

(2015) 06 BOM CK 0306
In the Bombay High Court
Case No : W.P. No. 194 of 2006

Shree Hanuman Vyayam Prasarak Mandal, Amrawati and
Others

APPELLANT

Vs

Regional Provident Fund Commissioner-II, Nagpur and Others

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 147 FLR 551

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : K.H. Deshpande and A.J. Deshpande, for the Appellant; R.S. Sundram and S.M. Bhagde, for the Respondent

Judgement

A.S. Chandurkar, J.—This Writ Petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 29.11.2005 passed by the respondent No. 1, thereby imposing damages under provisions of section 14-B and also levying interest under provisions of section 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for short the said Act).

The facts relevant for considering the challenge as raised in the writ petition is that the petitioner No. 2 is duly covered under provisions of said Act and it was liable to pay provident fund contribution in terms of said Act. For the period from June 1992 till February 2001 there was a failure on the part of the petitioners to pay the provident fund contribution within the stipulated time. Hence, on 28.6.2005 a show cause notice came to be issued by the respondent No. 1 calling upon the petitioner No. 2 to appear before the said authority and to show cause as to why the damages should not be imposed. The petitioners filed their reply pointing out that the show cause as issued was vague and necessary details had not been furnished. Subsequently, certain information was forwarded by the respondent No. 1 to the petitioners. On 17.11.2005 further submissions were filed on behalf of the petitioners. Thereafter on hearing the representative

of the petitioners, the respondent No. 1 passed an order holding the petitioners liable to pay damages under provisions of section 14-B of the said Act to the tune of Rs. 4,87,811/-. Similarly a direction to pay interest under provisions of section 7-Q was also issued for a sum of Rs. 59,676/-. This order dated 29.11.2005 is under challenge in the present writ petition.

Shri K.H. Deshpande, learned Senior Counsel with Shri A.J. Deshpande, learned Counsel for the petitioners made the following submissions:

"(A) That the initiation of proceedings by the respondent No. 1 was belated as the same were initiated in June 2005 in relation to the period from June 1992 to February 2001. It was submitted that though no period of limitation was specified for initiating such proceedings, the same were required to be initiated within reasonable time. The respondent No. 1 having failed to do so the same resulted in prejudice to the petitioner. In this regard the learned Senior Counsel placed reliance on the judgment of the Madras High Court in *Sri Naga Nanthana Mills Ltd. Vs. Presiding Officer, Employees Provident Appellate Tribunal, New Delhi -110092 and Others*, .

(B) That the provisions of section 7-Q came to be introduced by Act No. 33 of 1988 and the said Act came into force on 1.7.1997. As power to impose interest was conferred only on 1.7.1997, no interest could have been levied for the period from June 1992 to June 1997. It was therefore submitted that the impugned order to that extent was without jurisdiction.

(C) That the respondent No. 1 proceeded to impose damages under section 14-B of the said Act without considering the explanation and the reasons assigned by the petitioners for belated payments. It was submitted that the delay arose due to the fact that the grant in aid was released belatedly by the State Government for which the petitioners could not be blamed. It was submitted that the provisions of section 14-B of the said Act are penal in nature and the discretion has been conferred on the Authority to impose damages after considering the necessary facts of the case. It was submitted that the impugned order did not reflect consideration of the explanation furnished by the petitioner and hence there was failure to exercise discretion that was vested with the Authority. In this regard reliance was placed on judgment of learned Single Judge in *Cable Corpn. of India Ltd. and another v. Union of India and another* 2006 (111) FLR 563 (Bom.), It was, therefore, submitted that the impugned order deserves to be set aside."

2. Dr. R.S. Sundaram, learned Counsel appearing for respondent No. 1 supported the impugned order. On the aspect of delay, it was submitted that as there was no period of limitation prescribed in the said Act it was open for the respondent No. 1 to take appropriate action in the facts of the case. According to the learned Counsel there were no pleadings to support the ground of prejudice as sought to be urged. In absence of such pleadings and proof of the same said ground could not be accepted.

As regards the power to levy interest, learned Counsel referred to paras 32-A and 60 of the Scheme of 1952. It was submitted that even before provisions of section 7-Q of the said Act came into force, the Authorities had power to impose damages for delayed payment of contribution.

It was then submitted that the petitioner being liable to pay contribution there was no justification on their part in delaying such payment. Merely because the grant in aid was received belatedly the same would not amount to a sufficient cause for justifying the delay. Reliance in this regard was placed on judgment of learned Single Judge in R.V.P.R.T. Ayurved Mahavidyalaya Vs. Assistant Provident Fund Commissioner and Others, .

It was then submitted that the respondent No. 1 had given due consideration to the explanation furnished by the petitioners and had thereafter levied the damages. It (could not be said that the impugned order did not contain any reasons. It was therefore submitted that there was no reason to interfere with the impugned order.

Shri S.M. Bhagde, learned AGP appearing for respondent No. 2 supported the impugned order.

3. I have carefully considered the respective submissions and have gone through the documents filed on record. In so far as the aspect of delay in initiating the proceedings is considered it is to be noted that there is no limitation prescribed for taking steps to levy interest and impose damages. Said exercise undoubtedly has to be undertaken within reasonable time. In Hindustan Times Ltd. v. Union of India and others 1998(78) FLR 332 (SC), the aspect of delay in initiating action on the part of the Authorities under section 14-B of the said Act has been considered. It was observed therein that merely because the proceedings are initiated or demand for damages is made after several years, that by itself cannot be a ground for drawing an inference of waiver. Similarly mere delay in initiating action cannot amount to prejudice as delay permits the employer to use the amount of contribution for his own purposes. It was further observed that if prejudice is sought to be claimed, same can be done by pleading it and proving that between the period of default and date of initiation of action the employer has changed his position to his detriment.

4. If the present case is examined in the light of aforesaid law it can be seen that there are no specific pleadings nor has a specific stand in that regard been taken that on account of delay in initiating said proceedings prejudice had been caused to the petitioners as a result of which it had altered its position. In absence of such pleadings or proof of any nature regarding prejudice, delay by itself would not amount to prejudice as held in Hindustan Times (supra). The ratio of the decision in Sri Naga (supra) in absence of pleadings would not be applicable in the present case. Hence, first submission made on behalf of the petitioners regarding proceedings being vitiated on account of the same being belatedly initiated cannot be accepted.

5. In so far as the levy of interest under section 7-Q of the said Act is concerned the employer had been held liable to pay simple interest at the rate of 12% P.A. As per provisions of section 7-Q of the said Act, an employer is liable to pay interest at the rate of 12% P. A. or such higher rate as may be specified on any amount due from him from the date of which the amount has become so due till its actual payment. It is not in dispute that aforesaid provision was inserted by Act No. 33 of 1988 and same came into effect from 1.7.1997. There is no challenge to the validity of said provision. While considering the submission of learned Senior Counsel that as aforesaid provision came into force on 1.7.1997 the petitioners were not liable to pay interest for the period prior to 1.7.1997, it would be profitable to refer to the observations of the Supreme Court in Regional Provident Fund Commissioner Vs. The Hooghly Mills Company Ltd. and Others, , wherein provisions of the said Act have been considered. In para 24 thereof it has been observed thus:

"The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender."

6. The provisions of section 7-Q contemplate payment of interest on account of delayed payment and the liability to make payment of interest is from the date on which the amount of provident fund has become due. In para 32-A of the Scheme of 1952 a power has been given to recover damages for default in payment of contribution while in para 60 of said Scheme a provision of crediting interest to the account of member has been stipulated. It is to be noted that in so far as para 32-A of the Scheme of 1952 is concerned the power to recover damages by way of penalty from the employer has been provided. This provision was in existence prior to enforcement of Act No. 33-of 1988. Thus even if liability to pay interest came on the statute book on 1.7.1997, prior thereto the power to recover damages by way of penalty for default in making contribution was always available. Moreover, it is to be noted that aforesaid provision seeks to levy interest on account of delayed payment from the date when the amount has become so due. The Statement of Objects and Reasons while inserting provisions of section 7-Q in the said Act by Amending Act No. 33 of 1988 reads as under:

"3(vii) The existing penal provisions are more stringent. A suitable provision is also being made for charging of simple interest on belated payment of any amount due under the Act."

Considering the object behind insertion of said provision coupled with the fact that there was already a power to levy damages by way of penalty for delayed payment, it cannot be said that the Authorities were powerless to act in case of delayed payment of contribution to recover damages. Hence it cannot be said that there was no liability to pay any amount of damages for belated payment of

contribution prior to 1.7.1997 when provisions of section 7-Q of the said Act came to be enforced. The only difference is that instead of damages under para 32-A of the Scheme of 1952 the employer is liable to pay interest under section 7-Q of the said Act.

7. The matter can be viewed from another angle. In the matter of any procedure, there is neither a vested right or a vested liability as observed by the Supreme Court in *The State of U.P. and Another Vs. Shri Anand Swarup*, . The respondent therein was in unauthorised occupation of Government premises for the period from 15.12.1949 to 21.11.1955. The State sought to recover damages from him for wrongful occupation for aforesaid period under the provisions of the U.P. Government Premises (Rent Recovery and Eviction) Act, 1952. This action was challenged by the respondent on the premise that said Act came into force on 19.12.1952 and as the respondent had come into possession prior to said date, the provisions of the Act were not applicable. The Supreme Court held in para 7 as under:

"Sections 4 and 6 of the Act provide for the procedure for recovering the arrears of rent. Section 4 provides that where an arrear of rent "is payable" by any person "for occupation of Government premises," the competent authority may, "at any time after 30 days from the date on which rent accrued due, serve upon the persons liable a notice of demand for the amount due." Section 6 provides that if the said amount is not paid to the competent authority within 30 days from the date of service of the notice of demand or such extended period as the competent authority may allow, the arrear shall be recoverable as arrears of land revenue. The words "is payable" indicate that the liability to pay the arrears of rent should be outstanding on the date of the issue of demand. So a time barred claim for arrears of rent may not be recoverable under sections 4 and 6. But an arrear of rent, for the recovery of which the period of limitation has not expired, will be an arrear which "is payable." Accordingly it can be recovered by the procedure provided for under sections 4 and 6."

Hence said submission made on behalf of the petitioners does not deserve acceptance.

8. In so far as levy of damages under section 14-B of the said Act is concerned it would be necessary to refer to the principles laid down by the Supreme Court in *Hindustan Times* (supra) in that regard. In para 29 it has been observed thus:

"The Authority under section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved."

In the present case while replying to the show cause notice the petitioners took a stand that as there was delay in receiving the grant in aid from the State

Government there was delay in paying the amount of contribution. Respondent No. 1 in the impugned order has observed that late release of grant in-aid would not amount to an excuse for making the payments belatedly.

9. As held by the Supreme Court in *Hindustan Times* (supra) the Authority while considering the aspect of imposition of damages under section 14-B of the said Act is expected to take into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved. In the present case except for stating that late release of grant in aid would not be a sufficient ground there is no other consideration. The respondent No. 1 thereafter proceeded to impose damages under provisions of section 14-B of the said Act. The aspect referred to herein above as regards number of earlier defaults, the period of delay, frequency of default and the amounts involved have not been adverted to. These factors were relevant for the purpose of imposing penalty if found necessary or atleast relevant for determining the amount of compensation. In *Cable Corpn.* (supra) it was observed by learned Single Judge that the power to enforce damages being quasi judicial in nature, the same must be based on sound and objective considerations. This aspect however is missing in the impugned order in so far as the levy of damages is concerned. As regards the decision relied upon by the learned Counsel for respondent No. 1 in *R.V.P.R.T. Ayurved* (supra) the facts therein indicate that the State Government has been paying the petitioner therein salary grant as well as provident fund contribution at the rate of 8.33%. The rate of provident fund contribution came to be enhanced to 10% and according to the petitioner therein as the difference of 3.67% was not paid, said petitioner had failed to pay contribution. It was observed by this Court that there was no obligation on the State Government to make payment of employer's contribution to the provident fund. In the present case according to petitioners only the salary grant was being received by the petitioners and on account of delay in its release the payment of contribution could not be made. In this view of the matter, the decision relied upon by the learned Counsel for the respondent No. 1 is distinguishable on facts. Hence considering the law as laid down by the Supreme Court in the decisions referred to supra in so far as aspect of damages is concerned the matter requires to be reconsidered by the respondent No. 1. Hence the following order is passed:

"(i) The order dated 29.11.2005 in so far as it imposes interest under provisions of section 7-Q of the said Act is concerned the same stands confirmed.

(ii) The order in so far as it imposes damages under section 14-B of the said Act is concerned the same is set aside to that extent.

(iii) Proceedings are remitted to the respondent No. 1 to reconsider the matter in respect of imposition of damages by granting opportunity to the petitioners.

(iv) As the entire amount under challenge has been paid by the petitioners to the respondent No. 1 the amount of damages as assessed under section 14B would abide by the final adjudication. In case it is found that either no damages are

leviable or damages at a lesser extent are leviable, then the balance amount if any shall be refunded to the petitioners. Rule is made absolute in aforesaid terms. No costs."