

(2000) 01 KAR CK 0052
In the Karnataka High Court
Case No : Writ Appeal No. 1782 of 1997

The Regional Provident Fund Commissioner, Mangalore	APPELLANT
Vs	
M/s. Karnataka Forest Plantations Corporation Limited, Bangalore	RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 B, 17 B

Citation : (2000) 86 FLR 791 : (2000) 2 KarLJ 198 : (2000) 1 LLJ 1134

Hon'ble Judges : Y. Bhaskar Rao, C.J; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri Harikrishna S. Holla, for the Appellant; Sri S.N. Murthy, for the Respondent

Judgement

1. In this appeal the appellant calls in question the order dated 17-9-1996 passed by the learned Single Judge in W.P. No. 12229 of 1987 allowing the writ petition filed by the respondent herein.

2. The facts of the case in brief are:

The respondent is an establishment covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act ("the Act" for short). Prior to 30-6-1981 the establishment was under the control of State Government. With effect from 1-7-1981 a separate Corporation was constituted and the affairs of the erstwhile department under the State Government was entrusted to the said Corporation. There was default in payment of the contribution under the Act from 1978 upto October 1987. The appellant passed orders u/s 14-B of the Act. The orders were challenged by the respondent in the present writ petition. The learned Single Judge allowed the writ petition and quashed the orders passed by the appellant. Hence, the appeal.

3. We have heard the learned Counsel for the parties.

4. The learned Counsel for the appellant contended that the transferee establishment becomes jointly and severally liable along with transferor to pay dues u/s 14-B by virtue of Section 17-B irrespective of the fact whether the scheme of taking over provides for taking over of the liabilities u/s 14-B of the Act or not. He relied on two decisions in this regard.

5. In *Vitro Pharma Products Company Limited v R.P.F. Commissioner*, the High Court of Judicature at Bombay has held:

"The petitioner-company, when a private limited company, and thereafter a public limited company, was one entity and was responsible for the defaults, being the employer within the meaning of the Act. That entity cannot avoid the liability for penalty on the footing that, at the time when the defaults took place, a management other than the current management had been in office".

In *M/s. R.N.T. Estates Limited v Union of India and Others*, Notes of Cases 1779 Lab. I.C. 1989, while dealing with the liability in case of transfer of establishment it is held that, "transferee of establishment becomes jointly and severally liable along with transferor to pay dues u/s 14-B by virtue of Section 17-B".

6. It is the contention of learned Counsel for the appellant that in the light of the decisions cited supra, the employer to whom the establishment is transferred shall be liable to pay the contribution and other sums due from the employer under the Act and the order passed by the learned Single Judge taking a contrary view in the matter has to be set aside.

7. In *Vitro Pharma's* case, supra, the employer company which was a private limited company was later converted into a public limited company. The Court considering this aspect held that the employer was one entity before and after its conversion into a public limited company and, therefore, was singularly responsible for the default. In that case there was no "other employer" and the employer remained the same while only there was a change in the management. It is not so in this case where the employer at present is different from the previous employer. The facts of the present case are different from the facts of the case in *Vitro Pharma*, supra.

8. In *M/s. R.N.T. Estates Limited's* case, supra, there was transfer of establishment under a scheme of amalgamation sanctioned by company Court. The Court held that in the event of transfer, the transferee establishment becomes jointly and severally liable along with the transferor to pay the dues u/s 14-B by virtue of Section 17-B. The principle laid down in *M/s. R.N.T. Estates Limited's* case, supra, does not run contrary to the interpretation of the term "contribution and other sums due from the employer" found in Section 17-B, by the learned Single Judge, in the present case. The learned Single Judge was perfectly justified in holding that the concept of penalty would arise only when there is a guilt. While it can be said, on interpretation of Section 17-B, that the transferee employer is liable to pay the contribution for the period preceding the transfer, Section 17-B cannot be interpreted to mean that the transferee

employer would be liable also to pay penalty for the default committed by the previous employer during the period anterior to the transfer. The penalty as correctly interpreted by the learned Single Judge cannot be treated as either "contribution" or as "other sums due from the employer". Such an interpretation would be opposed to the principles of natural justice. Penalty cannot be saddled on somebody who is not guilty.

9. In the result, for the reasons stated above, there is no merit in the appeal and it is accordingly dismissed.