

(2013) 03 BOM CK 0250
In the Bombay High Court
Case No : Writ Petition No. 373 of 2005

The Regional Provident Fund Commissioner	APPELLANT
Vs	
Bogmallo Beach Resort and The Employees Provident Funds Appellate Tribunal	RESPONDENT

Date of Decision : 11-03-2013

Acts Referred:

Citation : (2013) 3 ABR 393 : (2013) 4 ALLMR 109 : (2014) 3 BomCR 238 :
(2013) 139 FLR 344 : (2013) LLR 1239 : (2013) 4 MhLj 859

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard Shri P.P. Singh, learned counsel appearing for the petitioner and Shri M.S. Sonak, learned counsel appearing for the respondents No. 1. The above petition seeks to quash and set aside by a Writ of certiorari the order dated 31.05.2005 passed by the respondent No. 2 in ATA No. 63(2) 2005.

2. Briefly, the facts of the case are that on the basis of the impugned order, the respondent No. 2 has inter-alia directed the respondent No. 1 to pay damages only to the extent of 60% by giving reduction of 40% to the respondent No. 1/ company.

3. The main submission of Shri P.P. Singh, learned counsel appearing for the petitioner is that the respondent No. 2 had no jurisdiction or power to reduce the damages in terms of provisions of Sections 31 and 32-B of the Employees Provident Fund Scheme, 1952. The learned counsel further pointed out that considering that there is no power to reduce the damages available to the respondent No. 2, the impugned order to that extent deserves to be quashed and set aside. The learned counsel has taken me through the provisions of the said Scheme and pointed out that on plain reading of the said provisions, no such power for reducing of damages can be found. The learned counsel has thereafter taken me through the impugned order and submitted that the respondent No. 2

has erroneously reduced the damages and consequently, the impugned order be quashed and set aside.

4. On the other hand, Shri M. S. Sonak, learned counsel appearing for the respondent No. 1 has raised two contentions. The learned counsel has pointed out that the petitioner is not entitled to file the above Writ Petition as held by the learned Single Judge of this Court in the judgment reported in Asstt. Provident Fund Commissioner Vs. Nirmitee Holidays (P) Ltd., . The learned counsel further pointed out that the powers to reduce the damages have been now well settled in view of the judgment of the Division Bench of this Court reported in Regional Provident Fund Commissioner Vs. Manoharbai Ambalal, through its partner and a registered Partnership firm, , which view has been considered by this Court while disposing of Writ Petition No. 510 of 2012 by order dated 20.12.2012. The learned counsel further pointed out that once the power is accepted to reduce the damages, it cannot be said that any jurisdictional error has been committed by the respondent No. 2 while passing the impugned order. The learned counsel as such submits that the petition be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. The first contention of Shri P.P. Singh, the learned counsel appearing for the petitioner to the effect that there is no power to reduce the damages as provided of the said Scheme on the respondent No. 2 cannot be accepted in view of the judgment passed by this Court while disposing of Writ Petition No. 510 of 2012 dated 20.12.2012 relying upon the said judgment of the Division Bench of this Court. This Court at paras 3 and 4 of the said order has observed thus:

3. During the course of the hearing of the above petition, Shri G. Sardesai, learned Counsel appearing for the respondent has brought to my notice the judgment of the learned Division Bench of this Court reported in Regional Provident Fund Commissioner Vs. Manoharbai Ambalal, through its partner and a registered Partnership firm, , whereby the learned Division Bench has held that the Tribunal has power to reduce such damages. The learned Division Bench has held at paras 5 and 6 thus:-

5. The learned Single Judge has rejected the contention of the appellant and has come to the conclusion that the Tribunal has been vested with the powers to hear an appeal and must be taken to have been also vested with the power to reduce the damages. We are in agreement with the judgment of the learned Single Judge. Indeed, section 7L of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") confers power on the Tribunal to hear an appeal and dispose it of in accordance with law, even where the appeal is against an order u/s 14-B for recovery of damages. It stands to reason that the Tribunal, which is invested with the power to decide an appeal from an order directing recovery of damages and to set aside the order if found illegal, it must be held to have the lesser but equally important power to reduce the quantum of damages. Indeed, there is no dispute that section 7-L of the Act which confers

power on the Tribunal specifically confers the power to modify, to reduce or annul the order appealed against, including the power to pass such orders thereon as it thinks fit. Section 7L of the Act reads as follows:

7-L Orders of Tribunal - (1) A Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under subsection (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this subsection, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

6. Shri Sundaram, learned Counsel for the appellant, however argued that the power to reduce the damages is conferred on the Tribunal under paragraph 32B, reproduced supra. That may be so. It only means that the Central Board also has the power to reduce damages, though not the exclusive power to do so. The power conferred on the Board does not warrant an inference that such a power is absent in the Tribunal while deciding an appeal. The statutory power to frame a Scheme is on the Central Government by section 5 of the Act. An instrument such as a Scheme, issued by the Central Government under such a conferred power can not be construed to modify or vary the extent of appellate powers conferred by the Act. We see no merit in the appeal.

Hence the present letters patent appeal is dismissed.

4. Considering that the point sought to be raised in the above petition is no longer *res integra*. Shri C.A. Ferreira, learned Asst. Solicitor General appearing for the petitioner points out that as per his instructions, the said judgment of the learned Division Bench has not been challenged by the petitioner. Hence, I find that no case is made out by the petitioner for any interference in the impugned order as the Tribunal had powers to reduce the damages.

6. Taking note of the ratio laid down in the said judgment, I find that the contention of Shri P.P. Singh, learned counsel appearing for the petitioner to the

effect that the respondent No. 2 has no power to reduce the damages cannot be sustained. Hence, it cannot be said that the respondent No. 2 had committed any jurisdictional error while passing the impugned order which calls for interference by this Court under Article 227 of the Constitution of India. In view of the above, I find no merit in the above petition which stands accordingly dismissed. Rule stands discharged.