

Ms Paramount Computer Network Ltd. Vs. Assistant Provident Fund Commissioner

Ms Paramount Computer Network Ltd. Vs. Assistant Provident Fund Commissioner

SooperKanoon Citation : sooperkanoon.com/923344

Court : Karnataka

Decided On : May-23-2011

Judge : Ram Mohan Reddy, J.

Acts : Employees

Appeal No. : WRIT PETITION NO:9454 of 2013 (L-PF)

Appellant : Ms Paramount Computer Network Ltd.

Respondent : Assistant Provident Fund Commissioner

Advocate for Pet/Ap. : SRI. J. KANIKARAJ, ADV.

Judgement :

1. Petitioner an employer within a meaning of the definition of the said term under Section 2(e) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short the Act), in relation to the establishment covered under the said V. failed to pay in full the contributions, within the lime stipulated, for the period 1996-1907 10 2000-2001, whence, the notice dated 18 11.2005 was issued to show-cause as to why damages for belated remittance should not be recovered, invoking Section 14-B of the Act. Opportunity of personal hearing though extended on several days of hearing, one Sri. L.S. Ramesh armed with a letter of authority represented the petitioner before the Provident Fund Commissioner. The enquiry

revealed that there was short remittances in Account No. 1 for the period 12/98 to 2/2001 and the dues were yet to be remitted.

2. In the hearing held on 16.10.2006, the authorised representative of the petitioner admitted the contents of the checklist to be correct in so far as short remittances in Account No. 1 and that the remittances were yet to be made. The said authorised representative orally objected to the levy of the damages on the premise that the petitioner suffered business losses. The commissioner declined to accept the oral objections: since not supported by substantial legal evidence, coupled with the admission of short remittances and the failure to remit the amount due even as on date of the enquiry, and accordingly, by order dated 23.10.2006 Annexure-E, directed recovery of 4,85,521/- as damage 15 within 15 days tailing which the said amount would carry Penal interest @ 12 % per annum. The non-remittances of the full contribution led to the order date 23.10.2006 Annexure-F under Section 70 of the Act, imposing interest on the short remittances and amounts due for the period of 1997-1998 to 2000-2001.

3. The petitioner aggrieved by the said orders preferred an appeal before the Employment Provident Fund Appellate Tribunal (for short Tribunal), whence. by order dated 21.12.2010 the appeal was dismissed. Hence, this writ petition.

4. The only ground urged by the learned Counsel for the petitioner is that the levy of damages under Section 14-B of the Act by the Commissioner, as confirmed by the Appellate Tribunal, is without appreciating the cause shown by the petitioner, being losses occasioned in business, a justification for short payment of provident fund contribution within the stipulated time.

5. A perusal of Section 14-B of the Act discloses that the commissioner is invested with the power to levy and recover damages when an employer commits default in payment of contribution to the fund, although such damages ought not to exceed the amount of arrears as may be specified in the case, after extending a reasonable opportunity of hearing to the employer. The second proviso to section 14-B invests a jurisdiction in the Central Board to reduce or waive damages levied in relation to establishment which is seeking a claim under Section 4 of Sick Industrial Companies (Special Provision) Act, 1985. subject terms and conditions

as may be specialised in the case.

6. It is no doubt true that the words "as it may think fit" invests a discretion in the Commissioner in the matter of determining the quantum of damages to be levied. However, such a determination ought to be exercised having regard to all relevant facts and circumstances of the case and the explanation put forth by the employer. It is also true that an order under Section 14-B ought to be a speaking order more so while deciding as to whether the default in a particular case, penal damages are called for at all and if so, to what extent.

7. Damages' is a penalty for default or failure in performance of a duty imposed under the Act as well as compensation for the loss sustained by the employee. Damages referred to in Section 14-B of the Act contains a penal element and therefore generally a writ Court would refuse to interfere in the matter of levy of the damages by the Provident Fund Authorities, if an employer has failed to deposit, the contribution or short remitted the contribution.

8. Yet again it is true that if factors which are not within the control of the industry, are responsible for non-functioning of the industry, for example, strike in a industry, act of god, hood, power cuts, direction by the law and order authorities, closed e of the factory during public unrest etc.. would be relevant circumstances for a sympathetic consideration of the claims of such industries in the matter of non-payment of contribution and other remittance under the Act. Therefore, levy of the damages for delayed payment in such a circumstances would be mitigated. Mere financial condition of an employer on account of loss in the business cannot afford justifiable grounds against the heavy of damages.

9. Regard being had to the aforesaid principles laid down in a catena of decisions the object and purpose of the Act the observations of the Apex Court in MAHARASHTRA STATE COOPERATIVE BANK LIMITED V/S ASSISTANT PROVIDENT FUND COMMISSIONER AND OTHERS reported in 2009 (10) SCC page 123 at paragraphs 25, 29 and 30, is apposite:

"25. An analysis of the above provisions shows that for providing financial benefits to the workers who contribute to the growth of the industries and industrialisation

of the country, the legislature has made provision for framing of various schemes under sections 5(1), 6-A(1) and 6-C(l) and establishment of Punas under sections 5(1), 6-A(2) and 6-C(2). With a view to ensure that the employers religiously comply with the mandate of provisions enacted for benefit of the workers, the legislature has not only provided for imposition of penalty under sections 14, 14-A, 14-AA and damages under section 14-B, but also made comprehensive provisions for recovery of the dues by way of attachment and sale of movable or immovable property of the establishment or the employer, as the case may be.

29. Section 14-B empowers the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette to recover from the defaulting employer damages which shall not exceed the arrears. First proviso to this section casts a duty on the officer concerned to give the employer reasonable opportunity of hearing before imposing and recovering damages. Second proviso thereto empowers the Central Board, to reduce or waive damages levied 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 Board of Financial and Industrial Reconstruction.

30. Since the Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e., the workers employed in factories and other establishments, it is imperative for the courts to give a purposive interpretation to the provisions contained therein keeping in view the Directive Principles of State Policy embodied in Articles 38 and 43 of our Constitution. In this context, we may usefully notice the following observations made by Krishna Iyer, J. in *Organo Chemical Industries v. Union of India* 1 SCC pp. 587 & 591-92, paras 28 & 40-4 V.

"28. The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be dandified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers' share. 'Damages' have a wider socially semantic

connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual.

40. The measure was enacted for the support of a weaker sector viz., the working class during the superannuated winter of their live. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour the concept of 'damages' when the court seeks to define its content in the special setting of the act. Fact judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday rimes Case, observed;

The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty.

41. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a devt loping country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a larger, fulfilling meaning."

10. In the instance case, there is no dispute that employer had short remitted the contribution over an extended period from the year 1998 to 2001 as disclosed in the order of the Commissioner. Annexure-E, and the cause shown was loss in business. In the absence of relevant materials constituting substantial legal evidence of the said fact, no exception can fcxj taken to the reasons, findings and conclusions arrived at by the commissioner in the order. Annexure-E. In my considered opinion, the levy of damages cannot be characterized as either arbitrary or illegal, calling for interference. The Appellate authority, in my opinion,

was fully justified in dismissing the appeal.

11. In the result, petition devoid of merit is accordingly rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com