

(2006) 07 CAL CK 0009

Calcutta High Court

Case No: F.M.A. 148 of 2003

The Regional Provident Fund
Commissioner

APPELLANT

Vs

Saptarshi Gyanpeath

RESPONDENT

Date of Decision: July 6, 2006

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 7Q

Citation: (2006) 1 ILR (Cal) 554

Hon'ble Judges: Prasenjit Mandal, J; P.K. Samanta, J

Bench: Division Bench

Advocate: Shib Chandra Prasad, for the Appellant; Amalesh Roy, Abhiskhek Guha and D.N. Chakrabarti, for the Respondent

Final Decision: Allowed

Judgement

1. The 1st Respondent is an Educational Institution which admittedly made default in making contribution to the fund payable under the Provisions for the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and/or the scheme framed thereunder for the period from the month of March, 1997 till September, 1998. The said dues were however deposited on 02.11.1998. Because of such delayed deposit the proceeding was initiated u/s 14B of the aforesaid Act for recovery of damages for such delayed contribution to the fund for the said period. The Regional Provident Fund Commissioner by his order dated 18.09.2001 directed the Respondent Educational Institution to pay damages at the rate of 12% per annum for pre-discovery period and 17% and 22% per annum for the respective periods of defaults. The respective amounts towards damages u/s 14B of the said act were determined and mentioned in the said order dated 18.09.2001. By the aforesaid order the Respondent Educational Institution was further directed to pay interest at the rate of 12% per annum u/s 7Q of the said Act on the aforesaid amount of damages from the due date till the date of actual payment.

In addition to the above, the Regional Provident Fund Commissioner levied a further interest at the rate of 12% per annum under self-same provisions of Section 7Q of the said act on the total so determined for the period from the date of making of the said order till the date of actual payment. In the writ petition filed by the 1st Respondent the levy of interest on the amount of damages as determined by the Regional Provident Fund Commissioner was seriously questioned.

2. The learned Trial Judge disposed of the writ petition by setting aside the levying of interest on the amount of damages. According to him the Provident Fund Commissioner was in error by charging interest without giving the 1st Respondent any opportunity to make payment. The learned Trial Judge accordingly directed the 1st Respondent to pay the entire amount of damages determined by him by his order dated 18.09.2001 within a period of fortnight from the date of disposal of the writ petition. This order is under challenge before us.

3. Upon plain reading of Section 7Q and 14B of the aforesaid act it appears to us that the employer in terms of provisions of Section 7Q for the said Act is liable to pay simple interest at least at the rate of 12% per annum on any amount due from him under the Act from the date on which the amount became due till the date of its actual payment. Section 14B of the aforesaid Act empowers the authority concerned to recover damages by way of penalty for making default in making contribution to the fund. However, such amount of damages should not exceed the amount of arrears or as may be specified in the Scheme. Para 32A of the Scheme framed under the aforesaid Act prescribes different rates of damages for different periods of default. Thus upon conjoint reading of Section 14B of the said act along with Para 32A of the said Scheme it is crystal clear that for making default in contribution to the fund the employer is not only liable to pay all arrears of contribution but at the same time damages that may be determined by the authority concerned in accordance with the provisions of Para 32A of the said Scheme.

4. Under the said scheme different amount of damages are leviable for different periods of default. Amount is as per the rates prescribed thereunder. For example a payment of delayed contribution by two months only will attract damages at the rate of 12%. only whereas four month's default will attract 2%. When by an order of the authority concerned made u/s 14B of the said Act a damage say for a delayed contribution by two months is being paid say after a year, then in such a situation the authority concerned is "absolutely empowered to levy interest u/s 7Q of the Act on the amount of such damages for the period of one year. Such interest however would not be payable u/s 7Q if the Act, if the employer himself had deposited the arrears of contribution along with the damages having calculated the same in terms of para 32A of the scheme.

5. In this case entire period of default was from the month of March 1997 till September 1998. Entire arrears of contribution were deposited on 02-11-1998. Therefore while the contribution for the month of September 1998 was delayed

deposited by a month or so, the other contribution were delayed deposited by different periods. Thus damages were separately determined. Similarly interests on different amounts of damages were calculated from the respective dates of delayed deposits till the date by which payment of such damages were directed. These provisions of Section 14B of the said Act along with para 32A of the said Scheme are enabling provisions to impose damages upon the employer for making default in the contributing to the fund as per the rates specified therein. Section 7Q of the aforesaid act further makes the employer liable to pay simple interest at least at the rate of 12% pr annum on any amount due from his under the Act from the date on which the amount became so due till the date of its actual payment. This provision of Section 7Q of the said act therefore mandates a payment of simple interest at the rate of 12% per annum at a minimum on any amount due from the employer under the Act. The damages that are determined by the authority concerned for making default in the payment of any contribution to the fund by the employer as per the provisions of Section 14B of the said act read with Para 32A of the Scheme are amounts due from the employer under the Act which carries interest at the minimum of 12% from the date when it became due. It therefore cannot be said that the interest on such amounts of damages cannot be imposed without an opportunity to the employer to make payment of the damages. The provision of Section 7Q of the said act is mandatory and is applicable to any amount exterrminable under the Act from the date on which the same became due for payment till the date of its actual payment.

6. As soon as the Regional Provident Fund Commissioner by the aforesaid order dated 18.09.2001 determined the several amounts of damages payable by the employer for making different defaults in payment of contribution to the fund, it meant that such damages were payable for the particular periods of default made in respect of payments of contributions along with the delayed contribution. Payment of such damages, as were due for the particular defaults, at any subsequent date, would naturally carry an interest at the minimum rate of 12% per annum in terms of the provisions of Section 7Q of the said Act. the language of the provisions of Section 7Q of the said Act is clear. The authority concerned has no scope for exercising his discretion to waive payment of interest on the amounts of damages determined by him for the particular periods of default which became due for payment upon expiry of the particular period of default. From the conjoint reading of Section 14B of the said Act read with Para 32A of the Scheme, it is also clear that the damages for delayed payment of contribution to the fund are also self-determinable by the employer by applying the rates specified thereunder for the particular periods of default made in the process. It therefore cannot be said that unless a proceeding is initiated u/s 14B of the said Act by the authority concerned, the Respondent Educational Institution was not liable for payment of damages for such delayed contribution to the fund.

7. We are therefore of the view that the learned Trial Judge proceeded on wrong premises and held that unless an opportunity to make payment of the damages as determined by the authority concerned is given to the employer, no interest could be levied on such damages under the provisions of Section 7Q of the said Act. The said provisions of the Act apply independently. Once there is a delayed contribution to the fund there is no scope for exercising discretion by the authority concerned.

8. Upon all such reasoning, we set aside the impugned judgment and order dated 0.12.2001 passed by the learned Single Judge in the writ petition and dispose of this appeal by directing the 1st Respondent Educational Institution to pay an amount of Rs. 21,336/- u/s 7Q of the said act on the amount of damages as determined by the authority concerned by its order dated 18.09.2001 within a period of four weeks from date. In default of making such payment within the aforesaid period, the aforesaid amount of Rs. 21.336/- shall further carry an interest at the rate of 12% per annum from this date till actual payment.

9. The appeal is thus allowed.

10. If urgent Xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.