

(2014) 03 MAD CK 0214

In the Madras High Court

Case No : W.A. (MD) Nos. 228 to 230 and 365 of 2011

RH 153, Ramanathapuram District Co-operative Spinning Mills Ltd.

APPELLANT

Vs

Central Board of Trustees of Employees' Provident Fund Organization

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 5
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 4

Citation : (2014) 142 FLR 791 : (2014) 142 FLR 202 : (2014) 3 LLJ 77

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—These appeals arise out of a common order passed by the learned Judge, in a batch of four writ petitions, dismissing a challenge to the imposition of damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Heard P. Chandrabose, learned Counsel appearing for the appellants and G.R. Swaminathan, learned Counsel appearing for the E.P.F. Organisation in W.A. (MD) Nos. 228 to 230 of 2011 and K. Muralisankar, learned Counsel appearing for the E.P.F. Organisation in W.A. (MD) No. 365 of 2011.

2. All the appellants before us are various District Co-operative Spinning Mills. They are all established in terms of the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

3. On the ground that the appellants failed to Comply with the provisions of the Act, the Regional Assistant provident Fund Commissioner passed orders levying damages in terms of Section 14-B of the Act. The appellants filed petitions before the central board of Trustees on 21.03.2005, seeking a waiver of the damages on par with sick Industrial Companies.

4. Simultaneously, the appellants also approached the Government of Tamil Nadu

Relief Undertaking (Special provisions) Act, 1969. The Government of Tamil Nadu by G.O. Ms. No. 58, Handlooms, Handicrafts, Textiles & Khadi (C1) Department, dated 07.04.2005 declared Certain Co-operative Spinning mills in the State of Tamil Nadu as relief undertakings for a period of two years with effect from 18.07.2003. The appellants in these writ appeals are included in the list of relief undertakings so declared by the said Government Order.

5. After a period of about two years, Central Board of Trustees of the E.P.F. Organisation rejected the request of all the appellants for the waiver of damages by identical but independent orders dated 05.02.2007. Challenging the orders dated 05.02.2007 passed by the Central Board of Trustees, the appellants filed writ petitions in W.P. (MD) Nos. 2514 and 2534 of 2007 and 5934 and 1129 of 2008. But these writ Petitions were dismissed by a learned Judge of this Court by a common order dated 30.11.2010 on the ground that declaration of an Industry as a "Relief undertaking"¹ under the Tamil Nadu Relief Undertaking (Special provisions) Act, 1969, will not save the appellants from the operation of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The learned Judge, also held that even if a mill is declared as a "sick industry" by the Board for Industrial and Financial Reconstruction, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will not protect such industries from the operation of provisions of the Act. On these two grounds, the learned Judge dismissed the writ petitions filed by the appellants.

6. The grievance of the appellants is that the Co-operative Spinning mills have already suffered enough at the hands of the various parries and that to impose a burden in the form of damages under Section 14-B, would virtually kill the Co-operative Societies. The appellants contend that the Central Board of Trustees did not even consider in the right perspective whether the appellants were entitled to the benefit of waiver or not. The order dated 05.02.2007 passed by the Central Board of Trustees which was impugned in the writ petitions did not contain any reason except to the effect that the request was outside the ambit of second proviso to Section 14-B of the EPF and MP Act. Therefore, it is contended by Chandrabose, learned counsel appearing for the appellants perspective by the Central Board of Trustees.

7. In order to understand the correctness of the contention of the learned Counsel appearing for the appellants, it is necessary to have a look at some of the provisions of the Act and the Scheme. Section 14-B empowers the organization to recover from the employer, such damages by way of penalty, not exceeding the amount of arrears, whenever an employer commits default in payment of any contribution. There are two provisos to Section 14-B. The first proviso requires the Organisation to give an opportunity of personal hearing to the employer. The second proviso enables the Central Board of Trustees to reduce or waive the damages levied under the Scheme. The Contention raised by the appellants revolves around the second proviso to Section 14-B. Therefore, it is extracted as follows:

Provided further that the Central Board may reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the scheme.

8. A careful look at the second proviso would show that two conditions are to be satisfied. The first is that the establishment which seeks the benefit of waiver should be a sick industrial company. The second condition is that a scheme for rehabilitation should have been sanctioned for such company under Section 4 of the Sick Industrial Companies within (Special Provisions) Act, 1985.

9. Mr. P. Chandrabose, learned counsel appearing for the appellants submitted that both condition are to be read as disjunctive of each other and not to be taken together. But the said contention cannot be accepted. The expression used in the second proviso is that it applies in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been is with reference to the Sick Industrial Company. Therefore, both the conditions are conjunctive and not disjunctive.

10. Mr. P. Chandrabose, learned counsel appearing for the appellants invited our attention to paragraph 32-B of the Employees provident Fund Scheme, 1952 and contended that Clause (a) under paragraph 32-B would remove any doubt as to whether the second proviso to Section 14-B would apply co-operative societies or not. Paragraph 32-B of the Employees Provident Fund Scheme, 1952 reads as follows:

32-B. Terms and conditions for reduction or waiver of damages: The Central Board may reduce or waive the damages levied under Section 14-B of the Act in relation to an establishment Specified in the second proviso to Section 14-B, subject to the following terms and conditions, namely:

(a) in case of a change of management including transfer of the undertaking to workers, co-operative 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.

11. Clause (a) of paragraph 32-B shows that the power of the Central Board to reduce or waive damages levied under Section 14-B would apply in case of a change of management including transfer of undertaking to workers" co-operative. Therefore, learned counsel appearing for the appellants contended

that Clause (a) would apply. Even under Clause (c), a reduction is feasible up to 50% depending upon merits. Therefore, the co-operative societies can certainly fall, according to the learned counsel for the appellants, either under Clause (a) or under Clause (c) of the Paragraph 32-B.

12. But the difficulty with the above contention is that a Scheme such as the Employees Provident Funds Scheme, 1952, framed by the Central Government in exercise of the powers conferred by Section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, cannot over reach or override the statutory provisions. If a concession as per the statute can be applied only to certain categories of establishments, the same cannot be extended to other establishments by a subordinate legislation. Therefore, the said contention cannot be accepted.

13. But however, that is not the end of matter. The fact that the appellants are the Co-operative Spinning mills is not in dispute. We do not really see any rationale as to why the second proviso to Section 14-B, restricted its application only to Sick Industrial Companies that come within (Special Provisions) Act, 1985. As a matter of fact, if at all, any establishment, is entitled to the benefit of waiver or reduction of damages, it should be the co-operative societies. If one has a look at the history of the development of the co-operative movement, it would be clear that they are not run on profit motive as private enterprises are. Therefore, if a benefit is applicable to other establishments, which are created only with profit motives, we fail to understand why the same benefit should not be extended to co-operative societies merely because they do not come within the purview of Sick Industrial Companies within (Special Provisions) Act, 1985.

14. In Q-793, Madathupatti Weavers Co-operative Production and Sales Society Ltd. Vs. Regional Provident Fund Commissioner and Others, , a Division Bench of this court invited reference to the decision of the Constitutional Bench of the Supreme court in Mohamedalli v. Union of India, AIR 1964 SC 930 and pointed out that co-operative Societies stand on a special footing which distinguished them from other establishments. The Division Bench further pointed out that it is the settled policy of the Government to encourage co-operative Societies with a view to their development and growth in the interest of community at large.

15. A similar view was taken by another Division Bench, to which one of us (V. Ramasubramanian, J.) was a party in Q-1283, Kidathirukkai Primary Agricultural Co-operative Bank, Kidathirukkai Post, Ramanathapuram District v. Assistant Provident Fund Commissioner and Another, in W.A. (MD) No. 262 of 2009, dated 25.06.2009. In the said case, the Division Bench pointed out that the Co-operative Society deserved special treatment in such cases.

16. In Regional Provident Fund Commissioner-II v. Shrine Velankanni Senior Secondary School, LNIND 2009 MAD 484 : (2009) 4 MLJ 647, another Division Bench of this Court, permitted a school to make a request to the central Board of Trustees in terms of paragraph 32-B of the Scheme for reduction or waiver of

penalty. Therefore, it is not as though the Court is powerless to direct the respondents to waive the damages.

17. In view of the above, we are of the considered view that the survival of the Co-operative Societies, depend upon the concessions that are extended to them. When the waiver of damages is permissible in respect of industries which were established only with profit motive, the benefit cannot be denied to co-operative institutions.

18. The appellants have already been declared as Relief Undertakings. Therefore, it is but proper that the responds show concession. In view of the above, the Writ Appeals are allowed, the impugned orders are aside and the damages levied under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 upon the appellants is reduced to the extent of 25% of the ordered amount. No costs. Consequently, connected miscellaneous petitions are closed.