(2005) 08 OHC CK 0010

In the Orissa High Court

Case No : O.J.C. No. 4562 of 2002

Orissa Construction Corporation Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner-II and Another RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

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

Citation : (2006) 108 FLR 1029 : (2006) 1 LLJ 1018 : (2005) OLR 889 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : L. Pongari, B. Jena and M.R. Samantray, for the Appellant; S.C. Satpathy, B. Mohapatra and S.K. Nayak, for the Respondent

Judgement

L. Mohapatra, J.—The petitioner in this writ application calls in question the legality of the order passed by the Regional Provident Fund Commissioner, Orissa in Annexure- 11 u/s 14-B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'') imposing damages to the tune of Rs. 61,114/-.

2. The petitioner is a Government of Orissa Undertaking and basically a construction establishment carrying on different project works awarded by the State Government, Central Government and other private organisations at different places. In the year 1998 the petitioner was awarded with two projects at Damanjodi under two separate agreements. The said work were supervised by the senior Managers I and II in respect of Package No. 1 and Package No. 2 respectively and the said Sr. Managers applied for allotment of separate EPF code numbers for their respective packages for administrative convenience. However, the senior Manager-II who was looking after package No. 2 was allotted with one code number i.e. OR/1610-W. Since the request of the senior Manager-I in charge of Package No. 1 was not responded to, the Financial Advisor and Chief Accounts Officer of the petitioner requested the opposite party No. 1 to allot

another code number for Package No. 1. There was again no response to the said letter and in the meantime the work site of Package No. 1 was inspected by the Enforcement Officer of the opposite parties during September, 1998 and he instructed for furnishing information in the prescribed format. The in formations were furnished to the Enforcement Officer with request for allotment of EPF code number. Though the said Enforcement Office recommended for allotment of a code number for Package No. 1 there was no response and after several letters were written, no code number was allotted in respect of Package No. 1. However, the opposite party No. 2 by letter dated May 15, 2000 directed the petitioner to deposit the amount and comply with the provisions of the Act under the code allotted to the Head Office of the petitioner company. The senior Manager No. I who was in charge of Package No. 1 intimated the opposite party No. 2 that though a sum of Rs. 1,16,562/- has been deposited towards EPF dues for the period from April, 1998 to February, 2000, but due to non-allotment of code number he was not in a position to submit the monthly and yearly returns for the year 1998-99 and again requested for allotment of a separate code number. Only by letter dated September 21, 2000 the opposite party No. 2 intimated the senior Manager No. 1 that he could use subcode number already allotted to the senior Manager No. II in respect of Package No. 2. Instead of allotting a separate code number a proceeding u/s 7-A of the Act was initiated for determination of the amount due from the petitioner and after hearing the petitioner it was directed to pay Rs. 77,272/- towards EPF dues. The said amount was paid in compliance of the order passed. Thereafter again by letter dated November 5, 2001 a further sum of Rs. 4115/- was demanded by the opposite party No. 2 towards interest u/s 7-Q for the period from March, 1999 to February, 2001 and the said amount was also deposited. Even after depositing the aforesaid two amounts, a proceeding u/s 14-B was initiated for imposing penal damages vide Penal Damage Case No. 7733 and in the said proceeding a further demand of Rs. 61,114/- was raised towards penal damages. The said order is under challenge before this Court.

3. Shri Pongari, learned Counsel for the petitioner submitted that the code number as requested having not been allotted in respect of the Package No. 1 even after several requests made, there were administrative difficulties in depositing the EPF dues and accordingly delay occurred. The delay not being intentional or deliberate there was no reason on the part of opposite parties to initiate a proceeding u/s 14-B of the Act and impose damages,

4. A counter-affidavit has been filed by the opposite parties 1 and 2. It is stated that the Head Office had allotted with one code number and therefore the PF dues could be deposited against the said code number. The petitioner having not deposited the PF dues against the said code number, delay in payment of the amount cannot be overlooked only on a plea that a separate code number had not been allotted in respect of the work under Package No. 1.

5. In order to appreciate rival contention of the parties, it is necessary to refer to

the order passed by the Assistant Provident Fund Commissioner, Berhampur in the proceeding u/s 7-A of the Act on October 31, 2001. The Asst. Provident Fund Commissioner for the said order has observed that there are basically two issues, namely allotment of a separate P.F. Code number to the Project of senior Manager No. I as requested and checking/securing/ensuring compliance in respect of both types of employee, such as NMR and work charged as well as contract Engineers and contract labour. It has been further observed in the said order that there has been clerical or probably technical mistake in allotment of a single P.F. code number to both Sr. Manager-I and Sr. Manager-II combined. The letter dated November 10, 1998 allotting code number covered only Sr. Manager-II whereas office records indicate allotment of single Code number to both senior Managers combined. From the aforesaid it is clear that in the letter dated November 10, 1998 the Department had intimated that Code No. OR/1610 had been allotted only to Sr. Manager-II whereas the office records indicate that the said Code number had been allotted to both senior Managers. Had the office note been correctly reflected in the letter dated November 10, 1998 there would not have been any delay in depositing Provident Fund dues. Learned counsel appearing for the Provident Fund Commissioner faced with the aforesaid observations made in the proceeding u/s 7-A of the Act could not produce any other document to show that any point of time the senior Manager- I in charge of Package No. 1 had been intimated to submit provident fund dues using the code number allotted to senior Manager-II or the Head Office. On the other hand, argument is advanced to the fact that the provident fund dues could be deposited against the code number allotted to the Head Office. In view of the discussions made above, it is clear that the delay in depositing provident fund dues is not wholly attributable to the petitioner and the office of the Provident Fund Commissioner has also a part to play therein.

6. Learned counsel for the petitioner relied on a decision of the Karnataka High Court in the case of Indian Process Chemical Laboratory (P) Ltd., Bangalore v. Regional Provident Fund Commissioner, Bangalore 1979 LabIC 84 Relying on the said decision it was contended by Shri Pongari that delay having occurred due to fault in the office of the opposite parties the petitioner cannot be saddled with penal damages u/s 14-B of the Act. The said decision though on principle is applicable, it is distinguishable on facts. In the said reported case delay occurred because of conduct of the bank concerned and the postal department. Under those circumstances, the Court held that no penal damages can be levied u/s 14-B of the Act. Reliance is also place on another decision of this Court in the case of Prajatantra Prachar Samiti Vs. Regional Provident Fund Commissioner, In the said judgment this Court agreeing with the view of the Calcutta High Court held that ''damage'' is different from ''fine'' and ''penalty'' and that damage u/s 14-B of the Act is intended to compensate loss to the beneficiaries of the Scheme.

So far as quantum of damages are concerned, reliance is placed by the learned Counsel for the petitioner on a decision of the Delhi High Court in the case of Atlantic Engineering Services (P) Ltd. Vs. Union of India and Another, Delhi High

Court in the aforesaid case observed that quantum of damages is to be determined depending on facts of each case.

7. Considering all the above decisions, I am of the view that admittedly there being delay in deposit of EPF dues, the petitioner is liable for payment of penal damages. In the impugned order penal damages have been assessed at Rs. 61,114/-. While passing the impugned order the authority has not taken into consideration the delay caused at the instance of the Department and therefore the assessment of damages ''17% to 37% is not appropriate. Had the authority taken into consideration the laches on the part of the opposite parties the damages could have been much less.

8. I, therefore, allow the writ application in part and direct that penal damages ''12% at flat rate be calculated afresh and fresh demand notice be issued to the petitioner for payment. Consequently, the order passed u/s 14-B of the Act in Annexure-11 is quashed.