

(1963) 11 KAR CK 0012
In the Karnataka High Court
Case No : Application No. 79 of 1963

Regional Provident Fund Commissioner K.S. Naik	APPELLANT
Vs	
Official Liquidator	RESPONDENT

Date of Decision : 12-11-1963

Acts Referred:

Companies Act, 1956 — Section 457 (3), 530
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 11, 14 B

Citation : (1964) 9 FLR 291 : (1964) 1 LLJ 699

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Advocate : K. Jagannatha Shetty, for the Appellant; Party in person, for the Respondent

Judgement

1. This is an appeal under rule 164 of the Companies (Court) Rules, 1959, read with S. 457(3) of the Companies Act of 1956 by the Regional Provident Fund Commissioner of Mysore at Bangalore against the order of the official liquidator dated 29 August, 1963 to the extent it rejected the appellant's claim for preferential payment in respect of a sum of Rs. 2,414.22 out of his total claim of Rs. 79,386.74 being the contribution and charges payable by the company in liquidation under the Employees' Provident Funds Act, 1952, and the scheme thereunder made applicable to the company.

2. Notice of admission of proof in form 70 prescribed under the rules dates 29 August, 1963 was served on the appellant on 31 August, 1963. The appeal was filed on 4 October, 1963, thirteen days beyond the time prescribed under rule 164. The appellant prays for condonation of this delay for the reasons set out in Para. 9 of his affidavit.

3. Two reasons are stated therein. The first is that the liquidator did not in form 70 indicate the period of limitation prescribed for appeal, and the second is that some time was taken up by the appellant in seeking instruction of the Central Provident Fund Commissioner at New Delhi. I may at once say that the first

reason is wholly unacceptable. The form prescribed under the rules does not provided that the period of limitation for an appeal should be mentioned therein. Secondly, it is not open to anybody much less a statutory functionary to claim ignorance of law or to fail to inform himself about the provisions of law relating to the claim which he proposes to enforce through an order of Court. But, the second reason appears to be, in the circumstances, acceptable, especially because the delay is not very long. I therefore condone the delay and entertain this appeal.

4. The claim of the appellant before the liquidator related to a period up to June 1958 and was made up of the following items :

Item Rs. Np. (1) Provident fund contribution ... 69,526 25 (2) Penal interest thereon ... 7,446 27 (3) Administrative Charges ... 2,088 03 (4) Penal damages thereon ... 223 69 (5) Legal charges ... 102 50 ----- Total ... 79,386 74 ----- There is no doubt about the accuracy of these figures. The liquidator has accepted them to be correct. He admitted the claim for preferential payment only in respect of items (1) and (2) but rejected the same in respect of items (3) to (5) on the ground that a claim for preferential payment must be made out on one or the other of the clauses of S. 530 of the Companies Act of 1956 and that such claim in this case may be said to have been made out only in respect of items (1) and (2) under Clause (f) of Sub-section (1) of S. 530.

5. The appellant claims that all the items mentioned above are entitled to preferential payment by virtue of S. 11 of the Employees' Provident Funds Act of 1952, by force of which all the items claimed by him should be deemed to be included among the debts entitled to preferential payment under the Companies Act. The relevant portion of that section reads as follows :

"Where any employer ... being a company, an order winding up is made, the amount due -

(a) from the employer in relation to an establishment to which any scheme applies in respect of any contribution payable to the fund., damages recoverable under S. 14B, accumulations required to be transferred under Sub-section (2) of S. 15 or any charges payable by him under any other provision of this Act or of any provision of the scheme; or

(b) * * * shall, where the liability therefore has accrued before the order of ... winding up is made, be deemed to be included among the debts which ... under S. 230 of the Indian Companies Act, 1913 (7of 1913), are to be paid in priority to all other debts in the distribution of ... the assets of the company being wound up"

6. It is, therefore, clear that if the contribution, damages or charges, claimed by the appellant come under any of the provisions of the Employees' Provident Funds Act or the scheme made there under applicable to the company an all of them accrued before the order of winding up was made, all those items would

have been entitled to preferential payment as if they were included in the debts enumerated in S. 230 of the Companies Act of 1913.

7. The Companies Act of 1913 has now been repealed and replaced by the Companies Act of 1956. If simultaneously reference to S. 230 of the 1913 Act, has been substituted by a reference to S. 530 of the 1956 Act in S. 11 of the Provident Funds Act, no further question would have remained for consideration. The learned counsel for the appellant after investigation having stated that no such substitution appears to have been made by any legislative amendment, the question for consideration is whether the appellant could, even in the absence of such an amendment, claim that the amounts claimed by him are entitled to preferential payment as if they are included in the list of debts enumerated in S. 530 of the Companies Act of 1956.

8. The answer to the question is, I think, to be found in S. 8(1) of the General Clause Act which reads as follows :

"Where this Act, or any Central Act or regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

9. The said provision of the General Clauses Act follows the provision of S. 38(1) of the English Interpretation Act, 1989 [52 and 53 Victoria C. 63]. The principles as stated in Craies on Statute Law at pp. 361 and 362 is that in the case of statutes which repeal earlier statutes and re-enact their provisions or in the case of consolidation Act, the repeal is generally for the purpose of rearrangement, and there is no moment at which the substance of the older enactments ceases to be in force. Where they also effect certain amendments they are generally intended to remove doubts, resolve ambiguities and bring about conformity with modern practice. Ordinarily in the case of consolidating statutes, one should begin with the presumption that no substantial departure from the previous state of the law is intended. Where, however, there are clear amendments which change the law, effect of course will have to be given to the amendments. Hence the rule of interpretation that unless a different intention appears in the consolidating statute, references in other statutes to the provisions of repealed enactments should be read as references to those provisions as re-enacted in the consolidating statute.

10. The Companies Act of 1956 is an Act to consolidate and amend the law relating to Companies. It repealed, among other statutes, the Companies Act of 1913. Though in certain important respects changes were made in the law, the general structure and features of the company law have remained substantially the same, most of the provisions of the previous Act having been re-enacted in substantially the same forms in the consolidating Act.

11. The provisions of S. 230 of the 1913 Act are re-enacted in S. 530 of the 1956

Act. There appears from the provisions of S. 530 no intention to taken away the priority in payment available to the sums or amounts mentioned in S. 11 of the Provident Funds Act. On the contrary, to the extent the legislative intent appears to foster the welfare of employees, the changes made in S. 530 of the 1956 Act while re-enacting S. 230 of the old Act appear actually to give larger field for the operation of that intent rather than restrict it.

12. I, therefore, accept the argument that reference to S. 230 of the Companies Act of 1913 in S. 11 of the Provident Funds Act must be read as a reference to S. 530 of the Companies Act of 1956.

13. The next question is whether all the items claimed by the appellant come within S. 11 of the Provident Funds Act.

14. Contribution to provident fund is expressly stated in the said S. 11. What is described as penal interest thereon is obviously damages recoverable under S. 14B of the Provident Funds Act; in the tabulated statement filed by the claimant before the liquidator the said item is described as "penal interest at 6 1/4 per cent per annum under S. 14B" Administrative charges are recoverable under Paras. 38 and 39 of the provident funds scheme notified under the Act, according to which administrative charges are a percentage of the contributions to the fund fixed by the Central Government in consultation with the Central Board having regard to the resources of the fund available for meeting its normal administrative expenses. The said percentage constituting the administrative charges is also required to be collected by the employer liable to make the contribution and paid into the fund. Damages for default or delay in payment of the administrative charges are recoverable under S. 14B.

15. So far, however, as item (5), viz. legal charges of Rs. 102.50, is concerned, neither the averments in the affidavit nor arguments on behalf of the appellant in Court have indicated the provision of either the Act or the scheme under which the same is recoverable.

16. It has, therefore, to be held that all the items claimed by the appellant except the legal charges Rs. 102.50 are entitled to preferential payment.

17. I, therefore, allow the appeal in part and direct that, excepting the sum of Rs. 102.50 described as legal charges, the rest of the claim of the appellant be paid out in priority as a debt included in S. 530 of the 1956 Act.

18. I make no order as to costs.