(1990) 03 CAL CK 0038

Calcutta High Court

Case No: Appeal No. 266 of 1987

Regional Provident Fund Commissioner, West Bengal		APPELLANT
	Vs	
Rabindra Chandra Chamaria and Others		RESPONDENT

Date of Decision: March 14, 1990

Acts Referred:

- Companies Act, 1956 - Section 142, 162, 168, 2(30), 207
- Constitution of India, 1950 - Article 226, 37
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 13(2), 14, 14(AC), 14A, 14AA
- Employees State Insurance Act, 1948 - Section 86
- Income Tax Act, 1961 - Section 179, 192
- Penal Code, 1860 (IPC) - Section 34, 405, 406, 409, 420

Citation: (1990) 1 CALLT 373

Hon'ble Judges: Bimal Chandra Basak, J; Amarabha Sengupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B.C. Basak, J.

These appeals by the Regional Provident Fund Commissioner, West Bengal (hereinafter referred as to R.P.F.C.) are directed against orders passed by the learned Company Judge of this Court in an application u/s 633 (2) of the Companies Act (hereinafter referred to as the said Act) whereby the learned Judge passed an order in favour of the petitioners.

FACTS

2. We shall set out herein below the operative portion of the certified copy of the order as drawn up and included in the Paper Book (Later on, we shall refer to the signed copy of the Minutes of the order passed, as recorded by the Court Officer, as certain submissions have been made relying on the same).

Upon the application by summons dated this day of the abovenamed Ravindra Chamaria, Jyotirindra Mohan Roy, Bajranglal Saraogi and Rajat Chakraborty (hereinafter referred to as the said applicants) filed this day and upon hearing Mr. Tapas Banerjee (Mr. R. K. Lala and Mr. K. R. Das appearing with him) advocate for the said applicants and Mr. K. N. Srivastava, advocate for Regional Provident Fund Commissioner and upon reading the petition of the said applicants and the exhibits annexed thereto and marked respectively marked ''A'' and an affidavit of Ravindra Chamaria as to the verification of the said petition affirmed on the twenty seventh day of January in the year one thousand nine hundred and eighty six and all filed this day and by and with the consent of the parties appearing in this application being treated to have been placed in the days list as an adjourned application.

It is ordered that the above named respondents and each of them be and they are hereby prohibited from initiating any criminal proceedings against the said applicants or any of them for non-payment and/or delayed payment of the provident fund dues until further orders of this Court and it is further ordered that the said applicants do pay to the above named respondent No.2 a sum of rupees fifty thousand per month commencing from April in the year one thousand nine hundred and eighty six towards arrears of Provident Fund dues until the entire dues of the above named respondent No.2 is paid off. And it is further ordered that this application be and the same is hereby disposed of accordingly and it is further ordered all parties to act on a copy of the minutes of this order duly signed by an officer of this Court being served on them.

3. The application was made by four persons. The petitioners Nos. 1, 2 and 3 described themselves as Directors of Eastern Manufacturers Company Ltd. (hereinafter referred to as the said company) and the petitioner No. 4 who described himself as the Mill Manager of the Jute Mill which is owned by the said company. The said company has been carrying on business, inter alia, of manufacturing different types of jute products and for which the said company has a factory at Titagarh, District 24-Parganas. Certain facts are pleaded in the petition regarding the management and financial position of the said company. The case sought to be made out in the petition is as follows :

Your petitioners state that in the circumstances aforesaid because of the reasons stated hereinbefore the Employers and/or Employees'' Contribution of Provident Fund could not be paid by the said company in full although time to time some amounts have been paid by the company towards the said dues. Your petitioners state that a sum of Rs. 6,76,711.97p. has been paid towards the current dues.

(para 15)

Your petitioners apprehend that the respondent may initiate proceedings for not depositing in full the Employees'' Provident Fund respondents for the years 1982-83, 1983-84, 1984-85 and 1985-86 and/or earlier.

(para 16)

Your petitioners state that after adjusting the payments made company at present the dues of Employees'' contribution of the Provident Fund to be deposited by the company would amount to Rs. 25,74,951/- in total and the Employers'' Contribution of the Provident Fund payable by the company would amount to Rs. 57,55,761/- and loan realisation to be deposited by the company would amount to Rs. 38,45,104/- in total for the years aforesaid amounting to Rs. 1,21,65,816/- in total.

(para 17)

Your petitioners state that as stated hereinbefore the said company has just started working on its own after passing through a crisis for nearly 5 years. Your petitioners state that your petitioners are able to pay and/or deposit with the respondents @ Rs. 50,000/- per from April 1986 towards the amount payable as Employers'' Provident Fund and/or to be deposited as Employees'' Provident Fund with the respondents.

(para 18)

Your petitioners state that in the circumstances aforesaid an should be made directing the respondents to accept a sum of 50,000/- per month from April 1986 towards liquidation of the dues payable by the company towards Employers'' contribution of provident Fund and amount to be deposited towards Employees'' Contribution of the Provident Fund till the entire dues are paid off.

(para 19)

Your petitioners state that inasmuch as the respondents might prosecution against your petitioners for the alleged violation of different provisions of the Provident Fund Act, the respondents should be directed not to initiate any proceedings against your petitioners until orders.

(para 20)

4. Under these circumstances, a prayer has made to the following effect:

(a) That the petitioners be relieved of their liability for delay or non-payment of provident fund dues to the respondent. No. 2;

(b) Injunction do issue restraining the respondents and each of them from initiating any criminal proceedings against the petitioners or any of them for non-payment and/or delayed payment of the Provident Fund dues;

(c) Ad-interim order in terms prayer (b) above;

(d) Petitioners be directed to pay to the respondent No.2 a sum of Rs. 50,000/- per month commencing from April 1986 towards arrears of Provident Fund dues until the entire dues of the respondent No.2 is paid off.

5. It appears that this application was moved by the petitioners as Court Application. When the application was moved on behalf of the petitioners one learned Advocate appeared on behalf of R.P.F.C. and on that basis the impugned order was passed. Being aggrieved by the same, this appeal bas been preferred by R.P.F.C.

6. We ought to point out that though the order was passed on 28th of January 1986, the appeal was not preferred until 28th April 1987 and though the stay petition was filed on that date directions were given for filing affidavits on 30th July, 1987. No explanation is offered as to why there was such a delay in giving directions contrary to usual practice. However, no such affidavit was ever filed on behalf of the respondents (who were the applicants before the Court below) and accordingly all allegations made in the stay petition stand uncontroverted. It was stated in the stay petition on behalf of R.P.F.C. as follows :

(a) The said company committed default in the payment of Provident Fund dues to the time of Rs. 13,95,891.65 during the period from February 1977 to September 1977 and on such default the said Company moved this Honourable High Court on October 11, 1977 under Article 226 of the Constitution of India under C.R. No.5523 (W) of 1977 and obtained an interim order of injunction restraining the applicant from taking any steps against the said company on the condition that the said Company would pay the said arrears of Provident Fund dues at the rate of Rs. 50,000/- per month with effect from October 31, 1977 but the said interim order of injunction stood vacated since the said company failed to comply with the terms and conditions of the Orders passed by this Honourable Court in the said Rule and subsequently the said Rule was discharged on August 13, 1981. It may be mentioned here that by letter dated April 23, 1980 the applicant informed the said Company to comply with the Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 so that the said Company might avoid legal consequences.

(b) That on the applicants filing criminal cases No. C/1193-94 of 1980 the said Company obtained a Civil Order No.5419 (W) of 1980 by moving a fresh application under Article 226 of the Constitution of India before this Honourable Court and obtained an Order of injunction restraining the applicant from taking any steps against the said Company and the said Company was also allowed to pay the arrears of Provident Fund dues by way of instalments but the Order of Injunction once again stood vacated and the applicant by notice dated May 22, 1982 intimated the said facts to the said Company.

(c) That on July 9, 1981 the said Company moved another application before this Honourable Court and obtained an Order of injunction along with a Direction to pay the arrears of Provident Fund dues at the rate Rupees One Lakh per month. Finally the Rule issued on the application moved on July 9, 1981 was discharged on April 11, 1985 by this Honourable Court.

(para 3)

That in the facts and circumstances stated hereinabove to avoid the inevitable legal consequences and solely with a view to frustrating the penal provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Respondents for the fourth time moved this Honourable Court on the self same prayers for injunction restraining the applicant from taking any steps against the said Company for wilful violation of the provisions of the said Act and also praying for instalments for payment huge sum of Provident Fund dues and obtained the Order appealed against.

(para 4)

That it is stated by the Applicant that the said Company Petition not maintainable in law having regard to the fact that the Respondents petitioners made an application before this Honourable Court u/s 633 of the Companies Act, 1956 for grant of instalments at the rate of Rs. 50,000/- per month from April 1986 for paying off the admitted arrears of Provident Funds dues amounting to Rs. 1,21,65,816/- fell due and payable under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the said Act") and the Registrar of Companies, West Bengal (the Respondent No.1 in the said application) was not concerned in any manner in regard to the payment or non-payment of the Provident Fund dues payable under the said A by the Respondents to the applicant.

(para 5)

That the applicant also states that in view of the facts that for payment of admitted arrears of Provident Fund dues and for apprehension prosecutions under the said Act, one cannot take resort to an application u/s 633 of the Companies Act, 1956 since the Provisions of section 633 do not contemplate such an application and as such the said company petition is misconceived and not maintainable in law.

(para 6)

That even assuming but not admitting that the said Company Petition was maintainable in law in that event also the impugned order is liable be set aside solely on the ground of non-application of mind inasmuch if the respondents are allowed to pay the admitted arrears of Provident Funds dues amounting to Rs. 1,21,65,216/- at the rate of Rs. 50,000/- per month then it will take 244 months i.e. 20 years and 4 months to liquidate the said arrears of Provident Fund dues which will cause serious loss and prejudice to the Provident Fund Organisation.

(para 7)

That even assuming but not admitting that the said Company Petition for grant of instalments in regard to arrears of Provident Fund dues is maintainable in law, and that instalments for payment of arrears of Provident Fund dues could be granted in that event also the impugned order is liable to be set aside being vitiated with complete non-application of mind inasmuch as if the Respondents are allowed to payoff the arrears of Provident Fund dues at the rate of Rs. 50,000/- per month then in one year the Respondents will have to pay Rupees six lakhs while if the Respondents utilise the admitted arrears of Provident Fund dues being Rs. 1,21,65,816/- by making a fixed deposit in a Bank then at least at the rate of ten per cent interest the Respondents can earn more than Rupees twelve lakhs in a year and thus the Respondents by utilising the trust money of their Employees can earn at least a profit of more than Rupees six lakhs in a year without any toil and on the other hand completely frustrating the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which is a beneficial legislation enacted as a measure of social justice.

(para 8)

That at the time of hearing of the said company petition the Applicant raised objection to the grant of any instalments but His Lordship was pleased to grant instalments for payment of the said huge sum of Provident Fund dues at the said rate as a result of which it will take more than twenty years to liquidate the said admitted arrears of Provident Fund dues out of which fifty per cent is the Employees'' share of contributions being duly deducted by the said Company and kept in trust.

(para 9)

That having regard to the fact that the applicant has been deprived of his statutory powers for no reason whatsoever and that by the impugned Order the respondents have been given a legal sanction indirectly which the Respondents cannot get directly because for violation of the Provisions of the said Act the Respondents cannot obtain relief u/s 633 of the Companies Act, 1956 for the establishment and also for the persons responsible for non-payment of the provident fund dues and as such the impugned order being completely without jurisdiction is liable to be set aside.

(para 10)

7. We shall make our comments later regarding the statements made in paragraph 9 above. We ought to point out that apart from such late filing of appeal, even after the appeal was filed, no step was taken on behalf of the appellant R.P.F.C. for an early hearing. As a matter of fact, the appeal appeared before us for disposal under Chapter XXXI Rule 22 of the Original Side Rules because no Paper Book had been

filed by appellant R.P.F.C. as required. For such default, in the usual course such appeal was likely to be dismissed. However we gave leave to the appellant R.P.F.C. to affirm an affidavit explaining the reason for non-filing of Paper Book and accordingly an affidavit was affirmed by one Kamal Lal Das on 21st of August 1989. Though we were not satisfied with the explanation given therein, we did not dismiss the appeal for such default in view of the importance of the case. In that affidavit it was stated on behalf of R.P.F.C. as follows :

That the said Establishment is a chronic and habitual defaulter so far as the payment of statutory dues under the said Act 19 of 1952 is concerned.

(para 3)

That the said Establishment defaulted in the payment of statutory to the tune of Rs. 13,95,891.65 during the period from February, 1977 September, 1977 and on such default a writ petition being Civil Rule No. 5523(W) of 1977 was moved before the Honourable High Court Calcutta, whereupon an interim order of Injunction was granted thereby restraining the Appellant from taking any steps consequent upon the defaults. Such interim order was granted on the condition that the arrears of Provident Fund dues would be paid by monthly instalments of Rs. 50,000/- with effect from October 31, 1977. The said interim order, however, stood vacated since the arrears of provident funds dues were not paid pursuant to the Directions of this Honourable Court. The said Rule was, however, charged on August 13, 1981.

(para 4)

That consequent upon defaults in the payment of statutory dues criminal cases Nos. C/1193-94 of 1980 were initiated by the office of the Appellant and thereupon another writ petition was moved before the Hon''ble High Court at Calcutta whereupon Civil Order No.5419 (W) of 1980 was issued. On the aforesaid second writ petition an injunction was granted thereby training the office of the Appellant from taking any steps in regard to defaults. Such interim order was granted on the condition that the arrears Provident Fund dues would be paid by instalments. For non-compliance the direction of this Hon''ble Court the said interim order granted on the said second writ petition also stood vacated.

(para 5)

That on July 9, 1981 a fresh writ petition being the third writ petition succession was moved before the Hon''ble High Court at Calcutta and on said third writ petition once again an interim order of injunction was granted on the condition that the arrears of provident fund dues would be liquidated by monthly instalments of Rs. 1 lakh. The Rule issued on the said third petition, however, was discharged on April 11, 1985 by this Hon''ble Court.

(para 6)

That in the month of January, 1986 once again and for the fourth time the four Directors of the said Establishment moved a petition u/s 633 of the Companies Act, 1956 before the Hon''ble High Court at Calcutta whereupon on January 28, 1986 His Lordship the Hon''ble Mr. Justice R. N. Pyne (As His Lordship then was) was pleased to pass an order thereby restraining the appellant from initiating any criminal proceedings against four Directors who were petitioners in the said company petition being company petition No.54 of 1956, for non payment and/or delayed payment the provident fund dues. His Lordship by the said order, however, directed that the petitioners in the said company petition would pay the arrears of provident fund dues by instalments of Rs. 50,000/- per month commencing from the month of April 1986. The Appellant being aggrieved by the said order preferred the instant appeal.

(para 7)

That as on March 31, 1986 the said Establishment defaulted in the payment of provident fund dues to the tune of Rs. 1,21,65,816/-. Pursuant to the order dated January 28, 1986 fourteen instalments were paid during the period from April 1986 to May, 1987. Thus as against the arrears of provident fund dues as on March 31, 1986 a sum of Rs. 1,14,65,816/- is still outstanding. From the month of April, 1986 onwards the said Establishment paid only the employees'' share of Provident Fund contributions but did not deposit any employer''s share of provident fund contributions. Consequently for the period from April 1986 to June, 1987 a further sum of Rs. 31,80,128.67 has fallen in arrears. Thus as on June 30, 1987 the total default amounted to Rs. 1,46,45,954.67 p.

(para 8)

That having regard to the fact that the said Establishment failed and neglected to pay the dues from the month of April, 1986 onwards, the office of the Appellant was constrained to issue prosecution notice.

(para 9)

That the said Establishment for the fifth time approached the Hon''ble High Court at Calcutta by moving once again a fresh writ petition on June 24, 1987. The writ petition involved the arrears of statutory dues which was payable during the period from April, 1986 to June 1987. This Hon''ble Court passed order allowing the said Establishment to clear off the said arrears of statutory dues by instalments but the terms and conditions of the order passed by this Hon''ble Court were not complied with.

(para 10)

That in the circumstances on January 14, 1989 the office of the appellant through its Inspector filed petitions of complaints under Sections 406/409 read with section 34 of the Indian Penal Code, in the Court of the learned Sub Divisional Judicial

Magistrate, Barrackpore, for defaults in the payment of Employees'' share of provident fund contributions after due deduction of the same from the wages/salaries of the employees during the months of August, 1987, September 1987 and December, 1987 to February 1988. The said complaints were registered as Case No. C-70 of 1989 and Case No. C-72 of 1989. The said complaints were filed against Mr. Ravindra Chamaria and the Mill Manager.

(para 11)

That on such complaints being filed by the office of the appellant, the said Establishment and Shri Ashish Kumar Das one of its Director once again moved a fresh writ petition being the sixth approach to the Hon''b1e High Court at Calcutta. On the writ petition which was registered as Matter No.223 of 1989 an interim order was passed on February 1, 1989 in terms of prayers (f) and (g) thereof. In the said prayers (f) and (g) of the said writ petition prayers were made for stay of all criminal proceedings including the investigations and further for injunction restraining the appellant from initiating or continuing with any criminal cases. Subsequently the appellant took out an application for vacating the said interim order and or application for vacating, His Lordship the Hon''ble Mr. Justice Monoj Mukherjee was pleased to pass an order dated June 19, 1989 thereby vacating the said interim order dated February 1, 1989 and allowing the application for vacating. The said Establishment, however, preferred appeal against the said order dated June 19, 1989 which is still pending decision.

(para 12)

That in the aforesaid circumstances once again on June 29, Mr. Ravindra Chamaria moved a fresh application u/s 633, Companies Act, 1956 before the Hon''ble High Court at Calcutta and one Mr. Kanhailal Sharma along with one Mr. Shrinarain Sureka moved another application u/s 633 of the Companies Act, 1956 on the same date i.e. June 29, 1989 before the Hon''ble High Court at Calcutta. All the said persons moved the said two company petitions alleging that for the defaults in the payment of provident fund dues they should not be responsible and no prosecutions should be commenced against them all acted reasonably and honestly. On the said company petitions interim orders in terms of prayer (b) thereof have been granted and by such interim orders the appellant has been restrained from initiating or launching any proceedings including criminal proceedings against the said persons for the defaults or breach of duty or breach of trust committed by them by not paying provident fund dues of the Eastern Manufacturing Company Ltd. The appellant has affirmed his affidavits in opposition to the said two company petitions and the said company petitions are still pending decision and the interim orders passed thereon are in operation.

(para 13)

That it is, however, stated that the total dues payable by the said Establishment as on June 30, 1989 is as follows :

Provident Fund Contributions	Rs. 1,76.00 lakhs
Family Pension Fund Contributions	Rs. 0.40 lakhs
Employees'' Deposit Linked Insurance Contributions	Rs. 0.60 lakhs
Employees'' deposit linked Insurance Administrative Charges	Rs. 0.12 lakhs
Total :	Rs. 1,77.12 lakhs

(para 14)

It is however stated that the said Establishment is under lock out from the month of March, 1988. The period of default is from the month of April, 1980 upto the month of February, 1988. The nature of default is as follows :

Nature	during the period
(1) Default in the payment of Employer''s share	April 1980 to January 1985
(2) Defaults in the payment of Employer''s share	August 1985 to March, 1987
(3) Default in the payment of both shares	April 1987 to June, 1987
(4) Default in the payment of Employer''s share	August 1987 to September 1987
(5) Default in the payment of both shares	November, 1987 to February, 1988

Thus total arrears upto June 30, 1986 is Rs. 1.32 crores. Current arrears during July 1986 to February, 1988 are Rs. 3 lakhs Employees'' share and Rs. 41 lakhs Employer''s share. Thus till February, 1988 the said Establishment was liable to transfer to the Board of Trustees in all Rs. 1.16 crores. Apart from the above the said Establishment was also liable to pay to the statutory fund a sum of Rs. 1.22 lakhs in the following manner.

In Account No. X	Rs. 0.40 lakhs

In Account No. XXI	Rs. 0.60 lakhs
In Account No. XXII	Rs. 0.12 lakhs
In Account No. II	Rs. 0.10 lakhs
Total	Rs. 1.22 lakhs

Thus the establishment is liable to pay in all Rs. 1 crore 77 lakhs and 22 thousands.

That the instant appeal has been preferred by the Appellant mainly because the appellant felt aggrieved because of grant of installment at the rate of Rs. 50,000/- per month only as against the huge accumulated arrears of statutory dues of Rs. 1,21,65,816/-.

(para 15)

That the question of recovery of arrears of Employees'' Provident Fund dues from the jute gals was discussed at some length in the meeting held on July 7, 1986 under the Chairmanship of the then Labour Minister of the Union of India with the Jute Mill owners. In the said meeting it was decided, inter alia, that eight per cent of the amount payable to the Jute Mills for purchase made against the Government orders, would be deducted from the bills of the concerned Jute Mills and would be adjusted against the arrears of employees provident fund and ESI dues. A review of the above scheme was made by the Ministry of Labour in consultation with the Ministry of Textiles and thereafter the Appellant was directed to treat the scheme formulated in the said meeting held on July 7, 1986 as withdrawn. In view of such circumstances on August 23, 1988 the appellant informed the said establishment about the withdrawal of the scheme formulated in the said meeting held on July 7, 1986 under the Chairmanship of the then Labour Minister with Jute Mill owners. As has been stated hereinfore the petitioners/respondents in the instant appeal inspite of their undertaking given from time to time to pay the arrears of statutory dues failed and neglected to pay the statutory dues and even after filing of the instant appeal by the appellant the said establishment and its Directors moved more than one applications before the Hon''ble High Court praying for further orders.
(para 16)

That since the said Establishment failed and neglected to pay the statutory dues, the appellant proposed to start further proceedings and actually initial several proceeding even after preferring the instant appeal and as soon as the appellant started taking steps, the said Establishment and its Directors again moved petitions before the Hon''ble High Court at Calcutta. At present the cases are pending before the Hon''ble High Court at Calcutta, namely, one filed by the said Establishment and the remaining two filed by its directors. In the aforesaid circumstances the appellant proposed not to proceed with the instant appeal out of the bona fide belief that necessary steps can be taken against the said Establishment and its Directors once the petitions filed them and now pending decision, are disposed of.

(para 17)

ARGUMENTS :

8. The sole point sought to be urged before us in support of this appeal is that the learned Judge erred in granting the relief u/s 633 the said Act in respect of the offences committed under the Employees Provident Fund and Miscellaneous Provisions Act 1952 (hereinafter referred to as the Provident Fund Act). It was submitted that the relief u/s 633 could be granted only in respect of an offence committed under the said Act and not in respect of any other Act. In this connection our attention is drawn to various offences created under the said Act referred to in sections preceding section 633. In this connection it is pointed out that in respect of the violation of the provisions of the said Act, it is the Registrar of the Companies or anyone authorised on his behalf who can initiate criminal cases, but in respect of the offences committed under the Provident Fund Act, the appropriate authority is the Regional Provident Fund Commissioner. In support of this contention reliance is placed Hareshchandra Maganlal and others Vs. Union of India and others, Sanatan Ganguly vs. The State & Ors., 56 Comp Cases 93 , The Public Prosecutor, Government of Pondicherry Vs. Abdul Aziz Khan and Another, G. D. Bhargava vs. Registrar of Companies & Ors. (1970) 40 Comp Cases 664, Ram Chandra & Sons Pvt. Ltd. vs. State (1967) 2 CLJ 92, Customs and Excise Commissioner vs. Hedon Alpha Ltd. (1981) 2 All ER 697. In Re: Beejay Engineer Pvt. Ltd. 53 Company Cases 93, Jagannath Prasad Jhalani & Ors. vs. Regional Provident Fund Commissioner (Haryana) & Ors. (1987) 62 Comp Cases 571 Budhan Singh (dead) by his Bhudan Singh and Another Vs. Nabi Bux and Another, . The State of Punjab Vs. Ajaib Singh and Another,

9. No one appeared on behalf of the respondents in the appeal (the applicants before the Company Court) for a long time. At a late stage Dr. Banerjee appeared for the respondents. His first submission was by way of a preliminary objection on the maintainability of the appeal. He has submitted that the order appealed against was passed by consent of the parties which was accepted and ratified by the appellant herein by acceptance of instalments and accordingly, the appeal is not maintainable. Reliance is placed in this connection to Ashoke Kumar Daw and Another Vs. Gobinda Chandra Dev and Others, In this context, he has referred to the "Minutes" of the Court (the record of proceedings which is maintained under the Rules and practice of the Original Side of this Court and which records the proceedings of the date) to the following effect :

Court application

In the matter of Eastern

Manufacturing Company Ltd.

Ravindra Chamaria & Ors.

vs.

Registrar of Companies & Anr.

Present :

The Hon''ble Mr. Justice

R. N. Pyne

January 28, 1986.

Dr. Tapas Banerjee with

Mr. R.K. Laha & Mr. K.R. Das appears and submits.

Mr. K.N. Srivastava for Regional Provident Fund Commissioner appears and submits.

The Court : By consent of the parties appearance in this application, this application is treated as an adjourned application as on days list.

In this application the petitioner has claimed that no criminal proceedings should be taken in view of the default made by it in payment of the Provident Fund dues. The petitioners have stated that it will pay to the Provident Fund Authorities a sum of Rs. 50,000/- per month commencing from April 1986 towards the arrears of Provident Fund dues until the entire dues of the Provident Fund Authorities are paid off.

Mr. K. N. Srivastava, advocate appearing for the Provident Fund Authorities states that the Provident Fund Authorities have no objection in accepting such payment by installment. As the Provident Fund Authorities are agreeable to accept the proposal of the petitioner company it is not necessary to serve the summons on the Registrar of Companies because it is the Provident Fund Authorities who will take steps on account of default of any payment of the dues of the Provident Fund Authorities. Therefore there will be an order in terms of prayer (b) and (d).

Dr. Tapas Banerjee appearing for the petitioner on instruction undertakes to the Court that the payment will be made by the petitioner Company the manner as stated in prayer (d) of the petition.

This application is thus disposed of.

All parties to act on a signed copy of the minutes of this order.

10. On the merits he has submitted that relief u/s 633 of Act can be given in respect of offences committed under any other Act a from the said Act. In this connection he has relied on Om Prakash Khaitan vs. Shree Keshariya Investment Ltd. 48 Company Cases 85 and In Re: Beejay Engineers Pvt. Ltd. 53 Company Cases 918.

11. We have allowed Mr. S. B. Mukherjee, Senior Advocate of Court to make submissions before us in support of the contention. That relief u/s 633 of the Companies Act is available in respect of offences committed under other Acts also.

We may point out that we have given such leave to Mr. Mukherjee having regard to the fact that it stated by Mr. Mukherjee that he has been engaged in various proceed where similar questions are involved and which are pending before the Company Court. Those matters have been adjourned pending decision of Court. Mr. Mukherjee has submitted that under the Provident Fund no personal liability has been created for payment of the dues of the Company so far as their officers are concerned. It is an offence by the company and the officers have been made liable for prosecution only under certain circumstances. He has also submitted that so far as breach of trust is concerned, Indian Penal Code (hereinafter referred to as IPC) deals with criminal breach of trust and so far as the Companies Act is concerned, it does not deal with criminal breach of trust. He has submitted that "any proceedings" referred to in section 633 of the said Act relate to any proceeding against the officers concerned who are connected with the affairs of the company. That is the only limitation so far as section 633 of the Act is concerned. Regarding the expression "any proceeding" he has submitted that the officer u/s 633 means an officer who is in default within the meaning of section 5 and section 2(30) of the Companies Act. From section 14A of the Provident Fund Act it is clear that the liability of the officers in question are in connection with the affairs of the company. It is also his submission that in respect of an application u/s 633 it is not necessary that the applicant must admit his liability. It is open to him to contend that whether he can be prosecuted under the Act or not he is entitled to relief as he has acted honestly and reasonably as provide section 633. In such application it is also open to him to contend that he is entitled to relief because he is not a person within the meaning of section (1) or sub-section (2) of section 14A of the Provident Fund against whom such criminal proceedings can be initiated. The only limitation to section 633 is that he should be an officer within the meaning of the Act and the violation relates to the affairs of the company. He has only to show that he had acted honestly and reasonably. His contention is that in order to obtain relief in an application u/s 633 (2) the appellant has only to show that he apprehends proceedings because of a threat and he is seeking relief though he is not guilty of the offence charged and even if he may be guilty, he deserves to be given relief because he has acted honestly and reasonably. In this context he has drawn our attention to section 633 where it is stated that he is or "may be liable". He has also referred to sections 418 and 420 of the Companies Act which relate to violation under the Act regarding the Provident Fund. He has submitted that under the Provident Fund Act it is not the liability of the officer; the primary liability is that of the company. On the question as to whether an order can be passed against the company directing payment, he has submitted that, if necessary, an order can be passed against the Company, if the company contents to the same. He has admitted that no order can be passed against the company in such a proceeding until and unless the company gives its consent. In this connection he has drawn our attention also to various provisions of the Employees State Insurance Act and the Indian Penal Code. He has also drawn our attention to section 179 of the Income Tax Act and

submitted that unlike the Provident Fund Act, a personal liability is created in respect of certain persons for the initial liability of the assessee. In support of his contentions he has relied on the following decisions The State Vs. S.P. Bhadani and Others, , Momtaz Begum Vs. The State, and R. K. Khandelwal and Anr. vs. State 1965(2) Cri. LJ 439, (paragraph 6 et seq). Regarding the Bombay decision in Haras Chandra Maganlal vs. Union of India (supra) he has submitted that it has not been correctly decided. The Court has overlooked the fact that the persons authorised by the Central Government can also take steps. He has also drawn our attention to various observations made in the said decision and submitted that they are not correct. He has also drawn our attention to section 621 which indicates the nature of the proceedings whereas u/s 633 no such indication is given. Regarding Customs & Excise Commissioner vs. Heden Alppa Ltd. (supra) he has submitted that so far as the Betting Act, which was the subject matter of the English decision, is concerned, it makes the director personally liable and, accordingly, this provision was not in pari materia with the relevant provisions before us. Accordingly, it has been submitted that whatever observation has been made in that case is purely obiter. In this connection he has drawn our attention to various portions of the said judgment. He has further submitted that this is a case of ouster of jurisdiction of the court and, accordingly, it must be made in a clear language.

12. In this case at the initial stage no one appeared for the respondents who were the applicants u/s 633 before the Company Court. Having regard to the same and particularly having regard to the substantial and important question of law involved, we requested Mr. Jayanta Mitra and Mr. Pratap Chatterjee, learned Advocates of this Court, to assist the Court as amicus curiae. Mr. Mitra appearing with Mr. Chatterjee made the following submissions. So far as the extent of the relief which may be granted by the Court on "terms as it thinks fit" as provided in such section (1) of section 633, he has submitted that the Court can give notice to the company and bring the company before itself so that an order for payment can be passed against the company and, if it is done, the Court can enforce the order. He has also drawn our attention to sections 621, 621A, 622, 624, 624A, 624B, 628, 629 and 629A of the Act which make it clear that such offences were created in respect of anything done or to be done under this Act. He has submitted that unlike these sections, section 633 does not include the expression "under this Act". Accordingly he has submitted that no such limitation, that the relief can only be granted in respect of offences under the said Act, should be imported in section 633. There is also no limitation regarding liability-it can be both civil and criminal. He has submitted that the language of section 633 is very wide and, accordingly, no limitation should be put to the same. In this context, he has drawn analogy to the Limitation Act, 1963 interpreting which the Supreme Court has held in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, that the Act applies in respect of applications under Acts other than Civil Procedure Code. In aid of his contention that in order to obtain relief u/s 633, the appellant does not have to admit his guilt he has relied on

M.O. Varghese Vs. Thomas Steaphen and Co. Ltd. and Another, and Sitaram Biyani and Another Vs. Registrar of Companies, . On the question of interpretation of statutes in general and welfare statutes in particular Mr. Mitra has relied on the following. Organo Chemical Industries and Anr. vs. Union of India & Ors. AIR (1979) SC 1803 at 1808 (para 15 to 18), Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, , All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, . Kehar Singh and Others Vs. State (Delhi Administration),

Acts & Statutes

13. Before we deal with the respective contentions of the parties, we shall set out the relevant provisions of the different acts involved.

Companies Act.

Section 2 (30) -"officer" includes any director, manager or secretary, or any person in accordance with whose directions or instructions the Board of Directors or anyone or more of the directors is or are accustomed to act, and also includes:

(a) **

(b) ***

(c) ****

but, save in sections 477,478, 539, 543, 545, 621,625 and 633 does not include an auditor; "

Section 5. Meaning of "officer who is in default" For the purpose of provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly and wilfully authorises or permits such default, non-compliance, failure refusal or contravention."

Section 633. Power of Court to grant relief in certain cases (1) If any proceeding for negligence, default, breach of duty misfeasance or breach trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit :

Provided that in a criminal proceeding under this sub-section the court shall have no power to grant relief from any civil liability which may attach to an officer in respect

of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceeding against that officer for negligence default, breach of duty, misfeasance or breach of trust had brought under sub- section (1)

(3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

It is to be pointed out that the proviso to sub-section (1) to section 633 inserted by the Companies (Amendment) Act 1960 and sub-section (2) substituted for original sub-section (2) by the said Amending Act.

14. Provident Fund Act

Section 14, Penalties-(1) Whoever, for the purpose or avoiding any payment to be made by himself under this Act (the scheme)(the Family Pension Scheme or the Insurance Scheme) or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(1-A). An employer who contravenes, or makes default in complying, the provisions of section 6 or clause (a) or sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment or administrative charges, shall be punishable with imprisonment for a term which extend to six months, but-

(a) which shall not be less than three months in case of default in payment of the employees'' contribution which has been deducted by employer from the employees'' wages;

(b) which shall not be less than one month, in any other case : and shall also be liable to fine which may extend to two thousand rupees-

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment.)

1-B An employer who contravenes, or makes default in complying the provisions of section 6C or clause (a) of sub-section 3-A of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term

which may extend to six months but which shall not be less than one month and shall also be liable to fine which may extend to two thousand rupees;

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence or imprisonment for a lesser term or of fine only in lieu of imprisonment.

(2) (Subject to the provisions of this Act, the Scheme) (The Family Pension Scheme or the Insurance Scheme) may provide that any person who contravenes, or makes default in complying with, any of the visions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to thousand rupees, or with both.

(2-A) Whoever contravenes or makes default in complying with provisions of this Act or of any condition subject to which exemption was granted u/s 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or, non-compliance, be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees with both).

14-A : Offences by companies (1) If the person committing an offence under this Act, the Scheme or (the Family Pension Scheme or Insurance Scheme) is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act, the Scheme (the Family Pension Scheme or the Insurance Scheme) has been - committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section-

(i) "company" means any body corporate and includes a firm and other association of individuals; and

(ii) "director", in relation to a firm means a partner in the firm.

14-AA. Enhanced punishment in certain cases after previous conviction. - Whoever, having been convicted by a Court of an offence punishable under this Act, the

Scheme or (the Family Pension Scheme or the Insurance Scheme), commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.

14-AB. Certain offences to be cognizable. - Notwithstanding anything contained in the Code of Criminal-Procedure, 1898 (5 of 1898), an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

14-AC. Cognizance and trial of offences. - (1) No Court shall take cognizance of any offence punishable under this Act, the Scheme or (the Family Pension Scheme or the Insurance Scheme) except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed u/s 13 (2). No Court interior to that or a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or (the Family Pension Scheme or the Insurance Scheme.

14-B. Power to recover damages. - Where an employer makes default in payment of any contribution to the Fund (the Family Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by hi under-sub-section (2) of section 15 (or sub-section (5) of section 17) or the payment of any charges payable under any other provisions of this A or of (any Scheme or Insurance Scheme) or under any of the conditions specified u/s 17. (the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette in this behalf) may recover from the employ such damages, not exceeding the amount of arrear, as it may think fit to impose.

Provided that before levying and recovering such damages, the employ shall be given a reasonable opportunity of being heard.

It is to be pointed out that the Provident Fund Act was originally known as The Employees Provident Funds Act 1952. By Provident Fund Laws Amendment Act 1971 a family pension scheme was added to the existing A and the existing Act was renamed as The Employees Provident Funds at Family Pension Act 1952. The Labour Provident Fund Laws (Amendment Act 1976 introduced another Scheme and the Act was renamed as The Employees Provident Funds and Miscellaneous Provisions Act 1952 by which it is known now.

It may be pointed out that the present sub-section (2A) was inserted 1 Section 14AA, 14AB and 14AC were inserted by Act 40 of 1973; Act 37 of 1953. Section 14-B was inserted by Act 37 of 1953. Section 14A was inserted by Amending Act 37 of 1953; Section 14 (1-A) was inserted by Amending Act 40 of 1973; Section 14 (1-B) was

inserted by Amending Act 99 of 1976. Sub-section (2) as it is now was substituted by Act No.37 of 1953.

Whoever, being in any manner entrusted with Property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Explanation (1) A person, being an employer, who deducts the employee contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2. A person, being an employer, who deducts the employee''s contribution from the wages payable to the employee for credit to the Employee''s State Insurance Fund held and administered by the Employee''s State Insurance Corporation established under the Employee''s State Insurance Act, 1948 (34 of 1948) shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

We may point out that above was inserted by Act 40 of 1973 and Explanation (2) was inserted by Act 38 of 1975 when the existing explanation was re-numbered as Explanation No. (1).

DECISION

Maintainability of appeal

16. Before we deal with the merits of the question involved, we shall deal with the contention regarding the maintainability of the appeal as raised by Dr. Banerjee appearing on behalf of the applicants. We have already referred to the order as drawn up and the Minutes of this Court which is maintained according to the age-old practice of the Original Side of this Court. The ''Minutes'' no doubt suggest as if the suggestion of the applicants was accepted by the lawyer appearing on behalf of the R.P.F.C. However, we are of the opinion that this does not prevent us from proceeding with the hearing of the appeal on merits for the following reasons.

17. In the present case the certified copy of the order appealed from, as drawn up, completed and filed, was filed with the Memorandum of Appeal as required under

the Code and the Original Side Rules. We have referred to the said order hereinabove, a copy of which is included in the Paper Book. The certified copy does not mention that the order itself was passed with consent of the parties. On the other hand it only mentions that by consent of the parties only the application was treated to have been placed in the day''s list as an adjourned application. This is according to the relevant rules and practice of the Original Side of this High Court, according to which an application cannot be disposed of on the first occasion it appears in the Cause List. This is merely a procedural formality prevailing in the Original Side which is well known to those who are acquainted with the business and Rules of this Court. There is nothing more to this. Admittedly, this order has been drawn upon notice to the parties according to the rules and practice of this Court. Further, it was open to the applicants to take steps for "speaking to the minutes" as allowed in respect of an order passed in the Original Side of this Court. In this context reference may be made to Rule 32 of Ch. 16 of the Rules of the Original Side of this Court which is set out hereinbelow :

Rule 32 Chapter 16 of the Rules of the High Court Original Side.

Speaking to the minutes of a decree or order

Where any party is dissatisfied with any decree or order as settled by the officer and intends to mention the matter to the Court, the Officer, if informed on such intention, shall not proceed to complete the decree or order without allowing such party sufficient time to apply to the Court. The application must be made by Motion on notice to the parties who appeared at the hearing.

Accordingly, the respondents cannot be now allowed to rely on these "Minutes" to defeat the Appeal.

18. Moreover, if on the merits it is held, as we have held, that the scope of section 633 is limited and that the Court cannot give any relief under this section in respect of any violation of any provision of any Act other than the Companies Act and particularly for violation of the provisions of the Welfare Legislatures like the Provident Fund Act, then the order appealed against is without jurisdiction. In our opinion the learned Company Judge had no jurisdiction to pass an order under the said section giving relief to the petitioners in respect of their liabilities under the Provident Fund Act. By consent the court cannot be conferred with a jurisdiction which it otherwise does not possess under the law. In this connection reference may be made to the Supreme Court decision in Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another,

19. There is another aspect of the matter. The Company Court by its order prohibited the R.P.F.C. from initiating any criminal proceedings against the said applicants or any of them for non-payment and/or delayed payment of the provident fund dues "until further orders" of the Court. It was further ordered that a sum of Rs. 53,000/- per month be paid towards arrears of provident fund dues.

Accordingly such order was not a permanent order; it was not unconditioned; it was not for all times to come. Accordingly by an order made in future the operation of this order could be brought to an end. Further, such relief from criminal proceedings was dependent/conditional upon such payment; that is the only effect of the alleged consent, if any. Therefore, inasmuch as after some initial payments, further payments under the Order was stopped, the R.P.F.C. was relieved from such "prohibition" and accordingly the alleged consent no longer stood in the way of the R.P.F.C. in challenging this order in appeal.

20. The decision in Ashoke Kumar Daw and Another Vs. Gobinda Chandra Dev and Others, relied upon, has no application inasmuch as the facts of the said case are completely different from the facts and circumstances of the present case. Further, mere acceptance of some instalments would be no legal bar to the appellants preferring this appeal Jagadish Chandra Chakravarty vs. Brojendra Mohan Maitra & Ors. AIR (1949) Cal. 427.

21. Accordingly the preliminary objection regarding the maintainability of the appeal is rejected and we shall proceed to deal with this appeal on merits.

Interpretation of Statutes.

22. Before we consider the scope and effect of section 633 we shall keep in mind the well-known principles of construction of statutes with particular reference to the welfare legislations. Generally speaking if the language of the statute is clear and unambiguous and admits of only one meaning, then the duty of the court is to adopt that meaning irrespective of the inconvenience that such construction may produce. If, however, two constructions are possible then the court must adopt that which will ensure smooth and harmonious working of the provision and give a go-bye to that interpretation which will lead to absurdity or give rise to public inconvenience or make well established principles of law nugatory. However it is to be kept in mind that the object of every enactment is public welfare. Reference may be made in this connection to State of Punjab vs. Ajaib Singh (supra) and In re: Bajaj Industries (supra).

23. In the case of Budhan Singh (dead) by his Bhudan Singh and Another Vs. Nabi Bux and Another, the passage relied on is at page 1883 (paragraph 9) :

Before considering the meaning of the word "held" in section 9, it is necessary to mention that it is proper to assume that the law-makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words, as observed by Crawford in his book on Statutory Constructions that the entire legislative process is influenced by considerations of justice and reasons. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most

instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the Legislature, there is little reason to believe that it represents the legislative intent.

24. In the case of Organo Chemical Industries and Anr. vs. Union of India and Ors., AIR 1979 SC 1803 the constitutional validity of section 14B of the Employees Provident Fund and Miscellaneous provisions Act 1952 was raised. In this connection the Court observed as follows:

The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. 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 retires 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. For, 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 Times 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.

(para 15)

A policy-oriented interpretation; when a. welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Art 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.

(para 16)

What are the stands which makes the fabric of ''damages'' under the Article? I have stated earlier that the composite idea of ''damages'' includes more than pecuniary compensation. Moreover, the injured party is the Board of Trustees who administer the Fund. That Fund not merely loses the interest consequent on the non-payment but receives a shock in that its scarce resources are further famished by employers'' default. There is great social injury to the scheme when employers default in numbers. So the lash of the law is delivered when its object is frustrated. What is more denunciatory is the fact that the employer makes deductions from the poor wages of the workers (and makes them suffer to that extent) and diverts even those

sums for his private purposes, by failing to make prompt remittances. Thus defaults in contributions is compounded by embezzlement, as it were. Naturally, damages will take an exemplary character and inflict a heavy blow on the shady defaulter.

(para 17)

25. In Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, it was observed as follows :

Semantic luxuries are misplaced in the interpretation of ''bread and butter'' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions, ''Void ab initio'', ''invalid and inoperative'' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen.

(para 6)

26. In the case of All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, , Supreme Court held as follows :

The Act in question is a beneficial legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence even if it is possible to have two opinions on the construction of the provisions of the Act the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is passed has to be accepted.

(para 19)

27. In the case of Kehar Singh and Others Vs. State (Delhi Administration), the Supreme Court held as follows :

Before I come to consider the arguments put forward by each side, I venture to refer to some general observations by way of approach to the questions of construction of statutes. In the past, the Judges and lawyers spoke of a ''golden rule'' by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the Court to intervene by its innovation.

(para 227)

During the last several years, the ''golden rule'' has been given a go-by. We now look for the ''intention'' of the legislature or the ''purpose'' of the statute. First, we

examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound, those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

(para 228)

28. We shall now deal with the decisions dealing with the scope of sections 14 and 14A of the Provident Fund Act. The case of The State Vs. S.P. Bhadani and Others, involved interpretation of the provisions of sub-sections (1) and (2) of section 14A of the Employees'' Provident Funds Act. In this context it was observed as follows :

In my opinion, these two sub-sections (1) and (2) deal with different kinds of officers. The officer of the company envisaged in sub-section (1) is the one who is in direct management of the affairs of the company. Wherever any offence has been committed by the company under the Act or the Scheme, such officer will also be deemed to be guilty of the offence and in his case it will not be necessary for the prosecution to prove consent, connivance or neglect on his part. Since he is in charge of the management and thus directly responsible for the remittance of the contributions to the Fund, both the company and he has been made liable under sub-section (1) without proof of consent, connivance or neglect on their part. The other officers covered by sub-section (2) cannot be deemed to be guilty of the offence committed by the company unless the prosecution further establishes that the offence was committed with the consent or connivance of such officers, he be the director, manager or secretary or any other officer of the company. Therefore, in cases falling under sub-section (2) the prosecution must fail, if it is not proved that the commission of the offence was due to consent, connivance or neglect of the officer concerned.

29. In the case of Momtaz Begum Vs. The State, regarding the interpretation of section 14A of the Employees'' Provident Funds Act, the Court made the following observation :

In my view sub-section (1) of section 14A makes it quite clear that it is incumbent upon the prosecution to prove that the director concerned was in charge of, and was responsible to, the company for the conduct of the business of the company. It

is only when that initial onus is discharged by the Prosecution that there is any onus upon the person concerned to prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. There is nothing in the petition of complaint to suggest that the petitioner was in charge of and was responsible to the company for the conduct of the business of the company. There is, therefore, no case against the petitioner to answer.

30. Reliance was placed on the decision in R. K. Khandelwal and another vs. State, reported in 1965 (2) Cri. L.J. 439. It was an application in revision against the order of the Additional Sessions Judge setting aside the order of discharge and directing further inquiry. This was in respect of a criminal case for an offence punishable under breach of section 27 read with section 18 of the Drugs Act. Referring to the said section it was observed that no director or partner of a Company can be convicted of the offence u/s 27 of the Act unless it is proved that the substandard drug was sold with his consent or connivance or was attributable to any neglect on his part, or it is proved that he was a person in charge of, and responsible to the company for the conduct of the business of the company.

31. Before we deal with the main question, we may deal with two other questions relating to the scope of section 633. It was argued before us that relief u/s 633 is available in respect of civil and criminal (cases 5 & 7) liabilities both. Reference may be made in this connection to the following cases.

32. In the matter of Muktsar Electric Supply Go. Ltd. (In Liqn.), (1966) 36 Company Cases 144, it was a petition filed by S. P. Chopra & Company u/s 281 read with section 216 of the Companies Act, 1913. A challan was presented in the Court of Magistrate, 1st Class, Parliament Street, New Delhi alleging an offence against petitioner No.2 u/s 409 of the Indian Penal Code. It was held that sub-section (2) included also criminal proceedings. In this connection it was observed as follows :

Sub-sections (1) and (2) of section 372 of the English Companies Act, 1929, were identically worded and section 281 of the Act appears to have adopted virtually the same language as was employed in the English section.

33. In The Public Prosecutor, Government of Pondicherry Vs. Abdul Aziz Khan and Another, a single Judge of the Madras High Court dealt with an appeal filed by the Public Prosecutor Government of Pondicherry, against an order of acquittal by the First Class Magistrate of the two respondents on the private complaint filed by the Registrar of Companies, Pondicherry, against them u/s 208-D (2) 208-E(3) and 244(3) of the Indian Companies Act, 1913. The learned Magistrate acquitted the respondents on two grounds, namely, (1) that the Companies Act, 1913 was not in force on the date of the alleged contravention as the Companies Act, 1956 had come into force by then and that, therefore, the prosecution under the Act of 1913 was sustainable and (2) that even assuming that the prosecution was sustainable, the

respondents had to be relieved from their liabilities as they had no criminal intention in having contravened the provisions of the Act by virtue of section 633 of the Companies Act, 1956. The High Court held that in respect of the second point the learned Magistrate was clearly in error. After referring to section 633(1) of the Companies Act the Court made certain observations including the following :

This section will apply to all legal proceedings civil or criminal or otherwise instituted under this Act.

34. It is not necessary for us to express any final opinion on this point, inasmuch as admittedly in the present case we are concerned only in respect of relief against criminal liability. However, we have doubts about the correctness of the same, so far as it relates to relief against civil liability. In respect of a pending proceeding application is to be made under sub-section (1) before the Court hearing the case and in respect of an apprehended proceeding, the application is to be made under sub-section (2) before the High Court. Excepting that, the powers of the High Court under sub-section (2) is same as the powers of the trying Court under sub-section (1). This has been specifically made clear by sub-section (2) by providing that the High Court''s power under the said sub-section will be the same as if the proceeding was pending before it. The proviso to sub-section (1) makes it clear that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to such officer for such act. Therefore, it may very well be said that in view of the same, the restriction regarding the exercise of power under sub-section (1) also applies in respect of an application under sub-section (2) and accordingly the High Court cannot grant any relief in respect of a civil liability in an application under sub-section (2). There is another aspect of the matter. We have held that section 633 applies to any liability under the Act; only, and if the Companies Act does not provide for any civil liability for such officers, then the question of giving any relief in respect of any civil liability to any such officer cannot and does not arise.

35. On the question as to whether in order to obtain relief u/s 633 it is necessary to plead guilty, we refer to the following cases. In the case of M.O. Varghese Vs. Thomas Steaphen and Co. Ltd. and Another, a single Judge of the Kerala High Court observed as follows: Under sub-section (1) in order to grant relief to a person against whom a proceeding was pending, it was not necessary that he should confess or admit his guilt or that the Court must find him guilty. It was sufficient that it appeared to the Court that he is or may be liable. In other words, the Court can relieve him of the liability in a case in which it appears to the Court that he may be liable. The same is the scope of the power of the High Court under sub-section (2). It is not necessary in an application under sub-section (2) that the applicant should confess or admit that he is guilty of any negligence, default, breach of duty, misfeasance or breach of trust or that the Court must find that he is guilty of any of those things, before relief can be granted to him. Any officer of a company, who has

reason to apprehend that any proceeding will or might be brought against him in respect of any such matter, may apply to the High Court under this sub-section for relief. All that is necessary is a reasonable apprehension of such a proceeding. In that case the Registrar of Companies held that the petitioner has contravened section 299 of the Act, and directed the Company to take steps to recover from the petitioner all remuneration drawn by him as director, since the date of the contravention. Hence the petitioner had reason to apprehend that proceedings may be taken against him in respect of his liabilities arising from the said contravention.

36. In the case of Sitaram Biyani and Another Vs. Registrar of Companies, a learned single Judge was considering a criminal revisional petition directed against an order passed by the Judicial Magistrate, 9th Court, Alipore arising out of a petition of complaint made by the Registrar of Companies, West Bengal u/s 211(7) of the Companies Act, 1956. The petitioners before the High Court were two Directors of a public limited company. In this case the learned Judge observed as follows :

If the learned Magistrate held that the accused petitioners acted in a honest and reasonable way and in consideration of the facts and circumstances they ought to be fairly excused he could record an order relieving them wholly or partly of their liability on such terms as he thought fit. If on the other hand the learned Magistrate arrived at a finding that the accused petitioners had not acted reasonably and honestly or that in view of the facts and circumstances of the case the accused petitioners ought not to be excused, the learned Magistrate could record a finding to that effect. In the present case the learned Magistrate does not appear to have recorded a finding positive or negative as discussed above. It should be mentioned that the accused petitioner at the stage when the petition u/s 633 was filed could not be found not guilty of the offences u/s 211. It should also be borne in mind as held in M.O. Varghese Vs. Thomas Steaphen and Co. Ltd. and Another, under sub-section (1) of section 633 of the Companies Act in order to grant relief to a person against whom a proceeding is pending, it is riot necessary he should confess or admit his guilt or that the court must find him guilty. It is sufficient that it appears to the court "that he is or may be liable." In other words, the Court can relieve him of the liability in a case in which it appears to the court that he may be liable. All that is necessary is a reasonable apprehension of a proceeding referred to in sub-section (1) of section 633.
(para 8)

37. It is not necessary for us to express any opinion on this point in the present case, having regard to the conclusion we have arrived at on the main question.

38. Before we examine the scope of section 633 on the question as to whether it is wide enough to give relief in respect of liabilities under the provisions of Acts other than Companies Act, we shall deal with the various decisions on this point. At first we shall refer to the decisions where it has been held that relief u/s 633 is not

available ill respect of any liability in respect of any Act other than the Companies Act.

39. A passing reference was made in Public Prosecutor Government of Pondicherry vs. Abdul Aziz Khan and Anr. (supra) to the effect that this section will apply to all legal proceedings civil or criminal or "otherwise instituted under the said Act".

40. In the case of G. D. Bhargava vs. Registrar of Companies and others (1970) 40 Companies Cases 664, it was judgment of a learned single Judge of the Allahabad High Court. This was in respect of an application u/s 633(2) of the Companies Act, 1956 by three directors of a company. In that case the police had been investigating into certain alleged offences by the directors said to be punishable not only under the Companies Act but also under sections 420 and 471 of the Indian Penal Code. Accordingly the petitioners sought relief against possible apprehended proceedings against them. It was pointed out by the learned Judge that the question of law which arose was whether upon the state of facts, the court could or should interfere u/s 633 of the Act. In this connection it was observed follows :

So far as the investigation into alleged offences u/s 420 or section 471 of the Indian Penal Code is concerned, I am afraid no direction can be issued u/s 633(2) of the Act either to the Registrar of Companies or to the Superintendent of Police in respect of this investigation whether the allegations are well founded or ill-founded. An alleged offence is using a forged document, known to the offender to be forged, as genuine, punishable u/s 471 of the Indian Penal Code, falls entirely outside the ambit of section 633 of the Act. Similarly, an alleged offence punishable u/s 420 of the Indian Penal Code is outside its purview. Where this is so, this Court has no jurisdiction to interfere at all u/s 633(2) of the Act even if an investigation or a prosecution for an alleged offence is mala fide or erroneous. A person who suffers any wrong or injury due to any malicious or baseless criminal proceeding or prosecution falling outside section 633 of the Act has other means of redress open to him under the law. Section 633 of the Act is restricted to cases mentioned therein.

41. In the case of Customs and Excise Commissioners vs. Hedon Alpha Ltd. & others (supra) the Commissioner of Customs & Excise claimed against the defendants balance of the amount of Betting duty due u/s 2(1) of the Betting and Gaming Duties Act, 1972 and alleged to be recoverable u/s 2(2) of the 1972 Act from the company and its Director. The director claimed that he had acted honestly and reasonably and should be excused and relieved from liability pursuant to section 488(1) of the Companies Act, 1948. Section 448(1) of the Companies Act, 1948, inter alia, provided that the Court may relieve the officer of the company in respect of negligence, default, breach of duty or breach of trust if he has acted honestly and reasonably. Stephenson LJ. presiding over the Appeal Court held that section 448 is inapplicable to any claim by third parties to enforce any liabilities except a Director''s liability to his Company or his Director''s duties under the Companies Act. In this connection it was observed as follows:

Furthermore, the language of section 448 was apt to describe the area in which a company director might be in reach of his duties to the company, and the ambit and concern, the context of martrix, of the section was company law and the relation of the officer (or auditor) of a company to the company and not to third persons. The proceedings which qualified for the statutory relief were claims made by companies, or on their behalf or for their benefit by e.g. liquidators, the Board of Trade, private prosecutors, including penal proceedings for the enforcement of the Companies Act but not proceedings for the recovery of debts or the enforcement of civil liability to strangers.

Griffiths LJ observed in his judgment :

In my judgment section 448 has no application to the present claim. Although the section is expressed in wide language it is in my view clearly intended to enable the court to give relief to a director who, although he has behaved reasonably and honestly, has nevertheless failed in some way in the discharge of his obligations to his company or their shareholders or who has infringed one of the numerous provisions in the Companies Acts that regulate the conduct of directors.

In the judgment delivered by Stephenson, LJ. reference was made to 22nd Edn. (1976) page 683 of the Palmer''s Company Law on the extent of the section''s application and the passage quoted was as follows :

It is thought that the Court''s power to grant relief in appropriate circumstances u/s 448 is sufficiently wide to extend to action by third parties as well as actions by the company, but the point is not free from doubt.

However, the learned Judge pointed out in the said judgment that an opinion inclining the other way was expressed in Pennington''s Company Law, 4th Edn. 1979, P. 548 as follows :

Under the statutory provision relief can be given against any of the criminal penalties imposed by the Companies Act, 1948 and 1976, but not. It would seem, against civil liability to anyone other than the company, as so apparently no relief may be given in the rare cases where a member or auditor of a company has a personal right to sue its directors.

42. In this context we may point out that our attention has been drawn to Palmer''s Company Law, 23rd Edn. 1982 Vol. I page 881 where it is stated as follows :

Statutory relief (s. 448), section 448 (which is referred to in section 205, proviso (b) is a protective section for directors on lines similar to that accorded to trustees. It provides that in any proceedings against, inter alias, a director for negligence, default, breach of duty or breach of trust, if a director who is or may be liable has in the opinion of the Court acted honestly and reasonably, and if, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may wholly or partly relieve him from his

liability; the court has a discretion in the matter, and may impose terms [s. 448(1)]. In spite of the wide words of the section it has been held that the section applies only to actions brought by or on behalf of the company against. its directors for breach of duty and to penal proceedings for the enforcement of the Companies Acts.

Reference was made in the footnote to the decision of the Court of Appeal as aforesaid and obviously for this reason the 23rd Edn. does not contain the observations made in the 22nd Edn. which was referred to by the Court of Appeal.

We may point out that in the 24th Edn. of the Palmer''s Company Law 1987 page 967 under the heading "Statutory relief u/s 727" the language is similar as in 23rd Edn. However, because of the change in the Act there is a change in the reference to the section concerned, being the new section 727.

43. The 5th Edn. of Pennington''s Company Law, 1985 at page 679 and 680 the observations made are to the following effect :

However, if a director is sued for breach of any of his duties, he may apply to the court for relief from liability, and if the court is satisfied that he acted honestly and reasonably, and that in all the circumstances he ought fairly to be excused. It may relieve him from liability on such terms as it thinks fit. This provision is identically worded to the provision in the Trustee Act. 1925 which enables the Court to relieve defaulting trustees, and the court''s jurisdiction will probably be exercised in the same way as under that Act. The court is reluctant to relieve remunerated trustees, and will only do so if they show that they have taken all reasonable steps and to make good their breach of trust, the same criterion has been applied when a defaulting liquidator sought relief, and it would no doubt also be applied in the case of a director. On the other hand, the court can give relief, even though the director has used the company''s money for ultra vires purposes, and even though the members oppose relief being given.

Under the statutory provision, relief can be given against any of the criminal penalties imposed by the Companies Acts 1985, but not against criminal liability under any other statute, or against civil liability to anyone other than the company whether the liability arises by statute or otherwise, and so apparently no relief may be given in the rare cases when a member or creditor of a company has a personal right to sue its directors. Reference was made to the Court of Appeal decision.

44. In the case of Jagannath Prasad Jhalani and Others vs. Regional Provident Fund Commissioner (Haryana) and Others (1987) 62 Company Cases 571 the Court was dealing with a petition filed u/s 633 of the Act. The respondents were Income Tax Officers, Regional Provident Fund Commissioner, Regional Director, Employees State Insurance Corporation and Registrar of Companies. The defaults for which the petitioners wanted to be excused from prosecution fell under different Acts, namely, Provident Fund Act, Employees State Insurance Act and Income Tax Act. It was

contended therein on behalf of the Regional Provident Fund Commissioner that section 633(2) of the said Act would not be applicable to a default of non-payment of contributions as required u/s 6 of the Provident Funds Act. The Court referred to the Delhi High Court decisions In Re: Beejay Engineers Pvt. Ltd. (1983)53 Company Cases 918. The Court observed that after examining the various provisions of the Act and some other Acts, it appears that perhaps the said decision needs reconsideration. In this context it was observed as follows :

Section 633 of the Act cannot be a panacea for all the ills, i.e., defaults/offences committed in respect of various other enactments, those already in force and those which came on the statute book at a subsequent date. An act may not have been an offence when the Companies Act enforced and it is, therefore, difficult to see how the Companies Act could become applicable in that case and when particularly the other Act defining the offence itself provides punishment for offences/defaults committed by the companies.

It was further observed :

If the words "any proceeding" are of wide amplitude, then perhaps Chapter XXI of the income tax Act dealing with penalties imposable for various defaults committed under that Act would also be within the ambit of section 633(2) of the Act. This does not stand to reason. I need not, however, say anything further on the question thus posed by Mr. Chawla as he himself said that he would proceed on the basis of the law as laid in the aforesaid decision of this Court and would still submit that the provisions of section 633(2) of the Act could not apply to a case of default in depositing the employees'' contribution deducted from his wages.

Referring to section 405 of I.P.C. it was submitted as follows :

Mr. Chawla thus said that the liability of the employer was absolute and he would be deemed to have dishonestly used the amount of employees'' contributions from the wages payable to the employees in case of non-deposit of the same as required under the Provident Funds Act. The law presumed that at least the employees'' contribution lying with the employer was in trust with him. I think Mr. Chawla is correct. The explanations to section 405 of the Indian Penal Code call for no exceptions. Even otherwise, the contentions raised by the petitioners that there was terrific recession all over the world in respect of hand tools manufactured by the company or non-receipt of subsidy from the Central Government or labour unrest in some of the manufacturing units of the company and suffering of huge losses by the company are no answer when it comes to non-deposit of the employees'' contributions deducted from the wages of the employees themselves. Explanations to section 405 of the Indian Penal Code apply with full rigour and it cannot be said that the petitioners either acted honestly and reasonably.

Argument as given by Mr. Chawla in the case of provident contributions would also apply in respect of income tax deductions and the petitioners must show in respect

of each and every employee as to why the tax which had been deducted could not be deposited in accordance with law. A general submission that the company facing financial crisis is no answer as tax is deducted when salaries are paid as provided in section 192 of the income tax Act.

45. In the case of Hareshchandra Maganlal and others Vs. Union of India and others, a Single Judge of Bombay High Court considered the scope of section 633(2) of the Companies Act, 1956. In that case, petitioners Nos. 1 to 3 were Directors of the Company incorporated and registered under the Companies while the petitioner No.4 was a Manager of the Company. The complaint was that they had contravened the provisions of the Employees Provident Fund Act and the Employees'' State Insurance Act. Accordingly, a notices to show cause were issued, prosecutions were filed against them by the Regional Provident Fund Commissioner and Regional Director, Employees State Insurance Corporation in respect of violation under said two Acts. The relevant petition was filed u/s 633(2) praying that the petitioners should be relieved in respect of criminal and civil liabilities. The petitioners claimed that there is a reasonable apprehension that mere prosecutions would be launched against the petitioners and civil liability to pay the amount would be enforced against them. The petitioner claimed that default in making contribution or payment was mala fide but the petitioners had acted honestly and reasonably and default had occured for reasons beyond their control and therefore they should be excused. Various other averments were made in support of the said plea. A preliminary objection was raised on behalf of the respondents to the maintainability of the petition claiming that the petitioners can be relieved from criminal prosecutions and civil liabilities in exercise powers under sub-section (2) of section 633 of the said Act in respect breaches or violations arising under the statutes other than the Companies Act. It was claimed that powers or jurisdiction of High Court under sub-section (2) of section 633 is restricted only in respect of criminal and civil proceedings which are likely to be instituted in respect of any default prescribed under the Companies Act. The Court held that the preliminary objection raised on behalf of the respondents, was correct and deserved acceptance. It was pointed out that the relief sought in the said petition was not in respect of criminal proceedings already instituted, but only respect of proceedings which the petitioners apprehended would be hereafter. Submission made on behalf of the petitioner to the effect that the ambit of sub-section (2) of section 633 of the Companies Act was very wide and that the expression "any proceeding" would include proceedings arising not only out of the defaults committed under the provisions of the Companies Act, but defaults under any statute, was rejected. After referring to relevant provisions of the Companies Act, the Court held as follows :

While examining ambit of sub-section (2) it must be borne in mind that the expression "any proceeding" is used in the sub-section, the legislature intended to restrict it only to these proceedings arising out of negligence, default, breach of trust, misfeasance or breach of duty in respect of duties prescribed under provisions

of the Companies Act. Although sub-section (2) was expressed in wide language, looking to context and placement of sub-section and on its true construction the only proceedings for which relief under sub-section (2) of section 633 could be claimed are proceedings against the officer of the company for breach of the provisions of the Companies Act. Sub-section (2) cannot apply to proceedings instituted against the officers of the company to enforce liability arising out of violation of provisions of other statutes.. There is intrinsic indication in sub-section (3) of section 633 to hold that exercise of powers under sub-section (2) must be restricted in respect of proceedings arising out of violation of Companies Act.

Upon consideration of section 14(AC) of the Provident Funds Act and section 86 of the Employees State Insurance Act, it was held as follows:

The prosecution proposed to be launched under the Provident Funds and Miscellaneous provisions Act and Employees'' State Insurance Act, are not at the behest of the Registrar of Companies or the share holders of the company or by a person authorised by Central Government in that behalf. It was, therefore obvious that such prosecution to be instituted by the officers appointed under the provisions of the statutes other than the Companies Act cannot be prevented by resort to provisions of sub-section (2) of section 633 of the Companies Act.

In this connection, reliance was placed on a decision of the Court of Appeal in the case of Customs and Excise Commissioner vs. Hedon Alpha Ltd. (1981)2 All E.R. 697 where the Directors sought relief u/s 448 of the English Companies Act which corresponds to section 633 of our Companies Act. The learned Judge did not agree with the views of the Division Bench of the Delhi High Court in Beyor Industries Case (supra). It was observed that the said Division Bench had not examined the context and the placement made on sub-section (2) as well as sub-section (3) of section 633 of the Companies Act which according to the learned Judge clearly indicated that Legislature desired to restrict the powers to proceedings to be instituted for violation of only Companies Act. It was pointed out that a single Judge of Delhi High Court in a latter case (Jagannath Prasad Jhalani vs. The Regional Provident Fund Commissioner (Haryana), reported in (1987)62 Company Cases 571 felt doubt about the correctness of the decision of the Division Bench of the Delhi High Court Reference was also made on behalf of the Company to the decision reported in (1966)36 Comp. Case 144 (S. P. Chopra & Company vs. Muktaar Electric Supply Company Ltd. Where the single Judge of the Punjab High Court held that the High Court could grant relief under sub-section (2) as the sub-section is wide enough to cover criminal Prosecution. In this context the learned Judge of the Bombay High Court observed as follows :

There cannot be any quarrel with the proposition but the sub-section is not wide enough to cover Criminal Prosecutions commenced under the Acts other than the Companies Act. Accordingly, the preliminary objection raised on behalf of the respondents that the petitioners cannot be relieved of Civil and Criminal liabilities

arising out of violation of the Provident Fund and Employees Insurance Act by resorting to sub-section (2) of section 633 of the Companies Act is required to be upheld and the petition must fail.

46. Now we shall deal with those decisions which decide that such relief u/s 633 is available also in respect of any liability arising under any Act other than the Companies Act.

47. In the case of Om Prakash Khaitan vs. Shree Keshariya lnvesment Ltd. 48 Company Cases 85 it was a decision of a single Judge of the Delhi High Court. There an application was made by one of the Directors u/s 633(2) of the Companies Act for relief against liabilities arising out of a number of defaults and breaches committed by the company in relation to its obligations arising under the Employees'' Provident Funds Act, the Employees'' State Insurance Act, the Sales Tax Act, the Essential Commodities Act and the Companies Act on certain grounds. In that case the Court proceed on the basis that such relief could be given under the said section.

48. In re: Beejay Engineers Pvt. Ltd. (supra) one of the questions involved was whether the Court had jurisdiction to grant relief to an officer of a company as envisaged in section 633 of the Act against the liability for negligence, default, breach of duty, etc. of the provisions of Acts other than the Companies Act. While answering the question in the affirmative, it was observed as follows :

Evidently this section is designed to provide protection to the officers of a company against certain kinds of liabilities, its object being to provide against undue hardship and harassment in deserving cases and give relief from liability to persons who though technically guilty of negligence, default, breach of duty, misfeasance or breach of trust are able to convince the conscience of the court that they have acted honestly and reasonably and having regard to the circumstances of the case they ought fairly to be excused from the charge or charges made against them. However, it is note worthy that protection is sought to be given to an officer of a company, which necessarily implies, that the liability arises on account of negligence, default breach of duty, misfeasance or breach of trust in relation to the affairs of a company which he is required to conduct honestly and reasonably. Surely the protection afforded by this section will not extend to and cover acts of misfeasance or breach of trust etc. which have no connection whatsoever with his status or duties as an officer of a company. All the same, this section cannot be construed to mean that default/offence committed by or proceeding against an officer must be under the Act as such the expression "any proceeding" occurring in this section is of wide amplitude and comprehensive enough to include all kinds of proceedings, i.e., civil is well as criminal. There is nothing in the language or the context in which this section is laid to limit, restrict or confine its operation to a liability arising out of negligence, default, breach of duty, misfeasance or breach of trust under the Act alone. In our opinion, protection under this section will be equally available to an officer of a company against liability to be proceeded against for negligence, default, breach of

duty, etc. even under other Acts so long as with regard to the affairs and functioning of the company. The power under this section is manifestly a power to relieve from liability which in the context means relief from the consequences, namely, fines and penalties that flow from the negligence., default, breach of duty, misfeasance or breach of trust. Of course, the grant of relief is discretionary having regard to the considerations mentioned in the section itself.

It is the cardinal rule of construction of statutes that the language used by the legislature must be construed in its natural and ordinary sense; if the words of the statute are themselves precise and unambiguous than no more can be necessary than to expound those words in their ordinary and natural sense. In other words, where the terms of a section are plain, the court should expound it as it stands unless it finds either in the section itself or in any other part of the statute anything that will modify or qualify or alter the language. If, however, the plain interpretation leads to some absurdity or some repugnance or some inconsistency with the rest of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency but no further. In the instant case, the language of the section is clear and explicit and we must give effect to it whatever may be the consequences. We see no ground for narrowing or limiting the application of the wide words of the section. "Any proceeding" are emphatic words and the same ought not to be construed in a narrow sense. Hence, we are of the considered view that this section will apply to all legal proceedings, civil criminal or otherwise, so long as the liability of an officer of a company arises from negligence; default, breach of duty, misfeasance or breach of trust and he can be relieved from such liability on account of his having acted honestly, namely, in good faith and if he has justifiable reason to escape such liability. We may, at the same time, make it abundantly clear that if the provisions of any particular statute under which liability is sought to be fastened on an officer of a company are in any way inconsistent with or have overriding effect over the provisions of the section, the court exercising power under this section will have to take due notice of the same before granting relief from the liability.

49. The question before us is whether "any proceeding" referred to in section 633 means all proceedings. In this context the well-known principle of construction is to be kept in mind particularly those laid down by Supreme Court in Kehar Singh vs. The State (Delhi Administration) (supra). The question is whether it would include proceedings for violation of the provisions of any Act other than the Companies Act. It is no doubt true that the language used is "in any proceeding" but that does not mean all proceedings whether under this Act or otherwise. The Companies Act was enacted in 1956. It deals with the Companies primarily. Various duties and liabilities have been imposed under the said Act and offences have been created for non-performance of such duties. The offences created under the Act are offences relating to the performance of certain duties under this Act. The expression ''any proceeding'' in this section cannot be taken out of this context and treated in

isolation without any reference to the context that will not be the correct approach. This is also violative of all canons of construction. That would not amount to interpretation of clear language; whether it is clear or not, should be ascertained only after consideration of the related provisions. The expression ''any proceeding'' must be considered in the light of the other provisions of the Companies Act. The various offences created would appear from the various sections of the Act particularly sections 59, 60, 62, 63, 68, 142, 162, 168, 207, 218, 272, 374, 420, 423, 538 to 545, 589, 606, 608, 609 of the Act. In the background of these provisions, if section 633 is sought to be interpreted, in our opinion it must be restricted to proceedings under the said Act only.

50. Further, as rightly pointed out, authority to initiate proceedings for criminal liability under the said Act, is different from the authority so competent under other Acts e.g. Provident Fund Act. Reference may be made in this connection to Section 14AC of the Provident Fund Act and section 621 of the said Act. Moreover, offences created under the said Act are non-cognizable offences whereas offences under other Acts include cognizable offence also. So far as Provident Fund Act is concerned, it is section 14AB. Sub-section (3) of the Act provides that the Court has to give notice to the Registrar of Companies and such other person, if any, as it thinks necessary. Giving of such notice to the Registrar of Companies is mandatory but not in respect of notice to any other authority. Therefore, if section 633 includes proceeding under Acts other than the said Act, then it would be open to the Court to give such relief u/s 633, without giving notice to the authority competent to prosecute in respect of liabilities under other Acts. Therefore, in the case of violation of the Provident Fund Act, the Court dealing with such application would not be obliged to give such notice to the competent authority under Provident Fund Act though such notice must be given to the Registrar of Companies even if it is not for violation of Companies Act. This is an indication that relief, which is the subject matter of section 633 application, is relief only against the liability under the Companies Act.

51. There is another aspect of the matter. An anomalous situation would be created if we interpret section 633 to the effect that the relief under the same is not confined to liabilities under the said Act but also to other Acts. We shall consider this aspect of the matter with particular reference to Provident Fund Act. We have already considered the principles of interpretation with particular reference to the welfare legislations. The Provident Fund Act imposes some duties on the employers. For failure to comply with the same some deterrent action was considered necessary and that is why some offences have been created under the Provident Fund Act and also by Explanation to section 405 of I.P.C. A company can be fined but cannot be sent to prison. Specia1 offence has been created when the offending employer is a company i.e., a juristic person. In the case of a company, in case of officers who come within the scope of the relevant provisions of section 14A(1) and (2), they are also deemed to have committed the offence. The said provisions lay down the

conditions of such liability and the ingredients of such offences. If that is proved, then the persons concerned are guilty of the offences charged. In which kind of cases the officers would not be liable, are also made clear. It is well-known that a "criminal intention" is not an essential ingredient in respect of a statutory offence. It is open to the legislature to make the liability absolute. It may be the intention of the Legislature to create an offence with an absolute liability; an intention to create an offence where the bona fide of the conduct of the persons concerned is not relevant so far as the offence is concerned. If in a particular case an officer is deemed to have committed the offence in view of sub-section (1) and/or (2) of section 14A, he can be punished. If in such a case section 633 is sought to be applied, and such officers/persons, who are otherwise liable for such offence, are given relief u/s 633, then the intention of the Legislature to legislate for the welfare of the weaker section of the public would be rendered nugatory.

52. There is another aspect of the matter. The Legislature has enacted the Provident Fund Act creating some liabilities. By section 14-A. inserted by Amending Act 37 of 1953 if the person committing an offence under the Act or any of the Schemes thereunder is a company, certain other persons connected with the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. By the "Explanation" to the said section, company means "any body corporate and other association of individuals" and "director" in relation to a firm means a partner in the firm. Companies Act applies to certain body corporates only. Therefore, it is clear that all companies covered by the Companies Act, are companies within the meaning of section 14A read with the Explanation, but all Companies within the meaning of section 14A read with the Explanation, are not companies covered by the Companies Act. If the contention that section 633 applies in respect of liabilities arising also under the provisions of any Act other than the, said Act, is accepted, then and in that case a peculiar situation will arise. In that case a person who is otherwise liable in view of the provisions of section 14-A, would be entitled to relief u/s 633 if he is employed by or connected with a company which is covered both by Provident Fund Act (read with the Explanation to section 14-A) and the Companies Act, but a person shall not be so entitled to such relief if he is not an employee of a body corporate covered by the Companies Act though he is an employee of a Company within the meaning of Explanation to section 14-A. To put it otherwise, in the case of a "company" which comes within the purview of section 14A of the Provident Fund Act but which does not come within the purview of the Companies Act, the liability of the persons concerned would be governed solely by section 14A(1) and (2) of the Provident Fund Act and they will not be entitled to any relief u/s 633; however if it is the case of a company within the meaning of the Explanation to section 14A of the Provident Fund Act and it is also a company coming within the purview of the Companies Act, then such persons shall be entitled to relief u/s 633 of the Act. Take the case of a partner in a partnership firm and a director of a company covered by Companies Act. Both of them are covered by and

can be made liable u/s 14A in view of the Explanation, but such a director is entitled to such protection of section 633 of the Act, whereas the partner is not. Therefore, though it is one Act (in this case a welfare legislation like the Provident Fund Act) it has to be applied and enforced in a different manner depending on the question whether though the employer may be a company within the meaning of the Provident Fund Act by virtue of the explanation to section 14A thereof, whether it is also a company coming within the purview of Companies Act, 1956. If that interpretation is given, then in our opinion, the intention of the Legislature in enacting the welfare legislation will be made infructuous. Further and in that event it may also be contended that such classification is not lawful and is arbitrary and that it amounts to unlawful discrimination and therefore ultra vires the constitution because there is no intelligible differential to justify such classification. There is one fundamental principle of interpretation. If two interpretations of a provision are possible, the one that would make it constitutional should be preferred to the other interpretation, which would make it unconstitutional. Only if we avoid such interpretation and considering all the aspects of the matter hold that section 633 does not apply in the case of Acts other than the Companies Act, then all these complications would not arise.

53. Further if by virtue of some general provisions like those contained in section 633 of the Companies Act, all the statutory provisions made for the welfare of the weaker section of the community stand modified automatically to the extent specified in section 633 for all time to come, even for all future legislations, then this would frustrate the whole object of the welfare legislations. In this context we may point out that in some of the cases the provisions have been enacted long after the Companies Act came into force in 1956. For example, by insertion of section 14AA in the Provident Fund Act, enhanced punishment is provided for in certain cases where there was previous conviction. This section has been inserted to tighten the process and take a strict view of a "habitual" offenders. If the interpretation, other than the one we hold, is accepted this would make this provision nugatory.

54. Lastly, we come to the various decisions on this question. We are; inclined to follow those decisions which have held in favour of the interpretation which we have given.

55. So far as Public Prosecutor Government of Pondicherry vs. Abdul Aziz & Anr. (supra) is concerned, as we have pointed out, the passage; relief upon was merely a passing reference. Accordingly the case is of no assistance to us and we do not intend to rely on the same. The decision in G. D. Bhargava vs. Registrar of Companies & Ors. (supra) is an authority for the proposition that in the case of an alleged offence punishable under any other Act, it falls outside the scope of section 633. We respectfully agree with the same. This supports our view. We further agree with the decision of the Court of Appeal in the case Customs and Excise Commissioner vs. Heden Alpha Ltd. (supra) which holds that this would not apply to

proceedings for the enforcement of civil liability to strangers Though this is a case regarding civil liability, we respectfully agree with the reasoning given by the Court of Appeal to the effect that liability not under the Act is not protected by this section. The observations in Palmer''s Company Law and Pennington''s Company Law in their latest editions supports the views we have taken. In the case of Jagannath Prasad Jhalani & Ors. vs. Regional Provident Fund Commissioner (Haryana) & Ors. (supra) the High Court rightly pointed out that section 633 of the Act cannot be a panacea for all the ills committed in respect of various other enactments those already in force and those which came on the Statute Book at a subsequent date. The High Court further pointed out that the expression "any proceeding" in section 633 is not of such wide amplitude as deemed. We respectfully agree with the views expressed therein. We also approve the comments made therein regarding the decision in Re: Beejay Industries (supra). We also agree with the reasons given by the learned single Judge of the Bombay High Court In the case of Harashchandra Maganlal & Ors. vs. Union of India & Ors. (supra). We approve the interpretation given to the expression "any proceeding" therein. The comments made in this decision regarding the decision in Re: Beejay Industries (supra) is perfectly justified.

56. The two cases cited in support of the proposition that relief u/s 633 is also available in respect of any liability arising out of any Act other than the Companies Act, do not bear close scrutiny and in any event we are unable to agree with the same. The case of Om Prakash Khaitan vs. Shree Keshariya Investment Ltd. (supra) only considered the question whether such relief should be granted u/s 633. 11 proceeded on the basis that such relief could be given without, going into or deciding the question. However, before us the main reliance placed in support of such interpretation in favour of wide amplitude is the case of In re: Beejay Industries Pvt. Ltd. (supra). We are unable to agree with the reasoning of this decision. In our opinion the criticism made of this decision in the case of Jagannath Prasad Jhalani vs. R.P.F.C. (Haryana; (supra) and Harashchandra Maganlal vs. Union of India (supra) are perfectly justified. Further, the Supreme Court itself, in the case of Kehal Singh vs. The State (supra) pointed out that the "golden rule" of Construction has been given a go-bye. In any event, while laying down the "cardinal rule of construction" the Delhi High Court has itself pointed out that when the plain interpretation leads to absurdity or repugnance or inconsistency with the rest of the statute, the grammatical and ordinary sense of the words may be, modified so as to avoid the absurdity and inconsistency. We are of the opinion that this test as laid down is fully applicable in the case of welfare legislation like the one before us and the Delhi High Court. As we have already pointed out, if the so-called plain meaning of the interpretation is adopted, it would not only lead to absurdity but it would also frustrate the provisions of welfare legislations. It is also to be pointed out that the limitation to this decision is inherent in this decision itself when at a later stage it was observed that if the provisions of any particular statute, under which liability is sought to be fastened on an officer or a company are in any way inconsistent with

or have overriding effect over the provision of the section, the Court exercising power under this section will have to take notice of the same before granting relief from the liability. It is clear that this decision itself spells out an exception to the general principles of Construction laid down even by the learned Judge. In our opinion, in that case the Court correctly laid down the general principles of interpretation but erred in application of those principles in interpretating section 633, and the provisions of Provident Fund Act. Accordingly we are unable to agree with the conclusion arrived at by the said decision. The decision of the Supreme court in the case of Kerala State Electricity Board vs. P. Kumharliumma (supra) has no application in the present case inasmuch as such decision was based on the difference in language of the different provisions including the Articles of the old Limitation Act 1908 and the new Limitation Act 1963.

57. Accordingly, we hold that section 633 of the said Act has no application in respect of any liability under any Act other than the Companies Act.,

58. This disposes of this appeal on merits. However, we intend to point out some peculiar aspects of this case. A peculiar course has been adopted on behalf of R.P.F.C. in the present case. When such applications u/s 633 are sought to be moved before the High Court, they are generally filed in the department or moved in Court and when it appears for the first time before the Court, directions are given for filing of affidavits and it is heard upon such affidavits. From the Minutes referred to above it appears, and it is not disputed before us, that this application was moved as "Court Application", that is without being listed and that when such application was moved on behalf of the applicants, a lawyer sought to appear on behalf of the Regional Provident Fund Commissioner. Instead of asking for directions for filing affidavits against such application so as to oppose such prayer with disclosure of all material facts, which were not disclosed in the petition, on behalf of R.P.F.C., very conveniently it was stated by its lawyer that if a sum of Rs. 50,000/- (Rupees fifty thousand) was paid every month, then there would be no prosecution. It may be pointed out that this is the very amount which was offered in the petition by the applicants. Far from the question of opposing such application, not even any higher figure was suggested though according to the R.P.F.C. huge amount was due, various mala fide proceedings were made and that allowing such instalment at such rate would result in postponement of realisation of the arrears for about 20 years. Peculiarly enough it does not appear from the ''Minutes'' that when such application was moved any such prayer was put forward made on behalf of the applicants first. It is surprising that any such stand was taken on behalf of the Regional Provident Fund Commissioner under such circumstances particularly having regard to the facts stated in the stay petition in the appeal and the affidavit affirmed thereafter in the proceedings under Chapter XXXI Rule 22 as stated above. According to the same, if the company was allowed to payoff dues at the rate of Rs. 50,000/- per month then in one year the company will have to pay Rs. 6 lakhs while if the company utilise the admitted arrears of Provident Fund dues being Rs. 1,21,65,816/-

by making a fixed deposit in a Bank at least at the rate of 10% interest, the company can earn more than Rs. 10 lakhs in a year and thereby make a profit of Rs. 6 lakhs per year without any toil. Even after preferring the appeal, R.P.F.C. did not pursue the matter diligently and their appeal was going to be dismissed for non-filing of the Paper Book under Chapter XXXI Rule 22 of our Rules, had it not been for this Court stepping in remedying such defect.

59. There is another aspect of the matter. It is stated in the stay petition filed by the R.P.F.C. in the Appeal Court (paragraph 9) referred to above that at the time of the hearing of the said company petition, the R.P.F.C. "raised objection to grant instalments but His Lordship was pleased to grant instalment for payments of the said huge sum of Provident Fund dues at the said rate as a result of which it will take more than twenty years to liquidate the said admitted arrears". This is totally and palpably false as pointed out above. No such objection was raised on behalf of the R.P.F.C. when the application was moved before the Company Court on the other they behaved in a fashion which has given 2 opportunity to the respondents in the appeal to contend that such Order was passed by the Company Court by consent of the parties.

60. We ought to point out another thing. Section 633(2) gives the power to the High Court to grant relief in case of an apprehended proceeding. Section 633(1) is in respect of any pending proceeding; otherwise powers u/s 633(2) are the same as the powers u/s 633(1) of the Act. u/s 633(1) the Court can give such relief "on such terms as it may think fit". The Company as such is not entitled to any relief under this section but only its officers. Accordingly, the Company is not a necessary party to such a proceedings but its officers. Therefore, if such relief is given to such officers in such an application can the Company be directed to make such payment? Such an order can be passed by Court u/s 14C of the Provident Fund Act where the employer is convicted of an offence of making default in the payment of any contribution. But can such order be passed and direction given against the company in an application of one of its officers u/s 633 of the Act? Even if such an order is passed by Court in such application can such order be enforceable against the Company? It true that u/s 634 of the Act, any order passed by the Court under the Act may be enforceable as a decree of the Court. But if order for payment is passed against a company in such an application which is not a party and which is not required to be made a party there it may be contended that the Court has no jurisdiction to pass such order against and give direction to the company; and if passed, whether such an order can be executed against the company u/s 634. Even if any consent is given by the company to such order being passed against the company, the legal effect of the same and the enforceability the same is not very clear. Even if in the present case the order of the Company provides for payment by "petitioners" i.e. the Directors a manager, obviously the money was to come from the till of the company, as directors/officers are not expected to make such payment out of their own pocket. As a matter of fact such payments were in fact made by the company for

some time in the present case. After they stopped doing so is it open to the authority concerned to enforce the order u/s 634 of the Act? This aspect of the matter was not obviously considered by the R.P.F.C. when they condescended to such an order being passed by the Company Court in such application.

61. Accordingly we invited some explanations from the Regional Provident Fund Commissioner as to the circumstances under which such course of action was adopted on behalf of the R.P.F.C. as stated above, but this was not forthcoming. We also wanted to hear the learned Advocate who appeared on behalf of R.P.F.C. in the Company Court, but he is also not available.

62. Another peculiar aspect of the matter is that no appeal was preferred immediately without certified copy as the R.P.F.C. was entitled to do but the appeal was sought to be preferred about a year later. Then again after the appeal was filed, no step was taken for early hearing of the appeal. The Paper Book has not been filed by R.P.F.C. The matter appeared in List under Chapter XXXI Rule 22 as explained above.

63. Having regard to the passage of time we also wanted to ascertain the present position so far as the petitioners are concerned. We wanted to find out the attitude of the applicants and the Company towards the suffering of the employees because of such default. According to the learned Advocate for the appellant the petitioner No.1 has ceased to be a Director from 16th November, 1987 and now he is in Singapore. So far as the petitioner Nos. 2 and 3 are concerned, it is stated that they have ceased to be the Directors from 22nd May, 1987. They are present in Court pursuant to the directions of the Court. The petitioner No.2 is now living at No. 207B, Park Street, Calcutta and the petitioner No.3 is now living at No.61, Upper Chitpur Road, Calcutta-700061. So far as the petitioner No.4 is concerned, who was the Manager of the Mill at the relevant time, it is not known to them as to when he ceased to be such Manager and where he is now. It is also to be pointed out that except making payments for a period of 14 months from the date of the order u/s 633, for the last three years no payment has been made. Upon enquiry made to that effect, as to the attitude of the company towards such arrears, we are informed on behalf of the company that the company is not able to make any payment at all. From the affidavit affirmed on behalf of the R.P.F.C. in this Appeal Court on the 21st of August, 1989 it appears that as against Provident Fund dues as on 31st of March, 1986 a sum of Rs. 1,14,65,816/- is still outstanding. From April, 1986 onwards, employees share of Provident Fund contributions have not been deposited. Accordingly, as on 30th of June, 1987 the total default amounted to Rs. 1,46,45,944.67 p. Two and half years have passed since then and more arrears have accumulated.

64. It is quite clear that the order appealed from was obtained so that by making some payments, the company, in the name of its directors/officers, may get relief for some time, and not to bother with the same thereafter, thereby throwing the

Court''s order to the wind and making a mockery of a Welfare Legislation.

65. Sections 8, 8A to 8G of the Provident Fund Act provides for modes of recovery of the amounts due under the Provident Fund Act. Upon enquiry to that effect made by us, a very general statement was made on behalf of the R.P.F.C. that no step was taken against the Company because of some order passed by this Court in its writ jurisdiction. It is admitted that no payment has been made in terms of the orders of this Court, but no step has been taken in view of "subsequent orders". Nothing is placed before us to show that in view of any order of any Court, the R.P.F.C. is prevented from taking any action as stated before us or as to what steps have been taken for realisation of the amount or what steps had been taken challenging the orders which prevented the Regional Provident Fund Commissioner from taking any action

66. We are thoroughly dissatisfied with the functioning of this office for the reasons stated hereinabove. We may point out that incidentally it was stated before us on behalf of the R.P.F.C. that a total sum of Rs. 113 crores is due and owing on account of the Provident Fund dues in this State alone, out of which a sum of Rs. 83 crores is due from the Jute Mills. The present company is one of them

67. Accordingly, we allow this appeal. All interim orders are vacated. The application made u/s 633 will stand dismissed. Costs of the Regional Provident Fund Commissioner is disallowed having regard to their conduct. We direct the Regional Provident Fund Commissioner to proceed in accordance with law for enforcement of his powers and duties under the Provident Fund Act expeditiously including prosecutions, which was dispensed with in view of the order of the Company Court.

68. Having regard to our observations regarding the conduct of the R.P.F.C. as above, we direct the Central Provident Fund Commissioner to make an enquiry and submit a Report regarding (a) the conduct of the litigation relating to the application before the Company Court by the office of the R.P.F.C. West Bengal and particularly as to the circumstances under which the lawyer of the R.P.F.C. agreed to accept Rs. 50,000/- per month before the Company Court and made an offer that no prosecution for offences will take place; (b) what steps had been taken after the company failed to pay the instalments as promised before the Company Court; (c) what steps are sought to be taken against the company and its officers pursuant to the disposal of this appeal. We give this direction as this is an unusual case. It does not involve disputes relating to some personal property of some private persons but it relates to the provision of a Welfare Legislation which was enacted for the benefit of the weaker section of the community but which has been sought to be frustrated, to a great extent successfully, by this Company for which the Regional Provident Fund Commissioner is not absolutely free from blame.

69. We wish to place on record our appreciation of the arguments made before us by the different learned Advocates appearing. We particularly place on record our

deep and sincere appreciation of the very able and competent assistance given to this Court by Mr. Jayanta Mitra, Advocate and Mr. Pratap Chatterjee, Advocate who have, in the true tradition of the Bar, appeared as amicus curiae in this matter pursuant to the request of this Court.

71. All parties concerned are entitled to have a signed copy of the minutes of the operative portion of this judgment.

72. Let a copy of this judgment be sent to the Central Provident Fund Commissioner, New Delhi and the Secretary of the Ministries concerned by the Registrar, Original Side of this Court.

Amarabha Sengupta, J.

73. I agree.