(2011) 06 MAD CK 0056

In the Madras High Court

Case No : W.P (MD) No. 8706 of 2007

Nellai Transports APPELLANT

Vs

The Assistant Provident Fund Commissioner RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(B), 7(1)

Citation : (2011) 06 MAD CK 0056

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Aravind Subramaniam, for the Appellant; G.R. Swaminathan, for the Respondent

Judgement

D. Hariparanthaman, J.—The Petitioner is a Transport Operator carrying goods for his own purpose. It is stated that the Petitioner has been

in business for more than 15 years. It is further stated that they are remitting the Provident Fund Contributions regularly. However, there was a

default for the period March 2003 to August 2004. Later, he remitted the contributions with interest.

2. In these circumstances, the Respondent issued a notice, dated 18.09.2007, u/s 14B of the Employees'' Provident Funds and Miscellaneous

Provisions Act, 1952 (in short herein after referred to as ""the Act""), directing him to appear in person on 10.10.2007, as to why damages could

not be levied for belated remittance of Provident Fund Contributions.

3. The representative of the Petitioner appeared on 10.10.2007. He stated that the Petitioner has never committed default in payment of Provident

Fund Contributions for the past 15 years and it was an unique occasion. The default was only due to severe financial crisis. He further stated that

the Petitioner was willing to pay the interest and he requested to waive the damages.

4. However, the impugned order was passed on the same date ie. on 10.10.2007, levying damages of Rs. 2,69,885/-

5. The Petitioner has filed the present Writ Petition to quash the aforesaid order on the ground that the order is a cryptic one and the order does

not contain any reason, when the Petitioner specifically pleaded that he has been remitting the Provident Fund Contributions regularly without any

default and the default was only due to severe financial crisis and it is the first time, he committed default.

6. The Respondent filed a counter affidavit refuting the allegations.

7. Heard both sides.

8. The learned Counsel for the Petitioner submits that the impugned order is a cryptic one without containing any reasons. The learned Counsel for

the Petitioner relies on two decisions of this Court namely ABCOY, rep. by its Managing Partner, Ms. Rahika Raman v. Regional Provident Fund

Commissioner, Tirunelveli - 627 011 reported in (2007) 6 MLJ 1793 and in The South India Mines and Minerals Industries Limited, Rep. by its

Executive Director v. The Regional Provident Fund Commissioner (W.P. Nos. 2554 and 2555 of 2004), dated 17.09.2007.

9. It is submitted by the learned Counsel for the Petitioner that this Court in ABCOY, rep. by its Managing Partner, Ms. Rahika Raman v.

Regional Provident Fund Commissioner, Tirunelveli - 627 011 reported in (2007) 6 MLJ 1793 , followed the decision of the Apex Court reported

in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, , wherein the Apex Court held that the Respondent shall take

into consideration various factors such as the number of defaults, the period of delay, the frequency of defaults and the amounts involved, while

fixing the amount of damages u/s 14 B of the Act. The Respondent has not given any reason as to why he rejected the plea of the Petitioner.

10. On the other hand, the learned Counsel for the Respondent seeks to sustain the impugned order based on the counter affidavit. He would

further submit that the remedy is provided under Appeal and therefore, the writ petition is not maintainable. According to the learned Counsel for the Respondent, since there was delayed payment, the Petitioner should suffer damages.

11. I have considered the submissions made on either side.

12. The Petitioner has been in business for more than 15 years. According to the Petitioner, he never committed default. First he committed default

only during March 2003 to April 2004 due to severe financial crisis. When the show-cause notice, dated 18.09.2007, was issued by the

Respondent u/s 14 B of the Act to appear in person on 10.10.2007, the representative of the Petitioner appeared and explained the reason for

non-payment of Provident Fund Contribution dues in time and he pleaded the financial crisis as the reason and also the fact that he never

committed any default prior to this period. He also pleaded that he would pay interest for the belated payment.

However, the Respondent passed the impugned order, dated 10.10.2007, levying damages to the tune of Rs. 2,69,885/-.

13. As rightly contended by the learned Counsel for the Petitioner, the impugned order is a cryptic one without containing any reason. The

impugned order is extracted hereunder:

ORDER

For the above reasons, I, S.MAHALINGAM, ASSISTANT PF COMMISSIONER, Tirunelveli in exercise of the powers conferred on me u/s

14B of the Act, think fit to levy damages at statutory rates and accordingly order that damages for the period from 03/03 to 08/04 amounting to

Rs. 2,69,885.00 as detailed below to be remitted.

13. No reason was given by the Respondent for rejecting the plea raised by the Petitioner about his inability to make the payment in time due to

financial crisis. The fact that it is the first default was also not considered.

14. In my view, the judgments that are relied on by the learned Counsel for the Petitioner squarely apply to the facts of the case. In similar

circumstances, this Court quashed the order of the Respondent in ABCOY, rep. by its Managing Partner, Ms. Rahika Raman v. Regional

Provident Fund Commissioner, Tirunelveli - 627 011 reported in (2007) 6 MLJ 1793 and relied on the decision of the Apex Court in Organo

Chemical Industries and Anr. v. Union of India and Ors. reported in AIR 1979 SC 1803.

15. In the decision reported in ABCOY, rep. by its Managing Partner, Ms. Rahika Raman v. Regional Provident Fund Commissioner, Tirunelveli -

627 011 reported in (2007) 6 MLJ 1793, the judgment of the Apex Court is extracted and the relevant passage is as follows:

5........... While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done her,

various factors, viz., the number of defaults, the period of delay, the frequency of defaults and the amounts involved.

16. Further, the following passage in Paragraph No. 6 of the aforesaid judgment is also relevant for the purpose of the case and the same is

extracted hereunder:

6............. Levying of damages is penal in nature and when the Petitioner has submitted that they are having financial crisis and hence, they could

not pay the amount in time, the authority did not even refer to the said fact and rejected it. On the contrary, awarded damages for various periods.

Even though an appeal lies to the Appellate Tribunal u/s 7-I of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, since the

matter has been admitted and pending before this Court for more than three years and as rightly pointed out, the authority had not exercised their

discretion in the matter of awarding of damages. It is a fit case to be allowed following the earlier decisions cited supra.

17. As stated already the judgment reported in ABCOY, rep. by its Managing Partner, Ms. Rahika Raman v. Regional Provident Fund

Commissioner, Tirunelveli - 627 011 reported in (2007) 6 MLJ 1793, squarely applies to the facts of this case. Since the matter is pending for the

past three years, I am not inclined to drive away the Petitioner to appellate remedy, particularly when the impugned order is opposed to the

aforesaid decision of the Apex Court.

18. As rightly contended by the learned Counsel for the Petitioner, the aforesaid passage extracted from the judgment of the Apex Court is based

on paragraph No. 32 B of the Employees'' Provident funds Scheme, 1952. Paragraph No. 32 B (c) of the said scheme is extracted hereunder:

32B. Terms and conditions for reduction or waiver of damages.-The Central Board may reduce or waive the damages levied u/s 14B of the Act in

relation to an establishment specified in the second proviso to Section 14B, subject to the following terms and conditions, namely:

(a) in other cases, depending on merits, reduction of damages up to 50 per cent may be allowed.

19. Hence, the impugned order, dated 10.10.2007 is quashed and the matter is remanded back to the Respondent to pass fresh order after

hearing the Petitioner and also taking note of the aforesaid observations.

