
(2015) 06 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 23502 (W) of 2005

Regional Provident Fund Commissioner	APPELLANT
Vs	
Darjeeling Dooars Plantation (Tea) Limited and Others	RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Citation : (2015) 147 FLR 191 : (2015) 3 LLJ 399 : (2015) 4 LLN 630 : (2015) LLR 1041

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Mihir Kundu, for the Appellant; Dilip Kumar Dhar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Shivakant Prasad, J—The instant writ petition is directed against the order dated 29th April, 2005 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 461(15) of 2000 which was preferred by Darjeeling Dooars Plantations (Tea) Limited, Mechpara Tea Garden, against the order passed by the Regional Provident Fund Commissioner, Jalpaiguri in a proceeding under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. It is contended that the Respondent No. 1 is an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and a Code number was allotted to the said establishment vide Code No. WB/871. That the said establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 as per provision of Sections 6, 6A and 6C of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with para 38 of Employees Provident Fund Scheme, 1952, para 3 of Employees Pension Scheme, 1995, para 9 of Employees Family Pension Scheme, 1971 and para 8 of the Employees Deposit Linked Insurance Scheme, 1976 the employer of the said establishment was required to remit the contributions payable under the said Act and the Scheme

framed therein within 15 days of the close of every month but inspite of such specific provisions stipulated in the said Act read with the aforesaid Scheme, the employer of the said establishment did not remit the contributions payable towards Employees Provident Fund, Employees Pension and Employees Deposit Linked Insurance Fund and also the administrative charges/inspection charges for the period of March, 1982 to September, 1990 and also from November, 1990 to April, 1995 as per amended paragraph 26 of the Employees Provident Fund Scheme, 1952 within the due date as specified in para 38 of the Employees Provident Fund Scheme, 1952, para 3 of the Employees Pension Scheme, 1995, para 9 of the Employees Family Pension Scheme, 1971, para 8 of the Employees Deposit Linked Insurance Scheme, 1976 and, accordingly, an enquiry was held and it was confirmed that the said establishment did not remit the liabilities as stated above for the period of March, 1982 to September, 1990 and also from November, 1990 to April, 1995 amended para 26 of the Employees Provident Fund Scheme, 1952.

2. Since the employer of the said establishment made default in the payment of said contribution to the Employees Provident Fund, Employees Pension Fund and Insurance Fund or the accumulation required to be transferred by them under Sub-section 2 of Section 15 and Sub-section 5 of Section 17 of the payment of any charges payable under any other provisions of the said Act or any Scheme or Insurance Scheme, the Regional Provident Fund Commissioner, under the power conferred on him vide Notification No. S0545(E) dated 17.10.2003 as amended by S.O. No. 2793 dated 18.6.1982 by which he was authorized to recover by way of penalty such damages not exceeding the amount in arrears at the rate as specified in para 32A of the Employees Provident Fund Scheme, 1952, para 5 of the Employees Pension Scheme, 1995, para 10A of the Employees Family Pension Scheme, 1971 and para 8A of the Employees Deposit Linked Insurance Scheme, 1976 accordingly, the Regional Provident Fund Commissioner, Jalpaiguri, initiated a proceedings under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 against the Respondent No. 1 for recovery of liability by way of penalty and such damages not exceeding the amount of arrears as specified in para 32A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and accordingly the petitioner issued notice being DAM/SRO/JPG/WB/32871/2000/881 dated 24.1.2000 upon the Respondent No. 1 for giving the Respondent No. 1, a reasonable opportunity of hearing as per provision of the proviso of Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

3. After receiving of the aforesaid notice by the respondents, ultimately Mr. V.K. Gupta, Senior Manager of the said establishment appeared before the concerned authority and submitted a representation praying for withdrawal of the said proceeding initiated under Section 14B of the said Employees Provident Fund and Miscellaneous Provisions Act, 1952 on the grounds, inter alia, that the said establishment is regular in payment of dues (Provident Fund) except some minor delays and the management took over the said establishment from 1987 and

prior to that it was looked after by some other management and the instant proceeding had been initiated after more than 10 years and it is difficult to lay hand on the old records of the said establishment and further dues assessed on implementation of the provision of paragraph 26 subsequent to decision by the Hon''ble Supreme Court and clarification by the Labour Ministry, the assessed dues have been paid immediately after assessment.

4. By an order dated August 30, 2000 the Regional Provident Fund Commissioner, Jalpaiguri imposed damages of Rs. 2,51,663/- under Section 14B of the Employee's Provident Funds and M.P. Act, 1952 on the respondent company for belated payment of provident fund contribution. The periods involved was from March, 1982 to September, 1990 and from November, 1990 to April, 1995. With regard to second period that is from November, 1990 to April, 1995, the provident fund amount was paid in late in respect of "Bigha Workers" (casual labourers) who are brought within net of the provident fund by making amendment of para 26 of the EPF Scheme (in short the said Scheme). The amendment of para 26 of the EPF Scheme was challenged in various High Courts wherein the Hon''ble High Courts granted stay of operation of the said amendment of para 26 of the scheme. By a circular dated August 26, 1991 the Regional Provident Fund Commissioner (Head Quarter) it was informed that the Ministry of Labour, Government of India considered the matter in consultation with the Ministry of Law and have directed that part of the notification dated October 19, 1991 relating to para 26 of the said Scheme be not given effect to ensure uniformity of treatment. Ultimately the matter went up to the Hon''ble Supreme Court and the Hon''ble Supreme Court upheld the validity of para 26 of the said scheme. After judgment of the Hon''ble Supreme Court, the Regional Provident Fund Commissioner issued a circular dated June 28, 1995. The provident fund authorities did not give effect to amendment of para 26 of the said Scheme till 1995. The respondent company was not required to deposit provident fund contribution in respect of Bigha Workers till 1995. There was no default of the respondent company till 1995 for not depositing contribution of "Bigha Workers" and damages could not be imposed for that period.

5. Following the said circulars, the Learned Tribunal has held that the scheme could not be correctly applied for the period from November, 1990 to April, 1995. There was nothing wrong in the order of the Learned Tribunal and damages could not be imposed for the period and the appellant deposited both employer and employees' share of contribution for the period from November 1990 to April 1995 after 1995.

6. With regard to the first period that is from March 1982 to September 1990 it will appear from the annexure to the notice that the delay in depositing the provident fund contribution in some cases was within 5 days, in most of the cases within 15 days and in exceptional cases the said delay was about 70 days. The proceeding in respect of the said delay was initiated in 2000 that is after expiry of 16/17 or 18 years when the Manager of the Tea Estate and Persons

looking after the provident fund matter had retired. The records for long 15 years were not available and it was not possible to explain the exact cause for which the delay had occurred.

7. The writ petitioner has assailed impugned order passed by the learned Appellate Tribunal on the score that the order has been passed without considering the materials on record. Learned counsel for the petitioner submits that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was enacted to serve beneficent purpose and it does constitute a welfare measure, as it seeks to create a fund which could be drawn upon by certain categories or employees working in Factories and some establishment to meet placing demands so also to provide premium after the employees had ceased to be in service, accordingly, non-deposition of the same directly effect the employees and as such a penal provisions being Section 14B has been enacted and as such the order passed as per provision of Section 14B is for the benefit of the employees which is legal and valid.

8. It is also contended that under the provision of Section 14B of the said Act the purpose of imposition of damages is meant to penalize the defaulting employer as also to provide repatriation for the amount of loss suffered by the employees in general not commensurate breach of the statutory requirements, but at the same time it is meant to provide compensation or redress to the beneficiaries that is to re-commensurate the employees for the loss sustained by them.

9. Learned counsel for the petitioner further invites my attention to the provision of Section 14B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and submits that damages can be levied to the extent of 100% of the arrears but the petitioner taking all aspects into consideration and keeping in mind the guidelines laid down by the Hon'ble Apex Court as well as various High Court took a lenient view and levied damages only at the rate specified in para 32A of the E.P.F. and M.B. Act, 1952 para 5 of Employees Pension Scheme, 1971 and para 8A of the Employees Deposit Linked Insurance Scheme, 1976 but the Appellate authority without any valid and cogent grounds reduced the damage to the tune of 50% which is absolutely bad, illegal and not in statutory provision and as such the order passed by the Appellate authority liable to be set aside and/or quashed.

10. It is further submitted that in view of the fact that Respondent No. 1 has defaulted in depositing to contributions both its own and as well as employee share in time, the Regional Provident Fund Commissioner after applying his mind to the period of delay i.e. March 1982 to September, 1990 and also from November, 1990 to April, 1995 as well as to the quantum, imposed a sum of Rs. 2,51,663.00 as damages But the Appellate authority reduced the damages taking into consideration pecuniary condition suffered by the establishment as a ground which is absolutely bad, illegal, arbitrary and cannot be sustained in law.

11. It is categorically stated that the said damages has already been recovered

from the said establishment, but the learned Appellate Tribunal took judicial notice of the same but reduced the damages to the tune of 50% and directed the said amount to be adjusted from the further contribution which is absolutely bad, illegal and arbitrary and the same is liable to be set aside and/or quashed.

12. It is contended on behalf of the respondent that during the relevant period United Bank of India was the banker of the respondent company. For some periods although challans were sent within statutory period, the inter-bank delay was there in remittance of the amount for which the respondent company was in not any way responsible. However, there was recession of the industry for the period from 1982 to 1986 and most of the gardens in Jalpaiguri became sick and 80% of the gardens defaulted in making contribution within the statutory period. Due to recession in trade loss and paucity of funds the respondent company could not make contribution within the time. However, the entire employer and employees' share of contribution and interest for delay payment of contribution were paid. By another circular dated December 29, 1976, the Central Provident Fund Commissioner stated that damages under Section 14B of the Act are recovered with the turn objects partly to recover loss to fund due to late remittance of provident fund dues by the employees and also the penalty to deter the erring employers from continuing to make delayed remittances. The loss sustained to the fund due to late remittance was fully protected by levy of interest and the respondent company did not make any default subsequently for which damages imposed by the Regional Provident Fund Commissioner could be sustained. The workers interest in any case was fully protected as the respondent company paid the contribution and interest for delay in payment of contribution. The workers are not entitled to damages levied. The Learned Tribunal has all the power of civil courts and judicially exercised power as provided in para 32B(c) of the Scheme and allowed reduction of damages up to 50%. Accordingly it is submitted that tribunal rightly reduced the damages in respect of the period from March 1982 to September 1990. The loss suffered to the fund for delay in deposit of provident fund contribution was fully protected by reducing the damages to 50% and the workers interest was also protected.

13. The learned Appellate Tribunal has observed that considering the annual reports balance sheet for the years 1980, 1981, 1982, 1989, 2003 and 2004 so that the appellant/respondent herein has been suffering financial loss for long. Considering this as a mitigating factor the Appellate Tribunal reduced the damages by 50% in view of the provision in para 32B of the Scheme.

14. It is further observed that EPFO is not a profit making body and whatever amount towards EPF dues is received by it from a factory/establishment, the same is deposited in interest generating securities and the interest so earned is further passed on the members of the fund, who are workers working in the establishment/factory and accordingly, the learned Appellate Tribunal was pleased to modify the order of RPFC, Jalpaiguri, W.B. by the impugned order.

15. It is settled principle of law that delay in making payment should not

prejudice the employees for whose benefit the fund is created. Where "default" is found, but no apparent "fault", the quantum of damages should be compensatory rather than penal in nature. Reference may be made to a case of Shanti Garments Pvt. Ltd. v. Regional Provident Fund Commissioner, 2003 LLR 256 (Mad.) : 2003-I-LLJ-467.

16. Delay in initiating proceeding under Section 14B of the Act is also not a ground for setting aside an order imposing damages on account of belated deposit of amount by employer towards provident fund unless a specific plea of prejudice is raised before the Provident Fund Commissioner.

17. It is a principle of law that though Section 14B of the Act does not provide for any limitation for initiation of proceeding for levy damages, but the power should be exercised within a reasonable period.

18. It is also settled in a case of Star of Gujrat Textile Mills Ltd. v. Regional Provident Fund Commissioner, Ahmedabad 1993 LLR 210 : LNIND 1992 GUJ 166.

19. The provision of para - 32B of EPF Scheme 1952, provides for terms and conditions for reduction or waiver of damages. It would be apt to reproduce the provision which reads as under:

"The central Board may reduce or waive damages levied under Section 14B in relation to an establishment specified in the second proviso to Section 14B subject to the conditions namely

(a) in case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b) in cases where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its schemes, in this behalf recommends, waiver of damages up to 100 percent may be allowed;

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

20. In the given facts and circumstances of the case, having regard to the rival contentions put forth by the learned Counsel for the parties as discussed herein in above, this Court is of the considered view that the learned Appellate Tribunal has rightly applied the provision of para - 32B of EPF Scheme 1952, finding mitigating factor for reduction of damages to 50%.

21. Ergo, the order passed by the learned Appellate Tribunal is tenable in law and in fact. I do not find any ground to interfere into the order impugned and no merit in this writ application. Accordingly, the writ application is dismissed, however, without any order as to costs. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.