Indian Eyelets Industries and Others Vs Regional Provident Fund Commissioner and Others

Writ Petition No. 1015 of 1985

Court: Calcutta High Court

Date of Decision: Jan. 31, 2002

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 14B

Citation: (2002) 94 FLR 903 : (2002) 2 LLJ 1066

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Judgement

Amitava Lala, J.

In this writ petition, the petitioners have challenged the order passed by the Regional Provident Fund Commissioner (II), West Bengal by imposing levy of damages u/s 14-B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, on an organisation named therein. Such order was passed on July 9, 1985. The show-cause notice was issued on March 22, 1984. The dues were paid in the year 1977. There is no dispute in respect of dues but there is some delay in depositing the same. In giving reply to the show-cause notice of the year 1984 the petitioners categorically mentioned about the accidental devastating fire which took place in 1974 and consequential effect in connection therewith. However, the authorities accepted all the deposits in the year 1977 either in time or within the extended time. When the show-cause notice for imposition of damages or penalty had been issued upon the petitioners, they were surprised and gave the reply, so that the same may be dispensed with. However, no affidavit has been filed in respect of the statements made by the petitioners in the writ petition of the year 1985 till this date. Learned counsel for the respondents contended that as per the Employees'' Provident Funds Scheme, 1952 (paras. 30 and 38) in case of any default within the prescribed period the petitioners have no other alternative but to pay the damages.

2. The respondents have relied upon the two Supreme Court judgments-one is reported in Organo Chemical Industries and Another Vs. Union of

India (UOI) and Others, , as well as M/s. Hindustan Times Limited Vs. Union of India and Others, . According to the petitioner even in case of

delay in depositing the provident fund the persons have to face the consequences u/s 14-B of the Act so far as the two cases are concerned. He

contended that there is no provision of limitation applicable under the Indian Limitation Act, 1963. Learned, counsel appearing for the petitioner,

on the other hand, relied upon a judgment in The Regional Provident Fund Commissioner, Tamilnadu Vs. The South India Flour Mills (Pvt.) Ltd.,

in which a Division Bench of the Madras High Court observed that the grounds ought to be taken carefully before passing an order of payment of

damages u/s 14-B of the Act.

3. Upon hearing the parties, I am of the view that two questions are available herein. The first one is that there is no reference of devastating fire in

the order itself and no affidavit to that effect denying the statements made by the petitioners is available to take their stand contrary to the factual

position of the case. On the other hand, the case of the respondents is that the payment of Employees'' Provident Fund cannot be dispensed with

by the Court which can be acceptable defence on the part of the authorities before the Court of law out the question lies differently altogether. The

petitioners contended that there is no default on the part of the petitioners for the purpose of claiming damages and/or penalty as provided u/s 14-

B of the Act. It is an admitted position that all the dues on the part of the Employees'' Provident Fund authorities have been paid and authorities

duly accepted in the year 1977. Therefore no question arises. So, according to this Court, there is a valid ground to test the bona fides on the part

of the petitioners as well as on the part of the authorities, whether there is any question of unjust enrichment or not? Thus taking into account the

totality of the matter when I find that now a Tribunal is available for the purpose of hearing an appeal from the order of such nature u/s 14-B, the

same can be invoked by the parties aggrieved hereunder within a period of fortnight from the date of the communication of this order and in turn

the appeal will be heard by the Tribunal upon giving fullest opportunity of hearing and by passing a reasoned order thereon in the light of judgment

and order passed by this Court in this respect.

4. The interim order, if any, will continue till two weeks after the communication of the order passed by the Appellate Tribunal. In default of filing

any appeal before the Tribunal by the petitioners the interim order will automatically stand vacated within such period.

5. Let the copy of the petition as supplied by the advocate be kept with the record and be treated as reconstituted petition.

6. Thus the writ petition stands disposed of.

7. There will be no order as to costs.

8. Let xeroxed certified copy of this judgment be supplied to the parties by the department within seven days from the date of putting in requisition

for drawing up and completion of the order as well as the certified copy thereof.

9. All parties are to act on a xeroxed signed copy minutes of the operative part of this judgment upon usual undertaking and as per the satisfaction

of the officer of this Court in respect as above.