(2016) 01 KL CK 0004

In the High Court Of Kerala

Case No : WP(C).No. 4968 of 2011 (U)

Parisons Estates & Industries Pvt. Ltd., Represented by its Director Mr. N.K. Khalid — APPELLANT

Vs

Employees Provident Fund Appellate Tribunal, New Delhi and Anr. — RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7A

Citation : (2016) 1 CLR 912 : (2016) 149 FLR 865 : (2016) LabLR 824 : (2016) LabLR 635 : (2016) 4 LLN 450

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : Thomas Mathew Nellimoottil, SC, P.F, for the Respondent

Final Decision : Disposed off

Judgement

K.Harilal, J. - The petitioner is a private limited company registered under the Companies Act, 1956. The petitioner is aggrieved by Ext.P6 order passed by the 1st respondent EPF Appellate Tribunal, dismissing Ext.P5 appeal petition filed by the petitioner challenging Ext.P4 order passed by the 2nd respondent. The petitioner company owns four tea estates which are situated at Mananthavadi in Wayanad District. These estates were purchased from M/s.Assam Brook Limited registered under the Companies Act, owning plantations in other parts of the country. Until the date of transfer, the estates in Wayanad were owned and managed by M/s. Assam Brook Limited, who was the employer as defined under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, (for short, ''the Act'') After the transfer, the respondents proceeded against the petitioner as transferee under Section 14B of the Act. According to the respondents,during the period from April 2001 to March 2004 there was a delay in remittance of contributions by the former employer, namely Assam Brook Limited. The proceedings were initiated by the respondents under Section 7A read with Section 14 of the Act against the petitioner for the realisation of the amount assessed as arrear of contributions and damages due from the former employer.

2. This writ petition is filed mainly on two grounds. Firstly, according to the petitioner, the transferee company cannot be proceeded against for the recovery of damages under Section 14B of the Act. Secondly, it is contended that the petitioner understands that the damages have been levied on the transferor company and the said company has preferred appeals against the orders levying damages and the said appeals are pending before the Tribunal. It is contended that the damages cannot be realised from both the transferor and the transferee. According to the petitioner, the proceedings initiated to realise the damages under Section 14B of the Act from the petitioner is arbitrary and illegal. Hence this writ petition is filed for issuing a writ of certiorari or any other order calling for all the records leading to Exts.P4 and P6 and to quash the same.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent.

4. The first point that arises for consideration is whether the damages caused by the delayed remittance of contribution under Section 14B of the Act can be realised from the transferee employer. The learned Standing Counsel for the 2nd respondent cited the decision reported in Hindustan Times Ltd. v. Union of India [(1998) 2 SCC 242] and submits that the above issue now stands covered by the said decision in favour of the 2nd respondent.

5. Going by the above decision, it is seen that the Supreme Court has considered the above question and held that the transferee is also liable to pay damages caused by the delayed payment of contribution under Section 14B of the Act. Thus, indisputably, the first question stands resolved in the light of the above decision.

6. Coming to the second point, the case of the petitioner is that the respondents have initiated proceedings against both transferor and transferee at a time for realisation of the damages under Section 14B of the Act. Even though such a contention is seen raised in this writ petition, no document has been produced to show that the respondents are proceeding simultaneously against both transferor and transferee. In the absence of such evidence, this Court is not inclined to set aside Exts.P4 and P6. But, indisputably, the respondents are not entitled to realise damages under Section 14B of the Act from both the transferor and transferee. Since the liability is joint and several, the respondents have right to realise the same from either of the two and it is made clear that if the respondents have realised the damages under Section 14B of the Act from the transferor, they have no right to proceed against the present petitioner for realisation of the same amount.

7. Hence with the above observations, this writ petition will stand disposed of.

