

(2012) 07 JH CK 0095**Jharkhand High Court****Case No:** L.P.A. No. 104 of 2011

Regional Provident Fund
Commissioner, Ranchi

APPELLANT**Vs**

M/s. MECON Limited, Ranchi

RESPONDENT**Date of Decision:** July 30, 2012**Acts Referred:**

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

Citation: (2012) 135 FLR 40 : (2012) 3 JCR 641**Hon'ble Judges:** Prakash Tattia, C.J; Jaya Roy, J**Bench:** Division Bench**Advocate:** P.P.N. Roy and Pandey Ashok Nath Roy, for the Appellant; K.B. Sinha and Amitabh, for the Respondent**Judgement**

1. Heard Learned Counsel for the parties. Appellant is aggrieved against the order of the learned Single Judge dated 04.02.2011 passed in W.P.(C) No. 6452 of 2010 whereby the writ petition preferred by the Regional Provident Fund Commissioner-Appellant, has been dismissed and the order passed by the Employees Provident Fund Appellate Tribunal, New Delhi in appeal being A.T.A. No. 597(3) 2003 dated 09.08.2010 has been upheld. The Appellate Authority interfered in the order passed by the Assessing Officer/Regional Provident Fund Commissioner, Ranchi dated 22.05.2003 and observed that default committed by the respondent company is not beyond one month and this fact cannot be disputed and then observed that there is delay of less than one month in depositing the amount under various heads and ultimately ordered that E.P.F. Authority may assess the dues @ 17% inclusive of interest.

2. Learned Counsel for the appellant submitted that a notice was issued to the respondent alleging that the respondent did not deposit the various amounts with the authority constituted under the Employees' Provident Fund Scheme, 1952 and,

therefore, is liable to pay the damages, obviously, under Clause 32A of the Scheme of 1952. Learned Counsel for the appellant also submitted that along with the notice, a statement of delayed payment was also enclosed. The Regional Provident Fund Commissioner, by impugned order dated 22.05.2003, declared that total Rs. 3,85,26,664.00 is the calculated amount of the penalties u/s 14-B and u/s 17-Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the said amount was directed to be paid by the respondent within 15 days.

3. The respondent M/s. MECON preferred appeal before the Employees Provident Fund Appellate Tribunal, New Delhi and the said Tribunal allowed the appeal by holding that it is a case of delay of less than one month in payment of certain dues by the appellant and, therefore, the levy of the damages can be @ 17% inclusive of interest.

4. Learned Counsel for the appellant submitted that the Appellate Tribunal committed serious error of law in declaring that the delay is not beyond one month and since there is delay of less than one month, therefore, levy of damages can be only 17% in view of Clause (a) under Sub-clause 1 of Clause 32A of the Scheme of 1952 which provides that in case the default period is less than two months, rate of damages shall be @ 17% per annum. Learned Counsel for the appellant drew our attention to the chart annexed with the notice served upon the respondent and submitted that there were so many defaults and the Appellate Tribunal, without examining the defaults, straightway declared all defaults to be of less than one month period.

5. Learned Counsel for the respondent submitted that a bare perusal of the notice as well as the statement annexed with the notice will reveal that in the last page of the statement it has been alleged that there is a demand of Rs. 16,00,72,107.00 but that demand is absolutely wrong. It is also submitted that because of the stay order passed by the Calcutta High Court, some amount was not deposited but there is a delay of less than one month in fact. Therefore, the order passed by the Appellate Tribunal is based on the facts and is a correct order which has been rightly upheld by the learned Single Judge.

6. We considered the submissions of the Learned Counsel for the parties and perused all two orders i.e., the order passed by the Provident Fund Commissioner and the Appellate Tribunal. From perusal of these two orders, which are very brief, it is clear that none of the authorities has considered the delay of each payment. The authorities, at least original authority, should have given a complete details of the period of delay for each of the payment. The said authority could have grouped all the delays by mentioning that how all the payments are delayed less than two months, how much delays are more than two months but less than four months, in how much matters the delay is though more than four months but less than six months and in how much cases delay was beyond six months period. Without this, the quantification could not have been done in view of Clause 32A of the Scheme of

1952. Therefore, the observation of the Appellate Tribunal that each and every delay was of less than one month is based on without any fact finding.

7. Therefore, the orders passed by the learned Single Judge as well as the Appellate Tribunal as well and also passed by the Provident Fund Commissioner dated 04.02.2011, 09.08.2010 and 22.05.2003 respectively, all deserve to be set aside and matter is required to be remanded to the Provident Fund commissioner, Ranchi to decide the question of delay in payment by taking into account all the entries separately and put them together in the categories of clause (a), (b), (c) and (d) of Clause 32A of the Employees" Provident Fund Scheme, 1952 and determine the quantum of the damages and to find out whether the respondent is at all liable for the amount or not.

8. Both the parties are directed to appear before the Provident Fund Commissioner, Ranchi on 28.08.2012. The L.P.A. is allowed accordingly.