

(2014) 01 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 222 of 2000

Regional Provident Fund Commissioner	APPELLANT
Vs	
Maharaja Shree Umaid Mills Ltd. and Others	RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Citation : (2015) 1 CDR 392 : (2015) LabIC 1886 : (2015) LLR 839 : (2015) 2 RLW 1033

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Deepak Goyal, Advocates for the Appellant; Anant Kasliwal, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the Regional Provident Fund Commissioner against the order of the Employees Provident Fund Appellate Tribunal dt. 5.8.1998 by which the appeal Filed by respondent-Mis. Maharaja Shree Umaid Mills Ltd. has been allowed and the penalty/damages equal to the amount of provident fund of Rs. 2,96,056 deposited by the respondent with delay has been set aside. The facts of the case are that a notice u/s. 14B of the Act of 1952 dt. 4.12.1996 was served upon the respondent establishment, upon its failure to deposit the provident fund for the period from January, 1981 to January, 1996 by Regional Provident Fund Commissioner. The respondent sent its reply on 23.12.1996 requesting to drop the proceedings under Sec. 14-B. During the pendency of the proceedings, the respondent by letter dt. 2.4.1997 submitted that it has deposited the amount of Rs. 50,000 under protest. Eventually the respondent deposited the entire amount in two installments respectively on 8.3.1996 and 13.3.1996. The Regional Provident Fund Commissioner passed an order u/s. 14B on 3.9.1997 determining the sum of Rs. 2,96,056 as damages for the aforesaid period from January, 1981 to September, 1995 to be recovered from the respondent establishment. Aggrieved thereby the respondent filed appeal before the Tribunal which has allowed the same vide order dt. 5.8.1998, which is under challenge in the present writ petition.

2. Shri Deepak Goyal, learned counsel for the petitioner submits that there is no dispute between the petitioner and the respondent as to the coverage of the establishment inasmuch as there is also no dispute that the respondent did not for as long as 15 years deposit the amount of provident fund. The delay ranges from the period of six months to fifteen years. The period of default and date of deposit was thus not disputed before the Commissioner. It was statutory liability of the employer to deposit the amount well in time. Reference in this connection is made to para 38(1) of the Provident Fund Scheme of 1952. The learned Tribunal has wrongly observed in para 8 of the judgment that the respondent is always prompt in paying PF contributions. It was argued that the learned Tribunal has misread and misapplied the judgment of the Supreme Court in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, . In fact, the aforesaid judgment supports the case of the petitioner. The Supreme Court in that case categorically held that the amount of damages includes the compensation, mainly of interest and penal consequences so as to warn the employer. The Regional Provident Fund Commissioner was well within its jurisdiction in awarding the damages/compensation to the extent of 100%. There was no case for interference. The Provident Fund Commissioner was fully justified in holding that the payment of provident fund by the respondent was not depended on the vigilance of the petitioner and it was not required to issue a demand letter. Section 7-B is a provision of review, which has nothing to do in the present case. Section 7-C was for the first time introduced with effect from 1.7.1998 and deals with the case of determination of escaped amount. This provision would therefore also not apply to the present case.

3. Shri Anant Kasliwal, learned counsel for the respondent opposed the writ petition and argued that the respondent deposited the amount within prescribed time without any demand being raised by the petitioner. It was thereafter that show cause notice was issued by the Provident Fund Department for damages. The respondent paid the share of even such employees who were no more in their employment and could not be traced to be made member of provident fund scheme. Those employees were not working with the respondent on regular basis, but were in fact engaged on contract basis on special occasions for carrying out the Work relating to factory. Petitioner never during long period of 18 years carried out the first default. Default, if at all any, was unintentional. It is argued that by realising the payment of wages, the department will be unjustly enriched clearly attracting the doctrine of unjust enrichment. Contention of the department that the respondent was habitual defaulter, is wholly without any basis.

4. It is contended that as soon as the amount was determined, the respondent deposited the entire amount of provident fund dues, therefore, there was no intention or mens rea on the part of respondent and thus the damages could not be awarded. Learned counsel relied on the judgment of Gujarat High Court in *Saurashtra Solvent Extraction Co. Put. Ltd. vs. Regional Provident Fund Commissioner*, (2006) 11 LLJ 962 (Guj.) in support of his arguments.

5. I have given my thoughtful consideration to the rival submissions and perused the material on record.

6. It appears from the order of Regional Provident Fund Commissioner that the respondent gave two reasons for its inability to remit the provident fund dues in time. Firstly, that the demand from the Provident Fund Commissioner was received late and immediately on receipt of the same, it was paid. Secondly, that it remained unpaid due to bona fide belief that the contribution is not due. The Commissioner, however, has not rejected any of these pleas holding that statutory obligation is cast upon the employer to deposit the dues within time limit. Compliance of the provisions of the scheme is not dependent on the vigilance of the department. The Tribunal however held on the authority of *Organo Chemical Industries & Anr.*, supra held that penal damages should be imposed only if the employer is habitual offender in withholding the share of employees after deducting from their wages. On the facts of the present case, the Tribunal held that it was evident that the respondent was always prompt in paying the provident fund contributions. The amount remained unpaid because the department did not determine the same under Sec. 7-A of the Act. The assessment was made on the basis of accounts books without finding out the employees who were eligible for being enrolled as a member of the scheme. Apart from this, the power to determine escaped liability under Sec. 7-C of the Act became effective from 1.7.1998 when this provision came into force. The Tribunal therefore held that the payment made by the respondent as provident fund dues is not so in strict legal sense, therefore, any levy of damages by way of penalty in exercise of power under Sec. 14-B would be baseless.

7. The Supreme Court in *Organo Chemical Industries*, supra in para 46 has held as under:--

"46. The expression "damages" occurring in Sec. 14-B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/S. 14-B is not merely "to provide compensation for the employees". We are clearly of the opinion that the imposition of damages u/s. 14-B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Sec. 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompence the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Schemes. The word "damages" in Sec. 14-B is related to the word "default". The words used in Sec. 14-B are "default in the payment of contribution" and, therefore, the word default must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word "default" in Sec. 14-B must mean "failure in performance" or "failure to act." At the same

time, the imposition of damages u/S. 14-B is to provide reparation for the amount of loss suffered by the employees."

8. In view of above, the contention that there was no intention or mens rea on the part of respondent in not making payment, even if it has failed to make payment on time, is without any substance. As per para 38 of the Scheme, payment of contribution has to be deposited within fifteen days of the close of every month and therefore the word "default" in Sec. 14-B must be failure in performance or failure, to act. Learned counsel for the respondent has relied on the judgment in Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, in which it was held that according to Sec. 14-B of the Act, the employer is under an obligation under the statute to comply with the payment of the amount. In the event of his committing default in the payment of the contribution to the fund or in the payment of any charges payable under any other provisions of the Act or any scheme or insurance scheme or any of the conditions specified in Sec. 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government may, by notification in the official gazette in this behalf, recover from the employer, by way of penalty, such damages, not exceeding the amount of arrears as may be specified in the scheme. The Act envisages the imposition of damages for delayed payments. The Act is a beneficial welfare legislation to ensure health and other benefits to the employees. The Supreme Court held that the employer under the Act is under a statutory obligation to deduct the specific percentage of the contribution from the employees salary and matching contribution, the entire amount is required to be deposited in the fund within 15 days after the date of the collection, every month.

9. The judgment of the Gujarat High Court in Saurashtra Solvent Extraction Co. Put. Ltd., supra on which reliance is placed however turned out on different facts because in that case the amount was already paid by the assesses to his consultant, who did not make the adequate deposit and, therefore, he filed a criminal complaint against such consultant and had to again pay the amount. Even then, the judgment of the Gujarat High-Court does not anywhere dilute the law laid down by the Supreme Court in the above referred to two judgments.

10. The analogy of Sec. 7-C taken by the Tribunal is wholly misconceived because Sec. 7-C applies to the case of escaped assessment and the said Sec. 7-C was for the first time introduced by amending Act 33 of 1988 w.e.f. 1.7.1997. In the present case, indisputably, the respondent was under an obligation to pay provident fund for the period from January, 1981 to September, 1995 and it made payment belatedly on 8th March and 13th March, 1996, thus enormously delayed. The liability and default both aspects have not been denied by the respondents. The Tribunal was therefore not justified in reversing the order of Regional Provident Fund Commissioner. In the result, the writ petition is allowed and the judgment of the Employees Provident Fund Appellate Tribunal dt. 5.8.1998 is set aside and that the Regional Provident Fund Commissioner dt.

3.9.1997 is restored.