

(2010) 03 MAD CK 0295

In the Madras High Court

Case No : Writ Petition No. 21089 of 2007

The Kancheepuram Kamakshiamman, Co-operative Spinning Mills Ltd.

APPELLANT

Vs

The Central Board of Trustees of Employees' Provident Fund Organization

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2010) 125 FLR 621 : (2010) 3 LLJ 740

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Chandra Bose, for the Appellant; T.R. Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This writ petition was filed by the District Co-operative Spinning Mills, represented by its Administrator (in-charge). The challenge made by the petitioner was to the order passed by the first respondent, as communicated by the second respondent, negating its plea for waiver of damages levied u/s 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and stating that the mill has not gone sick and is therefore, not covered under the BIFR sanctioned revival scheme.

2. The ground raised by the petitioner was that the mill has got exemption and it is declared as "Relief Undertaking" by G.O.Ms. No. 58, Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 7.4.2005 beyond 17.7.2003.

3. The said notification was issued by exercise of power vested on the Government under the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969. It is not known as to how that exemption will enure to the benefit of the petitioner. Admittedly, it is a State enactment and the schedule to the Act only lists the Industrial Disputes Act, Standing Orders Act, Shops and Establishments

Act as the Acts enumerated for the purpose of granting any exemption. Neither the Act provides for grant of exemption in respect of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, nor such provision can also be made by the State legislature, since the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is enacted by the Parliament. Therefore, the authorities, on a representation made by the petitioner to the Board of Trustees, rejected the request stating that the mill is not sick and it is not covered under the BIFR sanctioned revival scheme.

4. This writ petition was admitted on 21.6.2007 and pending the writ petition, this Court granted an interim stay.

5. Mr. T.R. Sundaram, learned Standing Counsel for the respondents brought to the notice of this Court a judgment of the Andhra Pradesh High Court in *Feno Fiber Ltd. v. Employees' Provident Fund Appellate Tribunal, New Delhi and Ors.* 2006 I LLJ 286. In that case, the Andhra Pradesh High Court held in paragraphs 10 and 11 as follows:

10. The powers of the CBT under the second proviso to Section 14B of the Act are powers granted by the statute to exercise discretion to reduce or waive damages levied u/s 14B of the Act and in relation to a specified establishment. Such an establishment must be a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the BIFR. Admittedly, the petitioner's application for sanction of a scheme is still pending with the BIFR. Neither on the date of its representation to the CBT for waiver nor even today has a scheme for rehabilitation of the petitioner industry been sanctioned. The petitioner, therefore, does not belong to the class of "industry" in respect of which the discretion of the CBT consecrated by the second proviso to Section 14B of the Act, is applicable.

11. Having regard to the nature of the power conferred on the CBT under the above dispensation, it appears more in the nature of an administrative discretionary power rather than a quasi-judicial dispensation. Therefore, the representation of an applicant for exercise of the discretion of waiver should be comprehensive to enable consideration of such representation without a further process of hearing or submissions later. All aspects which an applicant wants to submit in justification of his/her/its plea for waiver of the damages must comprehensively be included in any representation. The second proviso to Section 14B of the Act does not, in the considered view of this Court, postulate an elaborate quasi-judicial procedure and the CBT is well within its power to consider the representation on any available material and take a decision in accordance with the spectrum of the discretion available to it. In any event, as the petitioner does not fall within the class of "industrial companies" in respect of which the discretion could be exercised by the CBT under the second proviso to Section 14B of the Act, the decision of the CBT rejecting the petitioner's representation suffers from no infirmity warranting interference.

In the light of the above, there is no case made out to grant the relief prayed for by the petitioner. Hence, this writ petition stands dismissed. No costs. Consequently, M.P. No. 1 of 2007 is closed.