

(2008) 03 CAL CK 0020
In the Calcutta High Court
Case No : F.M.A. 494 of 2007

Regional Provident Fund Commissioner	APPELLANT
Vs	
Eveready Industries (India) Limited and Others	RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

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

Citation : (2008) 2 CHN 970 : (2009) 120 FLR 710 : (2009) 2 LLJ 678

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Jyotirmay Bhattacharya, J

Bench : Division Bench

Advocate : Shyamal Sarkar and Mihir Kundu, for the Appellant; Jayanta Mitra, Debangsu Basak, D.N. Sharma, Aniruddha Roy and R.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

Surinder Singh Nijjar, C.J.—This appeal has been filed by the Regional Provident Fund Commissioner, Jalpaiguri challenging the order passed by the learned Single Judge on 28th January, 2003 whereby the learned Single Judge set aside the impugned order with a direction to the authorities to reconsider the issue within a period of three months from the date in the light of the judgment and order passed by the Court. In coming to the aforesaid conclusion the learned Single Judge relied on a Division Bench judgment of this Court in the case of Darjeeling Dooars Plantation Ltd. and Anr. v. Regional P.F. Commissioner, W.B. and Ors. reported in 1995(I) LLJ 1999, wherein it has been held that there is a distinction in between Section 14B and Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The ratio of the aforesaid judgment came up for consideration before a Special Bench of this Court in the case of Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) Vs. Union of India (UOI) and Others, . The judgment of the Division Bench in the Darjeeling case (supra) has been specifically overruled. It has been held that though the word "employer" and "other persons" connotes two different identities, yet in the context of Section 17B on transfer of the establishment notionally and legally the

transferor ceases to be employer and the transferee stepped into the shoes of the employer. It was further held that a legal fiction has been created in respect of the liabilities arising under any provision of 1952 Act to continue the liability for the purpose of facilitating recovery even in respect of the dues that had accrued prior to the date of transfer making both the transferor and the transferee liable jointly and severally. It has also been held that the expression "other person" also connotes the transferee who is stepping into the shoes of the employer as soon as the transferee steps into the shoes of the employer the continuity of the liability is not affected by the transfer and both the transferor and the transferee, as employer past and present remains liable jointly and severally. The Special Bench further observed that it is difficult to accept the proposition that the provisions of Section 17B would not extend to Section 14B despite the damages impossible thereunder being other sum due under the provisions of the Act. The Special Bench particularly observed - "we therefore, do not agree with the said decision in Darjeeling Dooars Plantation Ltd. (supra) and overruled the same."

2. In view of the aforesaid clear enunciation of law, we are of the considered opinion that the judgment of the learned Single Judge would have to be set aside and the appeal would have to be allowed in view of the ratio of law laid down by the Special Bench.

3. In view of the above, the appeal is allowed. The judgment of the learned Single Judge is hereby set aside.

4. At this stage Mr. Mitra, learned Senior Counsel appearing for the respondent submits that during the pendency of the proceeding before the learned Single Judge the prayer made for permission to operate the bank accounts had been granted on payment of a certain amount. The learned Single Judge had decided the matter on 20th January, 2003. This appeal was filed in the year 2006 which has now come up for hearing. In such circumstances, the interim relief granted by the learned Single Judge by order dated 20th January, 2003 ought to be continued as the respondents intend to challenge the present order by way of presenting a SLP before the Supreme Court.

5. We are of the considered opinion that since the matter is squarely covered by the judgment of the Special Bench it would be wholly inappropriate to grant any interim relief at this stage. The prayer is declined.

6. We, however, grant one months' time to the respondents to deposit the entire liability.

7. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties by tomorrow.

Jyotirmay Bhattacharya, J.

I agree.