

(2004) 03 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) . 1346 of 1976

Ajanta Offset and Packaging Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Citation : (2004) 110 DLT 757 : (2004) 74 DRJ 293 : (2004) 101 FLR 772 :
(2004) 2 LLJ 915 : (2004) 3 SLJ 473

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Sudhir Makkar, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Petitioner is aggrieved by an order dated 27th May 1974 communicating coverage of the Petitioner under the provisions of the Employees' Provident Funds and Family Pension Funds Act, 1952, now known as the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act") w.e.f. 1st April, 1974. The Petitioner is also aggrieved by a memorandum dated 24th November, 1976 sent by the Regional Provident Fund Commissioner (for short "RPFC") demanding a sum of Rs.42,562.40 + Rs.989.25 on account of damages for delayed remittances of provident fund dues from April, 1974 to February 1976.

2. The Petitioner carries on business of printing in Delhi. By a letter dated 27th May, 1974, the Petitioner was informed by the RPFC that the provisions of the Act and the Scheme framed there under would be applicable to the Petitioner w.e.f. 1st April, 1974 and that the Petitioner was allotted a code number DL/3480 for this purpose. The Petitioner was requested to deposit the contributions, submit the relevant returns and was also informed that in case of belated contributions, damages may be levied and recovery affected as arrears of land revenue.

3. No immediate action seems to have been taken by either of the parties pursuant to the letter dated 27th May, 1974. Then on 4th June 1976, the Petitioner was issued a memorandum in the form of a show cause notice intimating that the Petitioner had not deposited in time its share of contribution under the Act from April 1974 to February 1976. Accordingly, the Petitioner was asked to show cause why damages amounting to Rs.42,562.40 and Rs.989.25 be not levied and recovered u/s 14-B of the Act. The calculation for damages was sent to the Petitioner along with the memorandum cum show cause notice.

4. The Petitioner sent its reply dated 23rd June, 1976 in which it was stated, inter alia, that the delay in payment was neither deliberate nor willful. The Petitioner prayed for waiver of damages. The Petitioner sent a subsequent letter dated 26th July, 1976 indicating the dates on which it had made the payment of dues under the Act and contended that it was not liable to pay damages as claimed.

5. The Petitioner has stated in its Writ Petition that no speaking order was passed on the basis of show cause notice and the representations made. Suddenly, however, the Petitioner was served with the impugned demand dated 24th November, 1976 directing it to deposit the damages as calculated in the memorandum cum show cause notice.

6. In their counter affidavit, the Respondents have denied the averments made by the Petitioner. The most important fact that has been brought out by the Respondents in their counter affidavit is that a date of hearing was given to the Petitioner pursuant to the show cause notice on more than one occasion. Finally on 2nd November 1976, the Petitioner was heard when its representative discussed the case and thereafter requested for an adjournment. The adjournment was declined because the Petitioner had asked for adjournments on three previous occasions. On the basis of the material available on record, the RPFC passed an order on the same date i.e. 2nd November, 1976 confirming the damages levied against the Petitioner. Pursuant to the order dated 2nd November, 1976 the impugned demand dated 24th November, 1976 was raised. This led to the filing of the present Writ Petition.

7. Learned counsel for the parties were heard on 5th, 11th and 18th March, 2004 when judgment was reserved.

8. Learned counsel for the Petitioner raised four principal contentions. It was firstly contended that the impugned demand dated 24th November 1976 did not contain any reason at all and was not a speaking order. This argument was not pressed beyond a point when it was brought to the notice of learned counsel for the Petitioner that the memorandum dated 24th November 1976 was only a demand and that a speaking order was passed on 2nd November, 1976. The original file containing the speaking order was shown to learned counsel for the Petitioner. Learned counsel then contended that the order dated 2nd November 1976 was not served upon the Petitioner and that in any case it did not contain

any valid reasons for levying damages. Allied to this contention was the second submission of learned counsel that the issues raised in the representations made by the Petitioner have not been properly considered. The third submission of learned counsel was that damages could not have been recovered from 1st April, 1974 because it was allotted a code number only on 27th May, 1974. It was finally submitted that the show cause notice dated 4th June, 1976 was sent after almost two years and that there should have been some time limit within which the notice could be sent to the Petitioner.

9. I am afraid it is not possible to accept any of the submissions made by learned counsel for the Petitioner.

10. The first two submissions are really different facets of the same contention and are liable to be rejected straightway. The contentions were initially based on a misconception of facts. The speaking order was shown to learned counsel in original, and it is in any event a part of the record before me, having been annexed to the counter affidavit of the RPFC. The admitted position, Therefore, is that a speaking order was passed on 2nd November 1976 and the Petitioner has not challenged this order. It has only challenged the consequential demand. It may be that the Petitioner saw the order for the first time when the counter affidavit was filed; but even then no attempt has been made over the last almost thirty years to challenge it. Its correctness must, Therefore, be accepted. There are two other hurdles in the way of learned counsel. Firstly, in writ jurisdiction, it is not possible to comment on the merits of the conclusions arrived at in the speaking order that has been passed in accordance with the principles of natural justice and secondly, even otherwise, learned counsel has not been able to show any conclusion in the speaking order that can be said to be irrational or perverse as to warrant interference.

11. Insofar as the applicability of the provisions of the Act is concerned, the provisions apply *proprio vigore* and all that the Respondent is required to do is to allot a code number to the Petitioner. It is true that the code number was allotted only on 27th May, 1974 but there is nothing to show that immediately thereafter the Petitioner made some payments towards its provident fund dues. Consequently, even if there was some delay on the part of the Respondent in allotting a code number that will not absolve the Petitioner of its liability under the Act, which, as mentioned above, applies *proprio vigore*.

12. In fact, in *Provident Fund Inspector vs. Ram Kumar* 1983 Lab. IC 717, the very same issue had arisen before the Punjab and Haryana High Court and in paragraph 8 of the Report, the High Court relied upon a decision of the Madhya Pradesh High Court to conclude that the Act comes into operation by its own vigour as soon as the conditions are satisfied and that the operation of the Act is not dependent upon any decision being taken by any of the authorities under the Act. The Kerala High Court took a similar view and this has been referred to in paragraph 10 of the Report. Paragraphs 8 and 10 of the Report read as follows:

"In Radhakrishnan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, , it has been held that the Act applies to the notified establishments with effect from the date from which the Notification states the Act applies and not from the point of time the competent authority holds the employer of such establishment liable and determines the amount payable by him. The Act comes into operation by its own vigour. It applies if the conditions stated in the Act are satisfied. Its operation is not dependent on any decision being taken by the authorities under the Act.

..... "In Kunhipaly vs. Regional Provident Fund Commr. Trivandrum (1966) 1 Lab.LJ 642 also it has been held by the Kerala High Court that the Act comes into operation by its own vigour. It applies if the conditions stated in the Act are satisfied. The contention raised in the said case that it is only on the communication from the authorities concerned that the provisions of the Act becomes operative, was not accepted and it was further held that the operation of the statute does not depend upon any decision being taken by the authorities under the statute. It depends on its provisions. Reliance in this behalf has also been placed by the Kerala High Court on a Supreme Court decision in The Associated Industries (P) Ltd. Vs. The Regional Provident Fund Commissioner, Kerala Trivandrum, . Under the circumstances, the respondents were under a legal obligation to deposit the employer's shares of the contributions to the fund within the time prescribed, the moment the Act and the Scheme became applicable to them, as no intimation or notice of any kind in that respect was necessary to be issued by the authorities concerned."

Frankly, I do not see any reason to take a view different from that already expressed above.

13. In M/s Birla Cotton Spinning & Weaving Mills Ltd. vs. Union of India (1984) 2 Delhi 60 one of the issues raised was whether there was any period for initiating proceedings u/s 14-B the Act. Answering the question in the negative, a Division Bench of this Court held in paragraph 14 of the Report as follows:

"It may be that if the staff of the Provident Fund Commissioner works more efficiently it may have been possible for them to detect earlier the various defaults committed by the petitioner and to issue notice to them with regard to these. But it should not be forgotten that under law the responsibility in the first instance for depositing the contribution is on the employer. He is expected to deposit the fund by 15th of the subsequent month. The moment he does not do so he commits defaults within the terms of Section 14B of the Act. The Explanation for the default may result in the respondents not imposing any damages or imposing nominal damages. But it is not correct to say that unless a notice is given separately with respect to each default by the Regional Provident Fund Commissioner, no action for each default u/s 14B can be taken on the basis of notice which mentions number of defaults. It is true that the Regional Provident Fund Commissioner will have to apply his mind with regard to each default and then impose damages with reference to each one of them separately.

But that does not mean that a consolidated notice mentioning the various defaults with all the details of delay and the proposed penalty, cannot all be put in one notice. After all the idea of a notice is to give an opportunity to the employer as to the action that is proposed to be taken against him. The slackness or even negligence in the office of the Regional Provident Fund Commissioner does not absolve the employer for each default committed by him. The exercise of power u/s 14B of the Act does not automatically get blunted because of the inefficiency or slow working in the office of Regional Provident Fund Commissioner."

Consequently, even the last contention of learned counsel must be rejected.

14. Learned counsel for the Petitioner relied upon *Organo Chemicals Industries vs. Union of India* AIR 1979 SC 1803 to contend generally that the RPFC has acted illegally. I find that this decision has been discussed in detail in *Birla Cotton*. Suffice it to say that the fact situation in *Organo Chemicals* was quite different. In the words of the Division Bench (paragraph 11 of the Report) in that case,

"... defaults were committed in payment of the provident fund and family pension fund by making delayed payments for the period from March to October, 1975 and from December, 1975 to November, 1976. The period of delay in payment of amount varied from a few months to a year. Notice to show cause by Regional Provident Fund Commissioner was issued on 7th June, 1977 requiring the petitioner to show cause why damages should not be levied u/s 14B of the Act. It is clear that by the time show cause notice was issued the contributions had already been deposited by the employer (though undoubtedly they were deposited later than as required under the Act and the Scheme). Notwithstanding that arrears stood deposited the Court upheld the order of the Commissioner imposing damages u/s 14B of the Act. This necessarily implies the rejection of the argument that the deposit of contributions before the issue of show cause, washes away the liability u/s 14B of the Act, because on no other premise can the judgment of the Supreme Court, upholding the imposition of damages even after the arrears had been deposited, be explained."

15. Learned counsel for the Petitioner also relied upon *The Murarka Paint & varnish Works Ltd. vs. Union of India* 1976 Lab IC 1453 to feebly submit that the imposition of damages was arbitrary. There was no challenge to the percentages involved; the challenge was with reference to the fact that there was a delay on the part of the Respondent in allotting a code number with the result that the Petitioner had to pay damages for two months of delayed demands, and if these two months are excluded, the overall quantum of damages will be proportionately reduced. The first aspect of this contention has already been dealt with above. The second part of the submission was raised in *Birla Cotton* and dealt with in extenso. The sum and substance of the conclusion of the Division Bench in this regard is that the RPFC acts on the basis of a circular. The purpose of the circular, as noted by the Division Bench was to give a broad and

general guidance to a large number of officers spread all over the country and, as a matter of fact, the circular has the sensible purpose of keeping the discretion within broad contours and is an attempt at devising uniformity in such proceedings while keeping the discretion unfettered.

16. A similar issue was raised in *Atlantic Engineering Services vs. Union of India* 1979 Lab IC 695. In that case, Division Bench of this Court held (in paragraph 8 of the Report) as follows:

"The learned counsel then questioned the determination of damages by the Government as arbitrary. He said that the very fact that a table has been prepared by the Government and it was sent to the petitioner with the show cause shows that the Government did not apply its mind and was mechanical in making the demand for damages. On the contrary, we are of the view that framing of the table of damages by the Government is a salutary measure for the guidance of the Officers of the Government who act under S. 14-B. Under the table the amount of damages is related to the delay in payment of the contributions. This method of determining damages is entirely reasonable and it shows that no officer acting under S. 14B can act arbitrarily, but must follow this reasonable guideline made by the Government. Further, this is only a guideline. It is not a determination. The actual decision as to what the damages should be in a particular case is made only after hearing the employer and assessing the particular facts of his case. This was done in the present case. The quantum of damages was, Therefore, reduced to 50% of the demand made at the time of the show cause notice. Reasons have been given why the contentions made by employer could not be accepted in full and why a partial relief for those reasons should be given namely by reducing the damages by 50%."

17. For all the reasons mentioned above, I am afraid it not possible to agree with learned counsel for the Petitioner. The writ petition requires dismissal and it is ordered accordingly. The bank guarantee furnished by the Petitioner for the amount in dispute should be encased forthwith. The Petitioner will be liable to pay and the Respondent is entitled to recover the disputed amount with interest @ 9% per annum from 22nd February, 1977, the date on which an interim order was made in favor of the Petitioner, till its recovery. The Respondent will be entitled to costs of Rs.5,000/-.