Section 14B of the said Act on account of delayed payment of the contribution during the period from April, 1974 to July, 1997. In other words, the damages under Section 14B of the Act were sought to be levied on the ground that there was delay in payment by the predecessor of the petitioner.

4. The order passed by the respondent no.1 has been confirmed by the Appellate Tribunal. Hence, this petition.

5. The only contention raised by Shri Bhobe, the learned Counsel for the petitioner is that the petitioner as the successor would not be liable to pay the damages under Section 14B of the Act, when the delay was on the part of the erstwhile establishment, which is the predecessor of the petitioner. However, Shri Bhobe, the learned Counsel for the petitioner, in all fairness, has now brought to the notice of this Court a decision of the Supreme Court in *McLeod Russell India Ltd Vs. Regional Provident Fund Commissioner*; (2014)15 SCC 263, in which similar contention has been negated by the Supreme Court. In para 14 of the judgment, the Supreme Court has dealt with an argument that damages as postulated in Section 14B would not be transferable under Section 17B for the reason that Section 17B specifically speaks of the contributions and other sums due from the employer under any provisions of the Act or the scheme. It has been found that proviso to Section 17B indeed clarifies the position in as much as it restricts and/ or limits the liability of the transferee up to the date of the transfer to the value of the assets obtained by him. It can, thus, be seen that the contention that the transferee would not be liable to pay damages under Section 14B of the Act when the lapse or the delay in payment of the contribution is on account of the transferor, has not been accepted.

6. For the said reason, no case for interference is made out. The petition is, accordingly, dismissed, with no order as to costs.