REGIONAL PROVIDENT FUND COMMISSIONER A

v.

THE HOOGHLY MILLS CO. LTD. & ORS.

(Civil Appeal No. 655 of 2012)

JANUARY 18, 2012 B

[ASOK KUMAR GANGULY AND T.S. THAKUR, JJ.]

Employees' Provident fund and Miscellaneous Provisions Act, 1952:

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ss. 17(1A)(a) and 14-B - Exempted establishment - Defaults in payment of contributions to the Fund - Power to recover damages - Held: In a case of default by the employer of an exempted establishment, in making its contribution to the Provident fund, s.14B of the Act will be applicable - If there D *is a default in payment of contribution to the scheme, it amounts to contravention of s.14-B and damages can be levied.*

Constitution of India, 1950:

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Articles 226 and 136 - Writ petition filed without availing of statutory remedy - Order of Regional Provident Fund Commissioner challenged by exempted established in writ petition - Held: Normally, the statutory remedy of appeal should be availed of - However, in view of peculiar facts of the F *case, it would not be correct exercise of judicial discretion to send the matter back to the remedy of appeal - Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - s.71 - Appeal.*

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Interpretation of Statutes:

Purposive construction - Social Welfare legislation - Held: The normal canon of interpretation is that a social welfare legislation or a remedial statute receives liberal

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A *construction and if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted - Further, a purposive approach is to be adopted which promotes the purposes of the Act - Employees' Provident Fund and Miscellaneous Provisions Act, 1951 - ss.* B *14-B and 17(1A)(a).*

The respondent-Company was granted exemption from the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 subject to the conditions mentioned in the exemption notification and C **the Explanation to sub-s. (1) of s.17 of the Act. As there were defaults on the part of the respondent-Company in making timely payment of dues towards the provident fund, proceedings were initiated against it and, ultimately, the Regional Provident Fund Commissioner directed the** D **respondent-company to remit the specified amount by way of damages to the respective accounts, failing which further action as provided under the Act would be initiated. The respondent-Company without filing the statutory appeal u/s 71 of the Act, filed a writ petition** E **before the High Court. The single Judge of the High Court allowed the writ petition holding that in view of the expression, "so far as may be" u/s 17(1A)(a) of the Act, the provisions in ss. 6, 7A, 8 and 14-B could not be applied in their entirety. In appeal, the Division Bench of** F **the High Court held that ss. 6,7A, 8 and 14B would not be attracted to the defaulting 'exempted establishment'. Aggrieved, the Regional Provident Fund Commissioner filed the appeal.**

G **Allowing the appeal, the Court**

HELD: 1. Normally, the statutory remedy of appeal should be availed of in a situation like this. However, in the peculiar facts of the case and specially having regard to the nature of the proceedings, the impugned order H **having been passed in the year 2004 and thereafter the**

writ petition entertained by the two Benches of the High Court and after that the matter remained pending before the Supreme Court, at this distance of time, to send the matter back to the remedy of appeal would not be a correct exercise of judicial discretion. [para 21] [378-C-E]

2.1. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is a social welfare legislation and is one of the earliest Acts after the Constitution came into existence. It effectuates the economic message of the Constitution as articulated in the Directive Principles of State Policy. The normal canon of interpretation is that a social welfare legislation or a remedial statute receives liberal construction and if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted. [paras 22, 24 and 25] [378-F; 379-G; 380-B]

Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur and others 1996 (8) Suppl. SCR 27 = (1997) 1 SCC 241 - relied on

2.2. The opening words of s.14B of the 1952 Act are, "where an employer makes a default in the payment of contribution to the fund". The object, as is evident from the Objects and Reasons of Amending Act 37 of 1953 was to remedy the defect. Similarly, s.17(1A), Clause (a), which makes s.14B applicable to an exempted establishment also came by way of an amendment, namely, by Amending Act 33 of 1988. The Statement of Objects and Reasons of Act 33 of 1988 makes it clear that one of the objects of such amendment was to check the defaults on the part of the exempted establishments also. It is well known that an interpretation which harmonizes with avowed object of the enactment is always to be accepted than the one which dilutes it. It is not uncommon to find legislature sometime using words by way of abundant caution. Therefore, the entire scheme of the Act is to be

A considered at the time of interpretation. While construing the statute where there may be some doubt the court has to consider the statute as a whole - its design, its purpose and the remedy which it seeks to achieve. In the instant case, for construing the provisions of ss.14B and B 17(1A)(a), a purposive approach is to be adopted which promotes the purposes of the Act. [paras 27-29, 35,37 and 56] [380-A-B; E-H; 381-A-C; 382-G-H; 383-A-F; 388-G-H; 389-A-B]

C *S.C. Advocates-on-Record Association & Ors., v. Union of India* 1993 Suppl. (2) SCR 659 = 1993 (4) SCC 441; and *State of West Bengal v. Union of India* 1964 SCR 371 = AIR 1963 SC 1241 at 1245 - relied on

Towne v. Eisner 245 US 418; *I.R. Commissioner v.* D *Dowdall O'Mahoney & Co.* (1952) 1 All E.R. 531; *Re, Bidie (deceased),* (1948) 2 All ER 995; *Jones v. Wrotham Park Settled Estates* (1980) AC 74; and *Seaford Court Estates Ltd. v. Asher* - (1949) 2 All E.R. 155 (CA) - referred to.

E Sixth Annual Benjamin N. Cardozo Lecture by Justice Felix Frankfurter, 47 Columbia Law Review 527 (1947); "The Loom of Language" by Friedrich Bodmer; and Bennion on Statutory Interpretation (Fifth Edition) - referred to.

F 2.3. Section 17(1A)(a) provides that when an exemption has been granted to an establishment under Clause (a) of sub-s. (1), the provision of ss. 6, 7, 8 and 14B of the Act shall, "so far as may be" apply to the employer of the exempted establishment in addition to such other G condition as may be specified in the notification granting such exemption. Sub-clause (a) of s.17(1A) is divided in two parts. The second part is more specific in as much as it has been clearly stated that where an employer contravenes and makes default in compliance with any H of the said conditions and provisions or any other

provisions of the Act, (this would obviously include s.14B), he shall be punishable u/s 14 as if the said establishment had not been exempted under clause (a). Therefore, there is a deeming provision giving clear indication of application of s. 14B of the Act to the 'employer' of an 'exempted establishment'. Thus, the sweep of the second part of clause (a) of s. 17(1A) which is preceded by the word 'and' is very wide. Section 14B may also be considered in this connection. Section 14B is attracted where an 'employer' makes a default in the payment of any contribution to the fund. In the instant case, admittedly default has taken place. [para 43-46] [385-B-G]

2.4. The expression 'fund' has been defined u/s 2(h) of the Act to mean the provident fund as established under a Scheme. Though the word 'scheme' has been defined u/s 2(l) to mean the employees provident fund scheme framed u/s 5, this Court in N.K. Jain has held that the definition of the word 'fund' would apply to a scheme operating in an establishment exempted u/s 17; and, "consequently if there is a default in payment of the contribution to such a scheme it amounts to contravention of s.6 punishable u/s 14(1A)". Following the same parity of reasoning, it is held, if there is a default in payment of contribution to such a scheme it amounts to contravention of s.14B and damages can be levied. [para 47-48] [385-F-G]

N.K. Jain and others v. C.K. Shah and others **1991 (1) SCR 938 = (1991) 2 SCC 495;** *National Buildings Construction Corporation v. Pritam Singh Gill* **1973 (1) SCR 40 = (1972) 2 SCC 1;** *Surendra Kumar Berma and others v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr.* **1981 (1) SCR 789 = 1980 (4) SCC 443 - relied on**

Knightsbridge Estates Trust Ltd. v. Byrne **(1940) 2 All**

A **E.R. 401 (Ch.D); and** *Prakash Cotton Mills (P) Ltd. v. State of Bombay* **(1957) 2 LLJ 490 - referred to.**

Dr. Pratap Singh and another v. Director of Enforcement, Foreign Exchange Regulation Act and others **1985 (3) SCR 969 =AIR 1985 SC 989 - distinguished.**

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Dr. M. Ismail Faruqui etc. v. Union of India and others **1994 (5) Suppl. SCR 1 =AIR 1995 SC 605 - held inapplicable.**

C **2.5. It is, therefore, held that in a case of default by the employer of an exempted establishment, in making its contribution to the Provident Fund, s.14B of the Act will be applicable. [para 58] [389-D]**

Case Law Reference:

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1994 (5) Suppl. SCR 1	**held inapplicable**	**para 10 and 55**
1996 (8) Suppl. SCR 27	**relied on**	**para 22**
E **1993 (2) Suppl. SCR 659**	**relied on**	**para 33**
245 US 418	**referred to**	**para 33**
1964 SCR 371	**relied on**	**para 35**
F **(1948) 2 All ER 995**	**referred to**	**Para 36**
(1980) AC 74	**referred to**	**para 38**
1991 (1) SCR 938	**relied on**	**para 39**
(1949) 2 All E.R. 155 (CA)	**referred to**	**para 41**
G **(1940) 2 All E.R. 401 (Ch.D)**	**referred to**	**para 47**
1985 (3) SCR 969	**distinguished**	**para 49**
(1957) 2 LLJ 490	**referred to.**	**Para 51**

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1981 (1) SCR 789	**relied on**	**para 53**	A
(1952) 1 All E.R. 531	**referred to**	**Para 56**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 655 of 2012.

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From the Judgment & Order dated 26.09.2008 of the High Court at Calcutta in MAT No. 1944 of 2006.

Aparna Bhat, Aruna Gupta for the Appellant.

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Pradeep Ghosh, Rana Mukherjee, Indranil Ghosh, Vikramjit Banerjit, Samiron Borkataky, Sudeshna Bagchi (for Victor Moses & Associates) for the Respondent.

The Judgment of the Court was delivered by

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GANGULY, J. 1. Leave granted.

2. The question which falls for consideration before this Court in this case is whether the employer of an establishment which is an 'exempted establishment' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 E (hereinafter, 'the Act') is subject to the provisions of Section 14B of the said Act whereby in cases of default in the payment of contribution to the provident fund, proceedings for recovery of damages can be initiated against the employer of such an 'exempted establishment'. F

3. The question was raised by the respondent before the High Court and both the Single Bench and the Division Bench of the High Court have recorded a finding in favour of the respondent and held that the respondent being an 'exempted G establishment' cannot be subjected to the provisions of Section 14(B) of the Act.

4. The material facts of case are not much in dispute.

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A 5. By notification dated 23.11.1967, the Central Government in exercise of its power under Section 17(1) (a) of the Act granted exemption to the respondent, which is a company registered under the Companies Act subject to the provisions specified in Schedule II annexed to the said B notification. The material part of the said notification is as follows:

"S.O. Whereas, in the opinion of the Central Government:

(1) The Rules of the provident fund of the establishment C mentioned in Schedule I (hereto annexed and (hereinafter referred to as the said establishments), with the respect to the employees therein then those specified in section 6 of the employees' Provident Fund Act, 1952 (10 of 1952); and

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(2) The Employees in the said establishments are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Employees' Provident Funds E Scheme 1952 (hereinafter referred to as the said School) in relation to the employees in any other establishment of a similar character.

Now, thereafter, in exercise of the powers conferred by clause (a) of sub-section (i) of section 17 of the F Employees' Provident Fund Act 1952 (19 of 1952), the Central Government, hereby exempt the said establishments with effect from dates mentioned against each of them, respectively from the operation of all the provisions of the said scheme, subject to the conditions G specified in scheme hereto annexed, which are in addition to the conditions mentioned in the explanation to sub-section (1) of the said section 17."

6. The respondent company comes under Item No. 5 of H the notification. Initially the case of the respondent company is

that after the grant of exemption it framed a scheme and created a Trust and appointed a Board of Trustees from the Management of the said Trust fund and was thus enjoying exemption under Section 17(1A) (a) of the Act. It is also common ground that there were defaults on the part of the respondent company in making timely payment of dues towards provident fund for the period between October 1999 to October 2000 and then again from November 2000 to July 2002. In view of such admitted defaults, proceedings were initiated against the respondent company and by notices dated 10.9.2003 and 11.10.2003 enclosing therewith the detailed statement of delayed remittance of provident fund and allied dues. As contemplated under Section 14(B) of the Act, respondent was offered an opportunity to represent their case on several dates by the authorities under the Act and their case was listed for hearing but nobody appeared on their behalf on several dates. Thereafter, on the basis of some representation on their behalf the matter was heard and the Regional Provident Fund Commissioner II, Sikkim and Andaman & Nicobar Islands by a detailed order directed the respondent company to remit an amount of Rs.32,62,153/- by way of damages to the respective accounts, failing which, it was stated that further action as provided under the Act and the Schemes framed thereunder shall be initiated.

7. It is not in dispute that the said order dated 9.6.2004 is an appealable order under the provisions of Section 7I of the Act. However, without filing any appeal the respondent company filed a writ petition before the learned Single Judge of the High Court which ultimately upheld the contention of the respondent company and, inter alia, came to following finding:

> "Under such circumstances, this court holds that the impugned order cannot be sustained in law as the concerned authority demanded damages from the petitioners not only on account of delayed payment of contribution to the trust fund but also on account of delayed

A payment of the contribution to the pension fund and insurance fund.

The impugned order, thus, stands set aside.

The Provident Fund Authority may, however,
B ascertain damages under Section 14B of the said Act afresh for delayed payment of contribution to the pension fund as well as the insurance fund.

The writ petition, thus, stands allowed with the above
C observation."

8. The learned Single Judge while allowing the writ petition proceeded on the basis that the expression "so far as may be" in Section 17(1A)(a) of the Act will have to be given its proper meaning. If such meaning is given then the provision in Sections
D 6, 7A, 8 and 14B of the Act cannot be applied in their entirety. The learned Single Judge held that the expression "so far as may be" cannot be treated as a surplusage.

9. The learned judge further held that the said expression
E "so far as may be" used in Section 17(1A)(a) of the said Act is for the purpose of restraining the application of provisions in Sections 6, 7A, 8 and 14B to the exempted establishment. The learned Judge also held that the damages which are recoverable under Section 14B of the said Act could not go to
F the hand of the individual affected employee. In case of delayed payment, loss of the individual affected employee is compensated by payment of interest under Section 7Q of the said Act. Since the damages which are recovered are not paid for compensating the losses of the individual employee, the
G expression "so far as may be" used in Section 17(1A)(a) of the said Act, does not require liberal interpretation. The said finding was given by the learned Single Judge in the context of the argument made on behalf of the appellant that the Act being social welfare legislation, needs to be liberally construed.

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10. The learned Judge ultimately accepted the meaning of the expression "so far as may be" given by the Constitution Bench of this Court in the case of *Dr. M. Ismail Faruqui etc. v. Union of India and others* – AIR 1995 SC 605.

11. Thereafter, an appeal was taken to the Division Bench of the High Court by the appellant. The Appellate Court also came to the conclusion that Sections 6, 7A, 8 and 14B of the Act would not be attracted to the defaulting 'exempted establishment'.

12. In view of the fact that Section 17(1A)(a) makes it clear that those Sections would be applicable "so far as may be", the Appellate Court accepted the reasoning given by the Writ Court and affirmed the judgment.

13. It is against such a concurrent finding and interpretation of the aforesaid provision of the Act, we heard learned counsel for the parties.

14. For a proper appreciation on the point at issue, it would be better to set out some of the relevant provisions of the Act.

15. Section 2(e) & 2(fff) define 'employer' and 'exempted establishment'. Those definitions are as under:

"2 (e) "employer" means—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the

A affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;"

B "2 (fff) "exempted establishment" means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the C establishment as such or to any person or class of persons employed therein."

16. Section 14(B) of the Act which provides for recovery of damages reads as under:

D "Section 14B - Power to recover damages - Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) E of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised F by the Central Government, by notification in the Official Gazette, in this behalf] may recover from the employer such damages, not exceedings the amount of arrears, as it may thinks fit to impose:

Provided that before levying and recovering such damages, G the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to H an establishment which is a sick industrial company and

in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme." A B

17. Section 17(1A) which deals with power to grant exemption reads as under:

"17 Power to exempt - (1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme. C

(a) any establishment to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character; or D E

(b) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character. F G

Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemptions to the H

A appropriate Government within such time limit as may be specified in the Scheme.

(1A) Where an exemption has been granted to an establishment under Clause (a) of Sub-section (1),

B (a) the provisions of Section 6, Section 7A, Section 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes,
C or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable under Section 14 as if the said establishment had not been exempted under the said Clause (a);

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(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

E (c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under Clause (b) shall -

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(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

G (ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central
H Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

(v) perform such other duties as may be specified in the Scheme.

18. Learned counsel for both the parties strenuously urged before us that in this case we are only concerned with the liability of the respondent company in so far as provident fund is concerned. Mr. Prdeep Ghosh, learned senior counsel for the respondent company has very fairly submitted that there are three accounts, namely, provident fund contribution, pension fund contribution and the Insurance fund contribution. The respondent company does not enjoy any exemption in respect of pension fund and insurance fund. Learned counsel further submitted that Section 14B makes a distinction among these three funds namely, provident fund contribution, pension fund contribution and the insurance fund contribution.

19. Ms. Aparna Bhat, learned counsel for the appellant argued that both the Courts i.e. the writ court and the appellate Bench of the High Court placed an erroneous interpretation with regard to application of Section 14B to an 'exempted establishment' by misconstruing the expression "so far as may be". Learned counsel also submitted that while construing the provisions of a social welfare legislation, like the Act, the High Court has not given any reason why it should not follow the well known principles of liberal interpretation.

20. Learned counsel also urged that in the judgment of the High Court there is no reason why despite the fact that there exists an efficacious remedy of appeal, the writ petition by the respondent company was entertained. The High Court has come to a finding that the grievance of the respondent company that it was not given adequate opportunity of hearing by the statutory authority is not correct on facts. Therefore, the learned counsel submitted that when an adequate opportunity of

A hearing was given, but the same was not availed of by the respondent company before the authority which passed the order dated 9.6.2004, it was not open to the respondent company to invoke the extraordinary writ jurisdiction of the High Court. Learned counsel for the respondent company however B urged that since the matter rested on an interpretation of various Sections of the Act, an appeal to statutory authority created under the said Act would not be an efficacious remedy.

21. In the peculiar facts of the case and specially having C regard to the nature of the proceedings, we do not wish to decide the controversy raised in this case on the question of non-availability of a statutory remedy. The impugned order was passed in the year 2004 and thereafter the writ petition was entertained by the two Benches of the High court and after that the matter is pending before us. Now we are in 2012. To D dismiss the order of the two Benches of the High Court inter alia on the ground that the writ petition was entertained despite the existence of a statutory remedy and then send it back to the remedy of appeal after a period of eight years, would not, in our judgment, be a correct exercise of judicial discretion. E However, we are of the opinion that normally the statutory remedy of appeal should be availed of in a situation like this.

22. From the aforesaid discussion it is clear that this case calls for interpretation of certain statutory provisions. It is not F disputed, and possibly cannot be disputed, that the Act is a social welfare legislation. The Act is one of the earliest Acts after the Constitution came into existence. Prior to its enactment, the requirement of having a suitable legislation for compulsory institutional and contributory provident fund in G industrial undertakings was discussed several times at various tripartite meetings in which representatives of the Central and State Governments and employees and workers took part. Initially a non-official Bill on the subject was introduced in the Central Legislature in 1948 and was withdrawn with the H assurance that the Government would consider the introduction

of a comprehensive Bill. Finally, the proposed legislation was endorsed by the conference of Provincial Labour Ministers in January, 1952 and later on the same was introduced in 1952. This Court had occasion to expressly hold that the said Act is a beneficial social welfare legislation to ensure benefits to the employees. In the case of *Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur and others* reported in (1997) 1 SCC 241, this Court while interpreting Section 14B of the Act held that the Act envisages the imposition of damages for delayed payment (paragraph 10 at page 244 of the report). This Court also held that the Act is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under a statutory obligation to make the deposit. In paragraph 11, it has also been held that in the event of any default committed in this behalf Section 14B steps in and calls upon the employer to pay damages.

23. If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.

24. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.

25. It is no doubt true that the said Act effectuates the

A economic message of the Constitution as articulated in the Directive Principles of State Policy.

26. Under the Directive Principles the State has the obligation for securing just and humane conditions of work which
B includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, interpretation of the said Act must not only be liberal but it must be informed by the values of Directive Principles. Therefore, an awareness of the social perspective of the Act must guide
C the interpretative process of the legislative device.

27. Keeping those broad principles in mind, if we look at the Objects and Reasons in respect of the relevant Section it will be easier for this court to appreciate the statutory intent. The opening words of Section 14B are, "where an employer
D makes a default in the payment of contribution to the fund". This was incorporated by way of an amendment, vide Amending Act 37 of 1953. In this connection, the excerpts from the Statement of Objects and Reasons of Act 37 of 1953 are very pertinent. Relevant excerpts are:-

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> "There are also certain administrative difficulties to be set right. There is no provision for inspection of exempted factories; nor is there any provision for the recovery of dues from such factories. An employer can delay payment
F of provident fund dues without any additional financial liability. No punishment has been laid down for contravention of some of the provisions of the Act.
>
> This Bill seeks primarily to remedy these defects'. – S.O.R., Gazette of India, 1953, Extra, Pt.II, Sec.2, p.910."

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28. Similarly, in respect of Section 17(1A), clause (a) which makes Section 14B applicable to an exempted establishment also came by way of an amendment, namely, by Act 33 of 1988. Here also if we look at the relevant portion of the Statement of
H Objects and Reasons of Act 33 of 1988 we will find that they

are based on certain recommendations of the High level committee to review the working of the Act. Various recommendations were incorporated in the Objects and Reasons and one of the objects of such amendment is as follows:-

> "(viii) the existing legal and penal provisions, as applicable to unexempted establishments, are being made applicable to exempted establishments, so as to check the defaults on their part;"

29. It is well known that an interpretation of the statute which harmonizes with its avowed object is always to be accepted than the one which dilutes it.

30. The problem of statutory interpretation has been a matter of considerable judicial debate in almost all common law jurisdictions.

31. Justice Felix Frankfurter dealt with this problem rather comprehensively in his *Sixth Annual Benjamin N. Cardozo Lecture* [See 47 Columbia Law Review 527 (1947)]. The learned Judge opined:-

> "Anything that is written may present a problem of meaning, and that is the essence of the business of judges in construing legislation. The problem derives from the very nature of words. They are symbols of meaning."

32. About what the words connote, there is a very illuminating discussion by Friedrich Bodmer, a Swiss Philologist in his treaties *"The Loom of Language"*. Bodmer, who was a Professor in the Massachusetts Institute of Technology, said:-

> "Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins

A from the mint, nor do they go forth with a degree to all the world that they shall mean only so much, no more and no less. Through its own particular personality each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol."

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33. The aforesaid formulation by Professor Bodmer was cited with approval by the Constitution Bench of this Court in *S.C. Advocates-on-Record Association & ors., v. Union of India* reported in 1993 (4) SCC 441 at page 553. Justice Holmes in *Towne v. Eisner* [245 US 418] thought in the same C way by saying:

"a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time D in which it is used."

34. Therefore, about the problem of interpretation we may again go back to what Justice Frankfurter said in the aforesaid article. This is of considerable importance. The learned Judge E said:

"...The process of construction, therefore, is not an exercise in logic or dialetic: The aids of formal reasoning are not irrelevant; they may simply be inadequate. The purpose of construction being the ascertainment of F meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone..."

35. Therefore, while construing the statute where there may G be some doubt the Court has to consider the statute as a whole – its design, its purpose and the remedy which it seeks to achieve. Chief Justice Sinha of this Court, in *State of West Bengal v. Union of India* reported in AIR 1963 SC 1241 at 1245, emphasized the importance of construing the statute as H a whole. In the words of Chief Justice:-

"The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs". A

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36. Lord Greene, Master of Rolls, also gave the same direction in *Re, Bidie (deceased),* [(1948) 2 All ER 995, page 998]. In the words of Master of Rolls the technique should be:-

"to read the statue as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word'?" C

37. Therefore, what is required to be done in the instant case for construing the provisions of Section 14B and 17(1A)(a) is to adopt a purposive approach, an approach which promotes D the purposes of the Act which have been discussed above. About the development of purposive approach, *Bennion on Statutory Interpretation* (Fifth Edition) has traced its origin:-

"General judicial adoption of the term 'purposive construction' is recent, but the concept is not new. Viscount Dilhorne, citing Coke, said that while it is now fashionable to talk of a purposive construction of a statute the need for such a construction bas been recognised since the seventeenth century. In fact the recognition goes considerably further back than that." E F

38. In this connection, the opinion of Lord Diplock in *Jones v. Wrotham Park Settled Estates* [(1980) AC 74] is very pertinent. At page 105 of the report the learned Law Lord said:-

G

"I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, H

A even where this involves reading into the Act words which are not expressly included in it."

39. This Court has already decided in *N.K. Jain and others v. C.K. Shah and others* reported in (1991) 2 SCC 495 that for construing the provision of this very Act a purposive approach should be adopted.

40. In *N.K. Jain* (supra) the question was whether criminal proceedings can be instituted under Section 14 of the Act in respect of an establishment which is exempted under Section 17 thereof, for contravention of the provisions of Section 6 of the Act.

41. Answering the question affirmatively the Court held in paragraph 13:

> "...legislative purpose must be noted and the statute must be read as a whole. In our view taking into consideration the object underlying the Act and on reading Sections 14 and 17 in full, it becomes clear that cancellation of the exemption granted does not amount to a penalty within the meaning of Section 14(2A). As already noted these provisions which form part of the Act, which is a welfare legislation are meant to ensure the employees the continuance of the benefits of the provident fund. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved."

42. In coming to the aforesaid conclusion the learned Judges relied on the famous dictum of Lord Denning in *Seaford Court Estates Ltd. v. Asher* – (1949) 2 All E.R. 155 (CA) wherein the learned Judge stated the position thus:

> "...A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must

not alter the material of which the Act is woven, but he can and should iron out the creases." A

43. In view of the interpretation of the Act in *N.K. Jain* (supra) there is no difficulty in construing the provision of Section 17(1A)(a) where it is provided that when an exemption has been granted to an establishment under Clause (a) of sub-section (1), the provision of Sections 6, 7, 8 and 14B of the Act shall, "so far as may be" apply to the employer of the exempted establishment in addition to such other condition as may be specified in the notification granting such exemption. B C

44. If we look at sub-section (a) which has been set out hereinbefore, we will find that sub-clause (a) of Section 17(1A) is divided in two parts. The second part is more specific in as much as it has been clearly stated that where an employer contravenes and makes default in compliance with any of the said conditions and provisions or any other provisions of this Act, (this would obviously include Section 14B), he shall be punishable under Section 14 as if the said establishment had not been exempted under clause (a). Therefore, there is a deeming provision giving clear indication of application of Section 14B of the Act to the 'employer' of an 'exempted establishment'. D E

45. Thus, the sweep of the second part of clause (a) of Section 17(1A) which is preceded by the word 'and' is very wide. F

46. Section 14B may also be considered in this connection. Section 14B is attracted where an 'employer' makes a default in the payment of any contribution to the fund. In the instant case admittedly default has taken place. G

47. The expression 'fund' has been defined under Section 2(h) of the Act to mean the provident fund as established under a Scheme. Though the word 'scheme' has been defined under Section 2(l) to mean the employees provident fund scheme H

framed under Section 5, this Court in *N.K. Jain* (supra) held the definition of the word 'fund' would apply to a scheme operating in an establishment exempted under Section 17. In that case it was urged on behalf of the respondent that the expression 'fund' and 'scheme' must be given a wide interpretation to include fund under a private scheme. Such submission on behalf of the respondent was noted in paragraph 16 at page 518 of the report. In para 17 at page 518 of the report, this Court on consideration of the ratio in the case of *Knightsbridge Estates Trust Ltd. v. Byrne* – (1940) 2 All E.R. 401 (Ch.D) and the decision of this Court in *National Buildings Construction Corporation v. Pritam Singh Gill* reported in (1972) 2 SCC 1 and also various other decisions accepted the said construction. Applying these principles, decided in the aforesaid cases, this Court has held "consequently if there is a default in payment of the contribution to such a scheme it amounts to contravention of Section 6 punishable under Section 14(1A)". (See page 517 of the report)

48. Following the same parity of reasoning, we hold if there is a default in payment of contribution to such a scheme it amounts to contravention of Section 14B and damages can be levied. The High Court, with great respect, erred by coming to a contrary conclusion.

49. Apart from that the High Court's interpretation of the expression "so far as may be" as limiting the ambit and width of Section 17(1A)(a) of the Act, in our judgment, cannot be accepted for two reasons as well.

50. The High Court is guided in the interpretation of the word "so far as may be" on the basis of the principle that statutes does not waste words. The High Court has also relied on the interpretation given to "so far as may be" in the case of *Dr. Pratap Singh and another v. Director of Enforcement, Foreign Exchange Regulation Act and others* reported in AIR 1985 SC 989. It goes without saying that Foreign Exchange Regulation

Act is a fiscal statute dealing with penal provisions whereas the aforesaid expression is to be construed in this Act which is eminently a social welfare legislation. Therefore, the parameters of interpretation cannot be the same. Even then in *Pratap Singh* (supra) this Court while construing "so far as may be" held "if a deviation becomes necessary to carry out the purposes of the Act..... it would be permissible". Of course the Court held that if such deviation is challenged before a Court of law it has to be justified.

51. In the instant case, the High Court failed to discern the correct principle of interpretation of a social welfare legislation. In this connection we may profitably refer to what was said by Chief Justice Chagla about interpretation of a social welfare or labour legislation in *Prakash Cotton Mills (P) Ltd. v. State of Bombay* reported in (1957) 2 LLJ 490. Justice Chagla unerringly laid down:

> "no labour legislation, no social legislation, no economic legislation, can be considered by a court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution.....it would indeed be startling for anyone to suggest that the court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice."

52. We endorse the same view. In fact this has been endorsed by this Court in *N.K. Jain* (supra).

53. Reference in this connection may be made to what was said by Justice Krishna Iyyer in the same vein in the decision of *Surendra Kumar Berma and others v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr.,* reported in 1980 (4) SCC 443. The learned judge held that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes.

A 54. Unfortunately, the High Court missed this well settled principle of interpretation of social welfare legislation while construing the expression "so far as may be" in interpreting the provision of Section 17 (1A)(a) of the Act and unduly restricted its application to the employer of an exempted establishment.

B 55. The interpretation of the expression "so far as may be" by this Court in its Constitution Bench decision in *M. Ismail Faruqui* (supra) was given in a totally different context. The said judgment on a Presidential Reference was rendered in the C context of the well known Ram Janam Bhumi Babri Masjid controversy where a special Act, namely, Acquisition of Certain Area at Ayodhya Act was enacted and sub-section (3) of Section 6 of the said Act provides that the provisions of Sections 4, 5 & 7 shall "so far as may be" apply in relation to D such authority or body or trustees as they apply in relation to the Central Government. In that context this Court held that the expression "so far as may be" is indicative of the fact that all or any of these provisions may or may not be applicable to the transferee under sub-section (1). The objects behind the said E enactment are totally unique and the same was a special law. Apart from this, this Court did not lay down any general principle of interpretation in the application of the expression "so far as may be". Their being vast conceptual difference in the legal questions in that case, the interpretation of "so far as may be" F in *M. Ismail Faruqui* (supra) cannot be applied to the interpretation of "so far as may be" in the present case.

56. The High Court's interpretation also was in error for not considering another well settled principle of interpretation. It is not uncommon to find legislature sometime using words G by way of abundant caution. To find out whether the words are used by way of abundant caution the entire scheme of the Act is to be considered at the time of interpretation. In this connection we may remember the observation of Lord Reid in *I.R. Commissioner v. Dowdall O'Mahoney & Co.* reported in H (1952) 1 All E.R. 531 at page 537, wherein the learned Law

Lord said that it is not uncommon to find that legislature is inserting superfluous provisions under the influence of what may be abundant caution. The same principle has been accepted by this Court in many cases. The High Court by adopting, if we may say so, a rather strait jacket formula in the interpretation of the expression "so far as may be" has in our judgment, misinterpreted the intent and scope and the purpose of the Act.

57. For the reasons aforesaid, we are not inclined to accept the interpretation of the High Court and we are constrained to overrule the judgment of the Single Bench as also of the Division Bench.

58. We hold that in a case of default by the employer by an exempted establishment, in making its contribution to the Provident Fund Section 14B of the Act will be applicable.

59. The appeal is allowed. However, parties are left to bear their own costs.

R.P. Appeal allowed.