
(1964) 07 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 134 of 1962

Amin Chand and Sons

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1965 P&H 441

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : K.S. Thapar, for the Appellant; C.D. Dewan, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—The question which falls for determination is whether this Court can in the exercise of its extraordinary powers under Articles 228 and 227 of the Constitution of India interfere with the discretion vesting in the first respondent, the State of Punjab, to levy damages on an employer u/s 14B of the Employees' Provident Funds Act, 1952, hereinafter, called the Act ?

2. The facts which are not disputable lie within a narrow compass and may briefly be set out. The petitioner-firm of Messrs. Amin Chand & Sons of Phillaur carry on the work of manufacturers of iron chaff cutting machines and during the course of their business have been employing a large number of workers. They have become liable under the provisions of the Act and the Scheme made thereunder (The Employees' Provident Fund Scheme, 1952) to deduct not only the employees' contribution towards provident fund but also their own. An employer is required under the Act to remit his own contribution to the Provident Fund together with what is called an administrative charge to the "Fund" which under Clause (h) of Section 2 of the Act is defined to mean "the provident fund established under the Scheme." This Fund at the relevant time was under the

control of Regional Provident Fund Commissioner, Punjab, at Ambala, It may be mentioned, though it is not relevant to the case, that the Fund is now at Chandigarh where the Office of the Regional Provident Fund Commissioner for Punjab and Himachal Pradesh has come to be located.

3. Under Para. 38 of the Employees' Provident Fund Scheme, 1952, an employer is required "before paying the member his wages in respect of any period, or part of period for which contributions are payable" to "deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge" and to pay to the Fund by separate bank drafts or cheques on account of contributions and administrative charge within fifteen days of the close of every month. The payment for the month of November, 1953, aggregating to a total of 614/50 and Rs. 18/44 nP. on account of contribution and administrative charges respectively was made on 17th of December, 1953. This was two days after the payment was due. Likewise, the payment in respect of December, 1953, was made on 21st of January, 1954, that of January, 1954 was made on 18th of February) 1954; of February, 1954, on 17th of March, 1954; of March 1954 on 17th of April, 1954; of June, 1954 on 16th of July, 1954; of July, 1954 on 17th of August, 1954; of February, 1956, on 20th of March, 1956; of April, 1957 on 16th of May, 1957; of January, 1958 on 17th of February 1958; and of August 1959 on 15th of September 1959.

4. The petitioner received a notice from the Regional Provident Fund Commissioner, Ambala, respondent 2, on 2nd of March, 1960, that defaults had been made in respect of the aforesaid payments mentioning the last payment to have been made on 15/20th of May, 1957. No reference in this notice is made to the last two payments made on 17th of February, 1958 and 15th of September, 1959. The petitioner was asked to show cause why damages should not be levied in pursuance of Section 14B of the Act which is to this effect:--

"Where an employer makes default in the payment of any contribution to the Fund.... the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears, as it may think fit to impose."

5. The position taken by the petitioner was that no arrears in respect of which such damages could be imposed had ever accrued and consequently there was no occasion for the levy of damages as proposed. Before the objections were actually submitted, the Regional Provident Fund Commissioner levied a sum of Rs. 1,258,96P. as damages in respect of contribution and administrative charges by the registered notice sent on 21st of October, 1960, (Annexure R. 1). It is against this imposition that the present petition is directed.

6. It is submitted by Mr. Thapar, for the petitioner, that the power to levy damages being discretionary, the petitioner was entitled to presume that the occasional delays of two to five days in transference of the amounts of the employer's contribution and the administrative charges had not been taken any

servious note of. If the respondents had expressed their intention to levy the damages further default would not have been repeated as the petitioner would not have been lulled into a sense of security. Mr. Thapar also contends that the contribution of the employer might well be understood to be payable in the following month and if that were so no delay had ever taken place.

7. There is no force in the second submission of the learned counsel. The Scheme makes it imperative for the employer to make his contribution simultaneously with that of the employees. Reference may be made to paras. 29 and 30 of the Scheme. In para. 30 the employer's liability to make the payment in the first instance of both the contribution by himself and also on behalf of the member is made mandatory. This leaves no room for the contention of Mr. Thapar that the contribution of the employer could have been made by the end of the following month. Para-graph 38 says that the payment has to be made by the 15th of every month and it means that the contribution of the employer together with administrative charges should have been transferred to the Fund as defined in the Act on the 15th of every month.

8. So far as the other point is concerned, it is to be observed that a letter from the Regional Provident Fund Commissioner sent to the petitioner on 5th of March, 1956 (Annexure E) shows that no mention is made about the defaults which had occurred two years earlier, although the letter makes a mention of the inspection of the factory by the Provident Fund Inspector. The petitioner was required in this letter to submit supplementary return in respect of seven members and nothing was ever said about the late remittance of the contributions under para. 38 of the Scheme. The payments had to be made by cheques which were remitted by the petitioner from Phillaur to Ambala. The delay never exceeded five days and in most cases it was of one or two days. The petitioner in such a situation might well have thought that the first respondent had decided not to exercise its discretion to levy the penalty. It must be observed that Section 14B which has been reproduced above makes mention specifically of the fact that the appropriate Government may recover such damages as it may think fit to impose. Technically, the damages should have been levied immediately after the default.

If the State Government chose to wait for six years to levy these damages, the propriety of such a course might well be questioned especially when the delayed payments related in some cases to successive months. If the State Government had chosen to exercise its discretion to levy the penalty on the first default the petitioner might never have repeated the default or would have taken greater caution to see that the remittance was made at the latest on the 15th of every month. No doubt, the duty of the employer to make this payment on the 15th of every month is statutory, but as the power to levy damages is discretionary it also is a legitimate inference for any employer to make that if the delay of two or three days has been condoned in the past it will not be taken account of in the future. It is certainly not in consonance with the purpose and object of the Act to

choose a date six years after the default to exercise the power to levy damages in respect of all payments made after the scheduled lime. The purpose of Section 14B is as much reformative as punitive. A defaulting employer, in my opinion, is given a chance to amend himself when a penalty up to 25 per cent becomes leviable. The exercise of discretion in the present case, in my opinion, is certainly arbitrary and has resulted in the operation of law very harshly.

9. For these reasons, I would allow this petition and holding that the order Exhibit Rule 1 has been passed in excess of the powers vested in the first respondent would direct that it be quashed. As the petitioner has been in default on some occasions, I would make no order as to costs of this petition.