
(2014) 03 GUJ CK 0124

In the Gujarat High Court

Case No : Special Civil Application No. 8574 of 2013

Regional Provident Fund Commissioner

APPELLANT

Vs

Employees Provident Fund Appellate Tribunal

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14B, 15, 17, 3

Foreign Exchange Regulation Act, 1973 — Section 54

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (2015) 145 FLR 137 : (2014) 3 GLR 2646

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Joy Mathew, Advocate for the Appellant

Judgement

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N.V. Anjaria, J.—The petitioner is the Regional Provident Fund Commissioner. He, by filing the present petition, has called in question judgment and order of the Employees' Provident Fund Appellate Tribunal. Before the Appellate Tribunal, the order impugned was the order passed by the petitioner under Sec. 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. When the petition came up for hearing, learned Advocate for the respondent objected to the very maintainability of the petition, raising the same as a preliminary point. Whether the Regional Provident Fund Commissioner has got a locus standi to challenge the order of the Appellate Tribunal which entertained and interfered with his order. The parties were heard in extenso on the said preliminary issue. The said point is dealt with at the outset.

2. Addressing the question may be prefaced by portraying the basic facts. The Competent Authority under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter mentioned as "the E.P.F. Act" for sake of brevity) issued notice to respondent No. 2-company holding that it was covered

under the provisions of the E.P.F. Act and further holding it liable to pay the amount of pension fund/deposit link insurance fund and administrative charges for the period from November, 2002 to February, 2010. The Department was of the view that the belated payment attracted damages under Sec. 14B of the Act. The establishment was asked by notice dated 20th July, 2011 to pay Rs. 1,26,79,829/- towards damages under Sec. 14B and Rs. 78,41,711/- towards interest under Sec. 7Q of the Act.

2.1. It appears that subsequent to the notice issued as above, representatives of the establishment appeared before the Authority at one stage and stated that the establishment had paid Rs. 54,21,091/- as per Sec. 7Q of the Act. It appears that the establishment failed to make the payment within the time given and failed to comply with the aforesaid notice. As a result, the Regional Provident Fund Commissioner passed order dated 16th February, 2012 directing the establishment to pay the amount of damages and interest.

2.2. The aforementioned order passed under Sec. 14B was carried in appeal before the Employees' Provident Fund Appellate Tribunal. For the reasons recorded in the order, the Appellate Tribunal restricted the damages upto 5% of the actual amount of damages, that is Rs. 1,26,79,829/- and the order of the petitioner-Regional Provident Fund Commissioner came to be accordingly modified. Before the Appellate Tribunal it was the case of the establishment that the P.F. dues could not be remitted in time for the reasons of financial constraints and adverse business conditions. While interfering with the order of the Regional Provident Fund Commissioner, the Appellate Tribunal took view that delayed payment of contribution would not ipso facto invite damages, if the employer had sufficient cause. It held that the observations made by the respondent-Regional Provident Fund Commissioner proceeded on erroneous presumption that the employer was answerable for damages irrespective of the fact that he had suffered with heavy losses.

2.3. The Appellate Tribunal recorded the contention of the appellant company-respondent No. 2 herein that it was constrained to file Reference before the Board for Industrial and Financial Reconstruction (B.I.F.R.) under the provisions of the Sick Industrial Companies Act which was registered as B.I.F.R. Case No. 44 of 1994. The case of the establishment inter alia was that during the year 2000 to 2004, operations of the company faced rough weather and suffered set back due to natural calamities like floods, earthquake and also because of industrial recession; the company was declared sick in 1994 having been referred to B.I.F.R., which sanctioned a rehabilitation scheme by order dated 6-4-1999 leading to change in the management. It brought to notice the order of sanction by B.I.F.R. to the Central Board of Trustees and Central Provident Fund Commissioner. As further recorded by the Appellate Tribunal, as also stated in the affidavit-in-reply filed by respondent No. 2, it appears that Employees' Provident Fund Organisation, New Delhi by his communication dated 10-9-2007 had granted 36 Equal Monthly Installments (E.M. Is.) to respondent No. 2 for

paying the principal amount. It had also granted 12 E.M. Is. to pay the interest under Sec. 7-Q of the Act. As regards the request of respondent No. 2-establishment for waiver of damages, the matter was required to be placed for consideration by Central Board of Trustees, it was stated. All these were the contentions on merits on the basis of which the Appellate Tribunal decided the appeal.

2.4. The Appellate Tribunal further held that the provisions for damages and penalty were enabling provisions only. The Appellate Tribunal further held that there was no finding recorded by the Inquiry Officer that there was any wilful and deliberate default on part of the appellant-establishment in not remitting the P.F. dues in time and that there was no mens rea.

3. Learned Advocate for the respondent Mr. Dipak R. Dave submitted with regard to the preliminary point that the order passed by the Regional Provident Fund Commissioner under Sec. 14B of the E.P.F. Act was passed in capacity of a delegatee of the Central Government. He, therefore, submitted that the petitioner-Regional Provident Fund Commissioner had no locus standi to file the petition. He had no independent capacity to derive a locus standi, it was submitted.

3.1. Learned Advocate compared and contrasted provisions of Sec. 14B with Sec. 7A of the E.P.F. Act and submitted that in Sec. 7A the Authorities empowered to determine the money due from the employers are specifically mentioned. There the said Authorities act in their own capacity and not as delegatee of powers of the Government. Learned Advocate for the respondent No. 2 submitted that even in context of Sec. 7A orders, the Courts have taken a view that the Authorities passing orders under Sec. 7A act as quasi-judicial authorities and they do not have the locus standi to challenge the order of the Appellate Tribunal which in exercise of its appellate power deal with the order passed under Sec. 7A.

3.2. Learned Advocate, in support of his above submission, relied on decision of the Kerala High Court in District Executive Officer v. State of Kerala, 1991 (1) KLT 390, decision of Madras High Court in Regional Provident Fund Commissioner Vs. Prabha Beverages Private Ltd. and The Presiding Officer, Employees Provident Funds Appellate Tribunal, , as also a Bombay High Court decision in Asstt. Provident Fund Commissioner Vs. Nirmitee Holidays (P) Ltd., . All these decisions took view in the context of orders passed under Sec. 7A of the Act that the Adjudicating Authority under Sec. 7A since exercises quasi-judicial powers cannot challenge the order in appeal filed before the Appellate Authority under Sec. 7-I of the Act.

3.3. On the other hand learned Advocate Mr. Joy Mathew appearing for the petitioner-Regional Provident Fund Commissioner contended that the petitioner has locus standi to challenge the order. He submitted that the petitioner is a custodian of interest of the fund and could legitimately challenge the order passed by the Appellate Tribunal, when in his view the same was required to be

challenged. He relied on decision by the Madras High Court in *Competent Authority v. A. Sowkath Ali*, being Writ Petition No. 2939 of 2011 decided on 17th April, 2012, and in particular Paragraph 18 of the said decision to bring his point home that on the same principle, the petitioner-Regional Provident Fund Commissioner would have locus standi to file the petition.

4. Proceeding to consider the question, Sec. 14B of the E.P.F. Act under which the petitioner-Regional Provident Fund Commissioner passed order reads as under:

"14B. 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-sec. (2) of Sec. 15 or sub-sec. (5) of Sec. 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme of Insurance Scheme or under any of the conditions specified under Sec. 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 Sec. 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 under Sec. 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme."

4.1. Appeals to the Tribunal is provided for under Sec. 7-I of the Act. The said provision is as under:

"7-I. Appeals to Tribunal:--(1) Any person aggrieved by a Notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-sec. (3), or sub-sec. (4) of Sec. 1, or Sec. 3, or sub-sec. (1) of Sec. 7A, or Sec. 7B except an order rejecting an application for review referred to in sub-sec. (5) thereof, or Sec. 7C, or Sec. 14B, may prefer an appeal to a Tribunal against such Notification or order.

(2) Every appeal under sub-sec. (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

4.2. Appeal under Sec. 7-I is contemplated at the instance of any person aggrieved by a Notification of the Central Government or any order passed by the Central Government or any authority specified in the Section. It includes order passed by the Central Government or any authority under Sec. 14B of the Act. Any person aggrieved by the said order may prefer appeal.

5. The contention that quasi-judicial authority would not have locus standi to challenge the appellate order which considered its own order, has substance. The said principle is well recognised. Apart the said aspect, the very language of Sec. 14B signifies that petitioner was only a delegatee of the Central Government while exercising powers under the said provision. As could be seen from Sec. 14B of the Act, the powers exercisable under the said provision are conferred on Central Provident Fund Commissioner. In the alternative, such powers could be vested in an officer who may be specified by the Central Government in the Notification in Official Gazette. When the Central Government names the authority by way of Notification, such authority or officer acts as an delegatee of the Central Government. In such case, the repository of powers would be the Central Government. As a delegatee, the specified authority cannot claim an independent status.

6. In other words, from the reading of the provision in Sec. 14B, either the Central Provident Fund Commissioner or officer specified in the Gazette by the Central Government would be the authority in whom powers are vested, and either the Central Provident Fund Commissioner or the Central Government could be said to be the person aggrieved for preferring appeal. The petitioner herein-Regional Provident Fund Commissioner acted as an authority so specified by the Central Government for the purpose of discharging functions under Sec. 14B. The petitioner, therefore, was discharging the functions of the Central Government as an adjudicatory authority under Sec. 14B. The petitioner delegatee, therefore, did not have a locus standi to file the petition.

6.1. In *Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another*, , the question considered by the Supreme Court was whether a Special Director appointed under the Foreign Exchange Regulation Act, 1973 himself can prefer appeal under Sec. 54 of the said Act before the High Court, against an order passed by the Foreign Exchange Regulation Appellate Board. The Apex Court held as under (Para 16):

"An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorised. Only when an officer is so specifically authorised, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An

adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board."

6.2. The above principle applies squarely in the present case. The petitioner-Regional Provident Fund Commissioner was an authority specified by the Central Government and functioning accordingly for the purpose of exercising powers under Sec. 14B of the E.P.F. Act could not have a locus standi to challenge the order of the E.P.F. Appellate Tribunal, which considered his order. The petitioner-Authority was an adjudicatory authority who exercised power of quasi-judicial nature to determine the lis. He himself could not have claimed any lis in the subject-matter. For the petitioner-Authority, no locus standi is available to challenge the order of the Appellate Tribunal. The petitioner-Authority cannot fall within the purview of "any person aggrieved" at the instance of whom appeal under Sec. 7-I would lie.

7. A person may have a locus standi to challenge any decision of any Forum or Court of law, or he may not have such locus standi. A person may have locus standi without having any litigative interest. There is a subtle distinction between "to have a locus standi" and "to have a litigative interest". For instance, in the matters of Public Interest Litigation the petitioner is perceived in law to have been clothed with a locus standi eventhough, a Public Interest Litigant cannot be said to have a litigative interest stricto sensu. The statutory authority which functions as adjudicating authority and discharge quasi-judicial powers, cannot claim for itself either a locus standi or a litigative interest to challenge the order of the Appellate Forum/Court which considers its own order.

8. For the foregoing discussion and reasons, the petition is liable to be dismissed on this point alone. As the preliminary point is held in favour of the respondent, no further aspects are required to be gone into. The petition is accordingly dismissed.