
(2008) 09 CAL CK 0036
In the Calcutta High Court
Case No : M.A.T. No. 1944 of 2006

Regional Provident Fund Commissioner	APPELLANT
Vs	
The Hooghly Mills Co. Ltd.	RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Employees Provident Fund Scheme, 1952 — Section 1, 14, 14(1), 14B, 15(2)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17(1), 5

Citation : (2009) 2 ILR (Cal) 1

Hon'ble Judges : Surinder Singh Nijjar, C.J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Kalyan Bandopadhyay and Shib Ch. Prosad, for the Appellant; Partha Sarathi Sengupta, Soumya Mazumdar and Sudeshna Bagchi, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Regional Provident Fund Commissioner Vs. The Hooghly Mills Company Ltd. and Others, (2012) 132 FLR 734 : (2012) 2 JT 51 : (2012) 2 LLJ 1 : (2012) 1 SCALE 422 : (2013) 1 SLJ 53 : (2012) AIRSCW 902

Pinaki Chandra Ghose, J.—This appeal is directed against an Order passed by the Hon'ble First Court on April 13, 2006 whereby His Lordship was pleased to allow the writ petition setting aside the impugned order issued by the Authorities dated June 9, 2004 passed by the Regional Provident Fund Commissioner - II, Sikkim and Andaman & Nicobar Islands determining the damages u/s 14B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the said Act") on account of delayed payment of the Companies dues for various periods between October, 1999 to October, 2000 and further from November, 2000 to July, 2002. The Respondent company challenged the legality and validity of the said Order passed by the said Commissioner dated July 9, 2004.

2. It appears from the facts that by a Notification dated November 23, 1967, the Central Government is exercise of its power u/s 17(1)(a) of the said Act granted exemption to the Company subject to the provisions specified in Schedule II annexed to the said Notification and by virtue of the said exemption the provisions of the said Act framed u/s 5 of the said Act is not applicable in respect of the writ Petitioner.

3. Admittedly, the Company framed a Scheme and created a Trust and appointed a Board of Trustees from the Management of the said Trust Fund. Admittedly the Company was and is enjoying the said exemption. It is also admitted fact that the Company could not pay its provident fund dues as stated hereinabove within the due date.

4. On default of such payment damages u/s 14B of the said Act were levied upon the Petitioner for such delayed payment in accordance with the provisions of para 32A of the Employees Provident Fund Scheme, 1952, para 5(1) of the Employees Pension Scheme, 1995 and para 8A of the Employees Deposit Linked Insurance Scheme, 1976 respectively.

5. The main question that arises in this appeal is whether Section 14B of the said Act is applicable to the Company in case of delay in making payment of the contribution to the Trust Fund although it is enjoying exemption u/s 17(1)(a) of the said Act.

6. Mr. Kalyan Bandopadhyay, Learned Senior Advocate appearing on behalf of the Appellants submitted before us that the said Act and the various Schemes framed thereunder are nothing but social welfare legislation and the whole purpose is for benefit of the employees and, therefore, the "exempted establishment" is also liable to pay the damages. The intention of the legislature is clear that even a default committed by any "exempted establishment" would be covered by Section 14B of the said Act.

7. He contended that the words, "fund" or "scheme" which has been mentioned in the said Act and under the various Schemes framed thereunder, ought to be read as a whole and in the proper context. Therefore, the restricted meaning of these definitions cannot be accepted.

8. According to him, where an establishment makes a default in contributing to the funds, Section 14(1)(a) of the said Act would be attracted and, therefore, there is no reason that why an "exempted establishment" should not be liable to pay damages since both the Sections 6 and 14B of the said Act have dealt with default in payment to the fund.

9. His contention is that the definition of the words, "fund" or "scheme" given in Section 2 of the said Act cannot give an exemption to an "exempted establishment" and, therefore, is equally liable to pay damages like other establishments.

10. He further pointed out that non-payment of contribution to a fund would be a

loss to the corpus which adversely affects the right of the employees and, therefore, awarding damages would help to generate the corpus of the fund itself which would be beneficial to an individual employee. The basic purpose of awarding damages is nothing but to provide compensation or redress to the beneficiaries who have suffered loss for such default.

11. He further contended that the Hon"ble First Court erred in holding that if the legislature had the intention to apply provisions contained in Sections 6, 7A, 8 and 14B of the said Act in their entirety, it would not have used the expression "so far as may be", in Section 17 of the said Act. According to him the meaning of the expression "so far as may be" is nothing but "as far as possible".

12. He submitted that the Hon"ble First Court has also failed to appreciate that Section 8(b) of the said Act leaves no doubt that damages are recoverable from an "exempted establishment" u/s 14B of the said Act, Accordingly, he submitted that in case of default of provisions of the said Act, each and every Section of the said Act would be applicable to an "exempted establishment".

13. Mr. Bandopadhyay drew out attention to Section 2(fff) of the said Act which defines an "exempted establishment. It reads as under:

S. 2(fff) - "exempted establishment" means an establishment in respect of which an exemption has been granted u/s 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein.

14. He also drew our attention to Section 17 of the said Act which is as under:

17 Power to exempt

(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, [exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme.

(a) any [establishment] to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other [establishment] of a similar character; or

(b) any [establishment] if the employees of such [establishment] are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other

[establishment] of a similar character. [Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemptions to the appropriate Government within such time limit as may be specified in the Scheme.]

[(1A) Where an exemption has been granted to an establishment under Clause (a) of Sub-section (1),

(a) the provisions of Section 6, Section 7A, Section 8 and 14B of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable u/s 14 as if the said establishment had not been exempted under the said Clause (a);

(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under Clause (b) shall -

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

(v) perform such other duties as may be specified in the Scheme.

(1B) Where the Board of Trustees established under Clause (b) of Sub-section (1A) contravenes, or makes default in complying with, any provisions of Clause (d) of that Sub-section, the Trustees of the said Board shall be deemed to have committed an offence under Sub-section (2A) of Section 14 and shall be punishable with the penalties provided in that Sub-section.

[(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposed to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.]

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any [establishment] to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits, separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme:

Provided that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

(2A) [The Central Provident Fund Commissioner may, if requested so to do by the employer, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme, if he is satisfied] that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in provident fund or not and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme.

(2B) Without prejudice to the provisions of Sub-section (2A), the Insurance Scheme may provide for the exemption of any person or class of persons employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme.]

[(3) Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment -

(a) shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintained such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges as the Central Government may direct;

(b) shall not at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was entitled at the time of the exemption; and

(c) shall, where any such person leaves his employment and obtain re-employment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the

amount of accumulation to the credit of that person in the provident fund of the establishment left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may, in the Fund established under the Scheme applicable to the establishment.

[(3A) Where, in respect of any person of class of persons employed in any establishment, an exemption is granted under Sub-section (2A) or Sub-section (2B) from the operation of all or any of the provisions of the Insurance Scheme (whether such exemption is granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment.

(a) shall, in relation to the benefits in the nature of life insurance, to which any such person or class of persons is entitled, or any insurance fund, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct;

(b) shall not, at any time after the exemption without the leave of the Central Government, reduce the total quantum of benefits in the nature of life insurance to which any such person or class of persons was entitled immediately before the date of the exemption

(4) Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply,

(a) in the case of an exemption granted under Sub-section (1), with any of the conditions imposed under that Sub-section [or Sub-section (1A)] or with any of the provisions of Sub-section (3);

[(aa) in the case of an exemption granted under Sub-section [1C], with any of the conditions imposed under that Sub-section; and]

(b) in the case of an exemption granted under Sub-section (2), with any of the provisions of Sub-section (3);

[(c) in the case of an exemption granted under Sub-section (2A), with any of the conditions imposed under that Sub-section or with any of the provisions of Sub-section (3A);

(d) in the case of an exemption granted under Sub-section (2B), with any of the provisions of Sub-section (3A).]

[(5) Where any exemption granted under Sub-section (1), Sub-section [(1C)], [Sub-section (2), Sub-section (2A), or Sub-section (2B)] is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund the pension fund or the insurance fund] of the establishment in which he is employed [together with any amount forfeited from the employer's share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service]

shall be transferred within such time and in such manner as may be specified in the Scheme or the Pension Scheme [or the Insurance Scheme] to the credit of his account in the Fund or the Pension Fund, [or the Insurance Fund], as the case may be.

(6) Subject to the provisions of Sub-section [1C)] the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Pension Scheme apply shall, notwithstanding any exemption granted under Sub-section (1) or Sub-section (2), pay to the Pension Fund such portion of the employer's contribution to its provident-fund within such time and in such manner as may be specified in the Pension Scheme.

17A. Transfer of accounts.

(1) Where an employee employed in an establishment to which this Act applies leaves his employment and obtains reemployment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

(2) Where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or, as the case may be, in the provident fund of the establishment in which he is re-employed.]

17AA. Act to. have effect notwithstanding anything contained in Act 31 of 1956

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Life Insurance Corporation Act, 1956.

17B. Liability in case of transfer of establishment

[Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provisions of this Act or the Scheme or [the Pension Scheme or the Insurance Scheme] as the case may be, in respect of the period up to the date of such transfer: Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]"

15. The meaning of "fund" has been defined in Section 2(h) of the said Act which is set out hereunder:

2(h) - "Fund" means the provident fund established under a Scheme:

(i) "Industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification u/s 4;

(ii) "Insurance Fund" means the Deposit-linked insurance fund established under Sub-Section 2 of Section 6C;

(iii) "insurance Scheme" means the Employees' Deposit-Linked insurance scheme framed under Sub-Section 1 of Section 6C;

(iv) "Manufacture" or "manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

16. Section 2(1) of the said Act defines the "Scheme" which is set out hereunder:

2(1) - "Scheme" means the Employees Provident Fund Scheme framed u/s 5;

(II) "superannuation" in relation to employee, who is the member of the Pension Scheme means the attainment, by the said employee, of the age of fifty-eight years;

17. In support of his contention, Mr. Bandopadhyay relied upon the decision reported in *Mohmedalli and Others Vs. Union of India (UOI) and Another*, wherein the Hon'ble Supreme Court clearly held that the exemption is a short-lived one because with the efflux of 3 or 5 years' period, they will automatically come under the scheme framed under the Act. The operation of Section 17 of the said Act has already been discussed, and it has already been indicated that an establishment coming under the exemptions granted or to be granted u/s 17 of the said Act does not mean that the establishment bears less burden of its share of contribution to the fund.

18. It further appears that it has not been contended that the Petitioners' establishment does not come within the general rule laid down in Section 1(3) of the Act or within the scope of the Scheme framed u/s 5 of the said Act. It is equally clear that all hotels and restaurants come within the scope of the notification impugned in this case. Hence, there is absolutely no reason for complaint that the Petitioners' establishment of that class has been chosen for hostile discrimination.

19. He also relied upon the decision reported in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, and submitted that the object and purpose of Section 14B of the said Act is to authorise the Regional Provident Fund Commissioner to impose the exemplary and punitive damages and thereby prevent employers from making defaults and also to provide reparation for the

amount of loss suffered by the employees. The word "default" in Section 14B of the said Act must be construed in the light of para 38 of the scheme to mean "failure in performance" or "failure to act". The welfare legislation must also be construed in the socioeconomic context and policy.

20. In the decision reported in *Sayaji Mills Ltd. v. Regional Provident Fund Commissioner* (1984) Supp. SCC 610 the Hon"ble Supreme Court held that the Provident Fund Act is a beneficent statute which should be construed so as to advance the object with which it is passed. Any construction which would facilitate the deviation of the provisions of the Act as far as possible be avoided.

21. In the decision reported in *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, where the Hon"ble Supreme Court held that the interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored, both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With the knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and, appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* and we find no reason to depart from the Court's construction.

22. In the decision reported in *N.K. Jain and others Vs. C.K. Shah and others*, the Hon"ble Supreme Court held that Section 17(1)(a) of the said Act would show that the said provision are also applicable to the exempted establishment with a view to make the penal provisions more stringent with a view to check the growth of arrears.

23. Mr. Partha Sarathi Sengupta,, Learned Senior Advocate appearing on behalf of the Respondent contended that the question has already been decided by the Division Bench of this High Court. Mr. Sengupta also drew our attention to Section 17(1)(a) of the said Act and contended that the damages u/s 14B of the said Act was levied upon the Petitioner on such delayed payment of provident fund dues in accordance with the provisions of para 32A of the Employees Provident Fund Scheme, 1952, para 5(1) of the Employees Pension Scheme, 1995 and para 8A of the Employees Deposit Linked Insurance Scheme, 1976

respectively.

24. The main point that has been urged by Mr. Sengupta that whether Section 14B of the said Act is applicable to an establishment enjoying an exemption u/s 17(1)(a) of the said Act. According to him, the appropriate Government may grant exemption from operation from all or any of the provisions of the Employees Provident Fund Scheme, 1952 to an establishment subject to the satisfaction and condition contained in Clauses A and B thereunder in exercise of its power u/s 17 of the said Act.

25. Mr. Sengupta contended that Section 17(1)(a) of the said Act was introduced with effect from February 1, 1998 giving certain relaxation to the exempted establishment regarding applicability of certain provisions of the said Act viz. Sections 6, 7A, 8 and 14B of the said Act in case of its default in complying with the provisions of the said Act or the conditions specified in the Notification granting such exemption to the establishment and he also emphasized on the expression "so far as may be". According to him, the said expression made it clear that the said Sections as a whole have no application in case of default committed by an exempted establishment and he also relied upon various provisions of the said Act and the definition of contribution [Sections 2(c), 2(1)(a) and 2(k)(a) of the said Act], fund, scheme etc.

26. He further submitted that the contribution which the employer of an establishment is required to pay under the said Act consisting of three types of payments and one part of such contribution is remitted to the fund and another part of such contribution is remitted to the pension fund created under Sub-Section 2 of Section 6A of the said Act and the other part of the said contribution is remitted to the insurance fund established u/s 6(c)(2) of the said Act. The mode of formation of the pension fund and insurance fund has been prescribed in Sections 6A and 6C of the said Act respectively.

27. According to him, the fund formed under the said Scheme is controlled by the Employees Provident Commissioner in case of the exempted establishment, fund known as Trust Fund framed as per the Notification by which exemption is granted, the said Fund is managed and controlled by Board of Trustees. Therefore, according to Mr. Sengupta, the Provident Fund Commissioner does not retain any control over the management of the said Trust Fund so long the establishment enjoys exemption. Therefore, the Provident Fund Authority has no power to impose or to recover damages for delayed payment of the contribution to the Trust Fund.

28. Mr. Sengupta drew our attention to Section 8 of the said Act which deals with recovery of monies due from an employer of different types of establishments. He further drew our attention to Sections 8A, 8B, 15(2) and 14B of the said Act and submitted that two different provisions have been made for recovery of arrears from an establishment which does not enjoy exemption and further in respect of an exempted establishment. He also pointed out that Section 8B of the

said Act does not provide for any arrears for an exempted establishment in respect of the contribution towards the Fund in respect of the exempted establishment the only power enjoys by the Authority is the power of revocation of exemption u/s 17(4) of the said Act.

29. He further submitted that the legislature did not have the intention to apply the provisions of Sections 6, 7A, 8 and 14B of the said Act in their entirety to an exempted establishment which would be evident from the expression used in Section 17(1)(a) of the said Act as "so far as may be".

30. Mr. Sengupta relied upon the decision reported in Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, in support of his contention and submitted that the expression "so far as may be" has to be construed to mean that those provisions may be followed to the extent possible.

31. The said expression "so far as may be" was also dealt with the Constitutional Bench of the Supreme Court in the decision reported in Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others, where it was held that the said expression "so far as may be" used in Section 6(3) of the acquisition of certain areas of Ayodhya Act, 1993 is indicative of the fact that all or any of the provisions of Sections 11 and 15 of the said Act may or may not be applicable to the transferee u/s 6(1) of the said Act. He further submitted that the case of N.K. Jain (supra) has no application in the facts and circumstances of this Case.

32. He also submitted that the decisions cited by Mr. Bandopadhyay have no manner of application in the facts and circumstances of this case. He joined issue on the question urged by Mr. Bandopadhyay that the point which was not urged before the Hon''ble First Court cannot be taken before the Appeal Court. On the contrary, he submitted that it is settled law of the land that a question of law can be urged by a party even before the Hon''ble Supreme Court for the first time provided the consideration thereof does not require any further adjudication of the disputed facts and hence, a question of law can be urged at any point of time before any forum. State of Madras and Another Vs. K.M. Rajagopalan,

33. Mr. Sengupta and Mr. Bandopadhyay also relied upon the unreported decision of the Hon''ble Division Bench of this High Court in Central Provident Fund Commissioner v. Modern Transportation Consultancy Services Pvt. Ltd. and Ors. F.M.A. No. 537 of 2007 In the said decision the Hon''ble Division Bench held as follows:

The "Fund" created by the exempted establishment u/s 17(1)(a) cannot be equated with the fund which is established by the Central Board u/s 5(1). Nor can it be added to the definition of Fund u/s 2(h) of the Act. It is for this reason that the appropriate Government can only exempt an establishment from the operation of the Scheme u/s 17(1) upon forming an opinion that the employees of such an establishment enjoyed benefits which are not less favourable to the employee that the benefits available under the Act or any Scheme made under

the Act. In fact, the exemption can only be granted on consultation with the Central Board.

34. Their Lordship further held that there is a clear distinction between a fund which is created by the Central Government and is administered by the Central Board u/s 5(1)(a) and a fund created by the private employer, exempted u/s 17(1) and administered by Board of Trustees u/s 17(1)(a) and (b) of the said Act.

35. By a catena of decisions of the Hon"ble Supreme Court it is well settled proposition of law that in interpreting the provision of law, the Court is not permitted to enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous, in other words, while construing a particular provision the Court cannot reconstruct the provision A.N. Roy Commissioner of Police v. Suresh Sham Singh AIR 2006 SCW 3522 and Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others,

36. After perusing all the decisions cited before us and the submissions made on behalf of the parties, we hold that the decisions cited by Mr. Bandopadhyay cannot be of any help to the Appellant in the facts and circumstances of this case. The ratio of a decision as has been held in the case of Commissioner of Customs (supra) must be culled out from the facts involved in a given case. A decision as is well known, is an authority for what it decides and not what can logically be deduced therefrom.

37. In the case of Mohmedalli (supra) the Hon"ble Supreme Court held as follows:

It would appear from the terms of the relevant portion of Section 17 that the exemption to be granted by the appropriate Government is not in the nature of completely absolving the establishments from all liability to provide the facilities contemplated by the Act. The exemptions are to be granted by the appropriate Government only if in its opinion the exempted establishment has provisions made for provident fund, in terms at least equal to, if not more favourable to its employees. In other words, the exemption is with a view to avoiding duplication and permitting the employees concerned the benefit of the preexisting scheme, which presumably has been working satisfactorily, so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which at least is not in terms less favourable to them. As the whole scheme of provident fund is intended for the benefit of employees, Section 17 only saves pre-existing schemes of provident fund pertaining to particular establishments.

38. After analyzing the decisions cited before us and after going through the materials on record placed, we must come to the conclusion that in Section 17(1) (a) of the said Act where an exemption has been granted to an establishment, the provisions of Sections 6, 7A, 8 and 14B shall so far as may be applied to the" employer of the exempted establishment, in addition to such other condition, as may be specified in the Notification granting such exemption.

39. It further appears to us that the employer after complying with the Notification shall be treated as exempted establishment. Therefore, we are unable to accept the contention of Mr. Bandopadhyay that if there is a default on the part of the exempted establishment then Section 14B of the said Act would be applicable to the said "exempted establishment". The only recourse as it appears to us is that the authority on such default shall take steps in the matter and shall be at liberty to withdraw the exemption so granted in their favour.

40. But we are not in a position to accept that all the provisions of Sections 6, 7A, 8 and 14B of the said Act would be applicable to the defaulting "exempted establishment". Section 17(1)(A) makes it clear that those Sections would be applicable "so far as may be".

41. In our considered opinion, the said Sections as a whole have no application in case of default committed by an "exempted establishment".

42. We also find that three types of payments are required to be paid by an establishment, and one part of such contribution so to be paid is remitted to the Fund, and another part of such contribution is remitted to the Pension Fund created u/s 6(A)(2) of the said Act and the said part of the said contribution is remitted to the Insurance Fund established u/s 6(C)(2) of the said Act.

43. We also take note of the mode of formation of the Pension Fund and Insurance Fund has been prescribed in Sections 6A and 6C of the said Act.

44. We further took notice that the Provident Fund Commissioner does not retain control over the Management of the Trust Fund so long the establishment enjoys exemption.

45. Therefore, we hold that the Provident Fund Authority has no power to impose or to recover damages for delayed payment of the contribution to the Trust Fund.

46. In these circumstances, we accept the reasoning of the Hon"ble First Court and, in our considered opinion, His Lordship has correctly held that the impugned order cannot be sustained in law as the authority demanded damages from the writ Petitioners not only on account of delayed payment of contribution to the Trust Fund but also on account of delayed payment to the Pension Fund and Insurance Fund.

47. Hence, we hold that the said order does not suffer from any irregularity or illegality and accordingly, we dismiss this appeal affirming the said order so passed by the Hon"ble First Court.

48. For the reasons stated hereinabove, the appeal is dismissed.

Surinder Singh Nijjar, C.J.: I agree