

(2010) 12 BOM CK 0060

In the Bombay High Court

Case No : Letters Patent Appeal No. 486 of 2010 in Writ Petition No. 1939 of 2001 (D)

Regional Provident Fund Commissioner

APPELLANT

Vs

Manoharbai Ambalal, through its partner and a registered Partnership firm

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 5, 7I, 7L

Citation : (2011) 3 ALLMR 204 : (2011) 6 BomCR 773 : (2011) 128 FLR 939 : (2011) 3 LLJ 446 : (2011) LLR 332 : (2011) 3 MhLj 908

Hon'ble Judges : S.A. Bobde, J;P.D. Kode, J

Bench : Division Bench

Advocate : R.S. Sundaram, for the Appellant; A.N. Vatsani, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.

1 Admit.

2. Advocate Shri Vatsani waives service for respondent. Taken up for final hearing by consent of the parties.

3. This letters patent appeal is preferred against the judgment and order of learned Single Judge upholding the power of the Tribunal to reduce the damages awarded by the Central Provident Fund Commissioner under paragraph 32A of the Employees Provident Fund Scheme, 1952. The appellant imposed damages on the respondent employer under paragraph 32A of the Provident Scheme in default seeking the contribution in time. The damages were imposed at rates for various period at varying rates from 17 % to 25 % in the following terms

Damages can be imposed upon the establishment at the rate of 17% for pre-discovery period 6/77 to 7/77, for the period 8/77 - 22% (a/c 1 & 10) and

25% (for a/c 2, 21, 22), for the period 9/77, 10/77 - 17 % for (a/c 1 & 10) and 25% for (a/c 2, 21, 22), for the period 11/77 to 9/85 - 25%, for 4/86 to 8/86 - 17% and for the period 10/80 to 5/84 - 17% on one share and damages are nil for the period 3/90 to 3/95, in accordance with the section 14B read with para 32A of EPF Scheme, 1952.

4. An order was passed u/s 14B of the Act to recover the said damages by the Provident Fund Commissioner. In an appeal filed by the employer, before the Tribunal u/s 7I of the Act, the Tribunal found that the damages imposed by the Commissioner were excessive and having regard to certain precedents of the Tribunal, in similar situation, came to the conclusion that it would be equitable and just to order the reduction and damages to 12% per annum for all the periods of default. The appellant challenged the said order by way of a writ petition. Before the learned Single Judge, the appellant contended that the Tribunal under the Act has no power to reduce the damages awarded against an employer and sought to be recovered since that power is exclusively vested, under paragraph 32B of the Scheme, in the Central Board. Paragraph 32B reads as follows

32B. Terms and conditions for reduction or waiver of damages.

The Central Board may reduce or waive the damages levied u/s 14B of the Act in relation to an establishment specified in the second proviso to section 14B, subject to the following terms and conditions, namely,

(a) in case of a change of management including transfer of the undertaking to workers' cooperative 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 Scheme, in this behalf recommends, waiver of damages up to 100 per cent. may be allowed;

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

5. The learned Single Judge has rejected the contention of the appellant and has come to the conclusion that the Tribunal has been vested with the powers to hear an appeal and must be taken to have been also vested with the power to reduce the damages. We are in agreement with the judgment of the learned Single Judge. Indeed, section 7I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") confers power on the Tribunal to hear an appeal and dispose it of in accordance with law, even where the appeal is against an order u/s 14B for recovery of damages. It stands to reason that the Tribunal, which is invested with the power to decide an appeal from an order directing recovery of damages and to set aside the order if found illegal, it must be held to have the lesser but equally important power to reduce the quantum of

damages. Indeed, there is no dispute that section 7L of the Act which confers power on the Tribunal specifically confers the power to modify, to reduce or annul the order appealed against, including the power to pass such orders thereon as it thinks fit. Section 7L of the Act reads as follows

7L.Orders of Tribunal - (1) A Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under subsection (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal :

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this subsection, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

6. Shri Sundaram, learned Counsel for the appellant, however argued that the power to reduce the damages is conferred on the Tribunal under paragraph 32B, reproduced supra. That may be so. It only means that the Central Board also has the power to reduce damages, though not the exclusive power to do so. The power conferred on the Board does not warrant an inference that such a power is absent in the Tribunal while deciding an appeal. The statutory power to frame a Scheme is on the Central Government by section 5 of the Act. An instrument such as a Scheme, issued by the Central Government under such a conferred power can not be construed to modify or vary the extent of appellate powers conferred by the Act. We see no merit in the appeal. Hence the present letters patent appeal is dismissed.