

(2008) 08 KAR CK 0003

In the Karnataka High Court

Case No : Writ Appeal No's. 135 and 136 of 2008

Ratna Polypack (India) Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

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

Citation : (2009) 1 KarLJ 515 : (2009) 3 LLJ 584

Hon'ble Judges : P.D. Dinakaran, C.J;V. Gopala Gowda, J

Bench : Division Bench

Advocate : J.N. Naveen, for A. Nagarajappa, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—These appeals are directed against the common order of the learned Single Judge dated 29-10-2007 passed in the Writ Petition Nos. 5810 of 2006 and 35369 of 2003 and other connected matters wherein the appellants have chosen to challenge the constitutional validity of Section 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called "the Act" in short) and in some of the cases, the orders passed under Sections 7-A, 7-Q and 14-B of the Act. In the said writ petitions, the constitutional validity of Section 7-Q was upheld by this Court and liberty was reserved to the petitioners to file appropriate appeals before the Appropriate Authority in accordance with law insofar as the orders passed by the authorities under Sections 7-A, 7-Q and 14-B of the Act.

2. Mr. J.N. Naveen, learned Counsel for the appellants contends that " in view of Section 14-B of the Act, Section 7-Q, which renders the employers liable to pay simple interest amounts to double jeopardy.

3. For the purpose of appreciating the legal submissions made by the learned Counsel for the appellants, the provisions of Sections 7-A, 7-Q and 14-B of the

Act are extracted hereunder.

7-A. Determination of moneys due from employers. - (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order.:

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely. -

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code, 1860.

(3) No order shall be made under Sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3-A) Where the employer, employee or any other person required to attend the inquiry under Sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under Sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for

proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. - Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the ex parte order.

(5) No order passed under this section be set aside on any application under Sub-section (4) unless notice thereof has been served on the opposite party.

7-Q. Interest payable by the employer. - The employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled Bank.

14-B. Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under Sub-section (2) of Section 15 or Sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

4. A closer analysis of the provisions makes it clear that what all Section 7-Q of the Act contemplates is that the employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment. It further provides

that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled Bank. There is a difference between the provisions of Sections 7-Q and 14-B. The action of authorities requiring the employer to pay interest for the belated payment does not require any opportunity of being heard. On the other hand u/s 14-B of the Act it is provided that the employer shall be given a reasonable opportunity of being heard before levying and recovering damages. It is therefore clear that if the employer is able to give a convincing explanation for the belated payment, employer is not liable to pay damages, in which event the argument advanced by the learned Counsel that in view of Section 14-B of the Act, Section 7-Q, which renders the employers liable to pay simple interest amounts to double jeopardy, fails.

5. As far as consequential orders of the authorities made under Sections 7-A, 7-Q and 14-B of the Act are concerned, the learned Single Judge has sufficiently protected the interest of the appellants by permitting them to move the Appellate Authority if they are so advised.

6. Hence we do not find any reason whatsoever to interfere with the order of the learned Single Judge. The writ appeals are dismissed, accordingly.