
(1995) 02 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 3007 of 1987

Abhijat Samayadarshika Maharashtra Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 16

Citation : (1995) 71 FLR 61 : (1999) 3 LLJ 144

Hon'ble Judges : V.P. Tipnis, J;R.G. Vaidyanatha, J

Bench : Division Bench

Judgement

Tipnis, J.—This case demonstrates how at times the public authority enjoined with a duty of protecting the public interest itself commits default and penalises the person who is not at fault at all. We are saying this because the facts of this case show that the authority who passed the order has shown total lack of application of mind while dealing with the matter.

2. Abhijat Samayadarshika (Maharashtra) Limited, is a Government company incorporated under the Companies Act. It is wholly owned subsidiary of the Western Maharashtra Development Corporation limited. The petitioner company was established on 12th July 1978 and it commenced its commercial production from 30th August 1979. Under the provisions of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the company was entitled to infancy benefit and accordingly the provisions of the Act became applicable to the petitioner company from 1.9.1982. The petitioner company immediately contacted the Inspector incharge of the area where the company's establishment was situated. The Inspector concerned advised the petitioner company to submit details in a questionnaire form and apply for code number and also to start deducting employees as well as employers contributions. By letter dated 15.9.1982, the company submitted the requisite questionnaire containing all the detail about the petitioners' establishment. The petitioner company also started deducting employees as well as employers contribution.

However, as no code number was allotted the petitioner company discussed the matter with one Mr. A. Hamsa, Inspector concerned, on phone and under his advise the amount of contribution was deposited in the current account. It is relevant to notice that the said fact is amply corroborated by letter dated 5th October 1982 sent by the Company to the said Shri Hamsa, copy of which is annexed to this petition at Exh. C. The said letter expressly requested the said gentleman to give Provident Fund Account Number. The petitioner continued to deduct the contribution and deposited the same in the current account under intimation to the Provident Fund Inspector. By letter dated 15.2.1982 the petitioner company again requested for allotment of code number and they further sought instruction as to where the accumulated amount of contributions be transferred. As no code number was intimated to the petitioner company and as no instructions were coming for the from the office of the provident Fund Commissioner as to where the amount should be transferred or deposited, the petitioner company by its letter dated 11.6.1983 addressed to the Regional Provident Fund Commissioner informed that the company has been implementing the provisions of the Act and the amount of contribution was lying with the petitioner only for want of provident fund code number or directions as to where it should be deposited. By that letter the petitioners once again requested for furnishing information and for issuance of code number.

3. As even after the above letters the petitioner did not receive any communication, the petitioner company on 8.9.1983 opened a separate bank account specially for depositing employees and employers contributions, which the petitioner company had been deducting. By a letter dated 19th July 1983 the petitioner company again requested the provident Fund Commissioner for allotment of code number. By further letter dated 1.9.1983, and 8.10.1983 the petitioner once again requested for allotment of code number so that the amount accumulated and kept separately in the bank account could be deposited with the office of the Regional provident Fund Commissioner. For the first time the petitioner received a reply from the office of the Regional Provident Fund Commissioner by letter dated 22nd October 1983 in response to their letter dated 8th October 1983. By the said letter the office of the Regional Provident Fund Commissioner sent back the letter dated 8th October 1983 with remark that the code number was not mentioned in the said letter and, therefore the petitioner should re-submit the said letter with code number. It is really beyond our understanding how the office of the Provident Fund Commissioner can insist on the petitioner for giving code number when the petitioner by writing several letters, had been almost begging of the Provident Fund Commissioner to give code number and the Provident Fund Commissioner had kept silent for number of months. The petitioner therefore by its letter dated 17th November 1983 pointed out to the office of the Provident Fund Commissioner that for the last more than 12 months petitioner had been requesting for allotment of code number which was not issued by the office of the Provident Fund Commissioner and therefore petitioner could not quote the code number. The petitioner continued to

implement the provisions of the said Act by depositing the amount of contribution of the employees as well as employers in the separate bank account specifically opened for the said purpose. The petitioner thereafter by its letter dated 1st December 1983, 10th April 1984, 7th July 1984, 13th August 1984, 19th August 1984, 13th September 1984, 13th October 1984 and 26th October 1984 requested for allotment of code number. In all the letters the petitioner pointed out that the petitioner had been lawfully implementing the provisions of the said Act and the amount of contributions had been deposited in a separate bank account.

4. Ultimately by a letter dated 5.11.1984, from the office of the Provident Fund Commissioner, the petitioner was communicated that it has been allotted code no. MH/22356 provisionally with effect from 31.8.1982 for implementation of the provisions of the said Act. The petitioner also received a printed intimation dated 6.11.1984 whereby the various directions regarding the implementation of the provisions of the said Act were set out. The petitioner was directed to deposit the provident fund contribution for the period from 1.11.1982 to 31.10.1984 within 30 days of the said intimation. By its letter dated 12th December 1984 the petitioner requested the State Bank of India to transfer the sum of Rs. 2,53,431.50 and a sum of Rs. 51,341.60 to the office of the Regional Provident Fund Commissioner. The petitioner by its letter dated 12th June 1985 addressed to the Provident Fund Commissioner intimated the fact about the said amounts being transferred to the provident fund account. Petitioner also sought guidance as to what is to be done with respect to the amount of Rs. 7.039/- which was still laying with the petitioner by way of accrued interest.

5. The petitioner company is following the same patterns of dearness allowance for its employees as that of the employees of the State of Maharashtra. State of Maharashtra declared on 13.3.1985 and 1st June 1985 as additional dearness allowance effective from 1st August 1984 and 1st January 1985. The employees of the petitioner company were paid arrears of dearness allowance during the period from August 1984 to May 1985. At the time of payment of arrears of dearness allowance, petitioner company also deducted employees provident fund contribution and after adding the employers contribution deposited the amount of total contribution with the office of the Regional Provident Fund Commissioner. The petitioner has asserted that thus there is no depositing the amount of contribution.

6. the petitioner received a show cause notice dated 17th October 1986 from the office of the Regional provident Fund Commissioner alleging that the petitioner had defaulted in making contribution for the period from September 1982 to November 1984 and for the relevant months when the arrears of dearness allowance was paid. The petitioner was asked to show cause why damage u/s 14-B of the said Act to the extent to the amount in arrears should not be levied on the petitioner for the alleged late payment of the contribution. By letter dated 26th October 1986 the petitioner pointed out that the petitioner had into

committed any default or any delay in making contribution and the amount of contribution could not be deposited in the office of the Regional Provident Fund Commissioner in time because of the fault of the office of the Regional Provident Fund Commissioner itself by not issuing the code number.

7. The Regional Provident Fund Commissioner passed an order dated 25th March 1987 and has observed in the order that he has carefully considered all the relevant facts and the submissions of the company and has gone into the reasons/documents shown to him at the time of personal hearing. He has observed that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies of its own vigour and it is the duty of the employer to comply with the statutory provisions of the Act and scheme without waiting for any communication from the Employees' Provident Fund Authorities. However, due weightage is given to this plea while quantifying damages. The difference between the due date and date of remittance as per code draft issued may be treated as loss of interest for calculation of damages at 10% p.a. He further observed that having regard to all the facts and circumstances of the case, he considered that the ends of justice would be met if the damages are imposed at 10% p.a. default upto 12.12.1984 and for the period September 1982 to October 1984 and at 25% p.a. for difference of the dearness allowance from January 1985 to May 1985. The Provident Fund Commissioner has further observed that the damages levied are exemplary and punitive having regard to the nature, extent and persistency of the default and calculated to deter this and other similarly placed establishments from defaulting further. A portion of the damages calculated at 10% p.a. represents loss of interest to the fund. Ultimately under different headings the Provident Fund Commissioner levied the damages totalling into Rs. 26,369.15.

8. Being aggrieved by the said order levying damages and demanding the same, the petitioner company has filed the aforesaid petition. It requires to be noticed that his petition is filed in the year 1987. Copies of all letters referred to in the petition are annexed to the petition. However, despite service the Union of India or the Regional Provident Fund Commissioner has not filed any affidavit in reply.

9. Shri Talsania, learned counsel for the petitioner very severely criticised the order of the Regional Provident Fund Commissioner and submitted that the order shows total non application of mind. When the petitioner as a law-abiding Company immediately approached the concerned Inspector and requested him to give code number and also on his advice deposited the amounts in a separate account and thereafter for months together the petitioner had been asking the authorities to issue code number but the authorities did not respond to the same and the moment the code number was allotted the amount was transferred in the Provident fund account, no reasonable person can say that the petitioner company has committed any default within the meaning of section 14-B of the said Act. Shri Talsania further emphasised the absurdity of the order by stating that so far as the payment of arrears of dearness allowance are concerned, the

arrears were paid at proper time but they were for the previous period as directed by the Government of Maharashtra. As such it is difficult to appreciate by what logic and reasons the learned Commissioner could hold that there was any delay on the part of the petitioner for the payment at all.

10. Shri Mehta learned counsel appearing for the Union of India and for the Regional Provident Fund Commissioner found it almost impossible to support the order. He faintly argued that though the code number was not given to the petitioner, nevertheless it could have deposited the amount in the provident fund account and they ought not to have waited till the code number was allotted to them. We find it very difficult to appreciate this submission coming on behalf of the Provident Fund Commissioner who despite dozens of letters from the petitioner company did not care to give the code number to the petitioner company. What is more relevant is that the petitioner company has asserted that from the beginning all the acts of the petitioner company were as per the advice of the Inspector concerned. In fact the Inspector concerned is named and copy of the letter sent to him is also on record. None of these facts are controverted by filing affidavit in reply and we find no good reason at all to disbelieve and not to accept the assertions made in the petition. If that be so we find it impossible and extremely difficult to appreciate how the department which itself defaulted, can find fault with the petitioner company. The order impugned, in our opinion is almost perverse.

11. After having heard the learned counsel for both sides and after having gone through the record we find it impossible to sustain the order. So far as it pertains to the demand of arrears in respect of D. A. it is absolutely unreasonable and unjustifiable. So far as it pertains to the earlier period, in the facts and circumstances of the case, we find it impossible that any reasonable person can come to the conclusion that the petitioner company has committed any default within the meaning of the provisions of section 14-B of the said Act. We cannot forget that the power to recover the damages u/s 14-B of the said Act is almost penal. Under these circumstances it was all the more necessary for the Provident Fund Commissioner to be more precise and careful while considering the matter. In the result the impugned order dated 25.3.1987 passed by the Regional Provident Fund Commissioner is quashed and set aside.

12. We would not like the matter to rest here. The facts of the case are rather startling and we cannot be unmindful of the fact that in the whole process because of the fault on the part of the office of the Regional Provident Fund Commissioner, the employees of the petitioner company sustained loss in the form of loss of interest. As we have found that it was not the petitioner company but in fact the office of the Regional Provident Fund Commissioner, which was responsible, we direct that the Provident Fund Commissioner will inquire into the matters and also take steps to recover the same from the officer responsible for the same placing the responsibility on the concerned officer.

13. In the result Rule is made absolute in the aforesaid terms and though

normally the court does not pass order of costs against the public authority, in this case we deem it necessary to pass order for costs in favour of the petitioner. Accordingly we direct the respondents to pay an amount of Rs. 1000/- by way of costs of this petition to the petitioner.

14. Certified copy expedited.