
(1999) 09 DEL CK 0038

In the Delhi High Court

Case No : CIVIL WRIT PETITION NO. 2899/85

Arvind Construction Co. Pvt. Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Citation : (1999) 6 AD 29 : (2000) 1 LLJ 1193

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. Arvind Shah, for the Appellant; Jyoti Singh, for the Respondent

Judgement

C.M. Nayar, J.—This petition is directed against the respondents for issuance of a writ of certiorari for quashing the Order dated September 19, 1985 passed by the Regional Provident Fund Commissioner, Delhi u/s 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act).

2. The petitioner is a construction company engaged in the activities of undertaking building and construction contracts and carries out its construction work at various places, such as, Bokaro, Singrauli, Nirsra, Delhi and Calcutta. By virtue of Notification dated October 22, 1980 construction industries were covered under the provisions of the Act. The Notification in this regard came into effect from October 31, 1980 and is filed as Annexure "A" to the writ petition. On March 31, 1981 the Regional Provident Fund Commissioner directed the petitioner to furnish the required information within seven days in order to examine as to whether the petitioner was covered under the provisions of the Act and the scheme framed thereunder. The petitioner through its Managing Director requested the Regional Provident Fund Commissioner vide his letter dated April 10, 1981 to give him three month's time for supplying him all the relevant information. The said information was stated to be supplied and by letter dated September 25, 1981 the petitioner requested respondent No.1 to allot an account number in order to enable the petitioner to deposit the provident fund

contribution pending the approval of the Provident Fund Trust Deed. This communication reads as follows:

"The Regional Provident Fund Commissioner,
60, Nehru Place,
New Delhi.

Dear Sir,

Kind Attention Mrs. Kathuria.

Sub: Applicability of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme framed thereunder.

Kindly refer your No. PFRC(98)/6390/24535 dated 31.3.1981. We have submitted our reply under our letter No. ACCP/PF dated 1.9.1981.

We enclose herewith a list of the members of our staff who are eligible to contribute to the Provident Fund.

We have created a trust of our own and framed rules. We have already sent them for favor of kind approval and granting us exemption.

We shall be grateful if in the meanwhile a number is allotted to us to take further action in the matter to enable us to deposit the Provident Fund contributions.

We shall feel highly obliged for early action in the matter.

Thanking you,

Yours faithfully,

For ARVIND CONSTRUCTION CO. (P) LTD.

sd/-

(B.P. Jain)

Managing Director"

3. The petitioner was allotted code No. D.L. 5732 and averments with regard to the same and deposit of contributions are made in paragraphs 7, 8 and 9 of the writ petition which read as follows:

"7. That the respondent No.1 allotted code No. D.L. 5732 and informed the petitioner to deposit the employees and as well as employer's contributions in employees Provident A/c No. I the administrative Charges in Employees Account No. II and Contribution in Family Pension Scheme 1971 in Family Pension A/c No. 10 within 15 days of the close of every month. The petitioner was also directed to submit the various returns under the Employees Provident Fund Scheme 1952 & Employees Family Pension Scheme, 1971 within 25 days of the close of every month. The petitioner was directed under the said letter dated 31.10.1981 to

make full compliance of the provisions of the Act and the scheme as stated above within 15 days of the receipt of the said Communication.

8. That immediately after receipt of the letter the petitioner deposited all its contributions without making any further delay. The contribution for January, 1982 and February, 1982 was made on 24.2.1982 and 16.4.1982 respectively. The petitioner also by his letter dated 20th March, 1982 informed the respondent No.1 that there is no late deposit and the petitioner has deposited the entire amount within two months.

9. That the petitioner was regularly depositing the necessary contributions under the Act from 1982 to 1985. No complaint whatsoever was made by the respondent No.1 nor there was any delay in depositing the contribution. The Inspectors of the Department who regularly visited the premises and inspected the books of the petitioner have expressed their satisfaction over the compliance of the petitioner with the provisions of the Act and the scheme framed there under "

4. Respondent No. 1 issued notice to the petitioner to show cause on February 4, 1985 as to why damages should not be imposed and recovered as the petitioner allegedly defaulted in paying the employees Provident Fund contribution, family pensions contribution and administration charges in the respective accounts within the due dates for the months November, 1980 to May, 1983. The said respondent also directed the petitioner to appear before him on March 11, 1985 with all necessary documents. The petitioner submitted a reply to the show cause on February 20, 1985 and informed respondent No.1 that the payments relating to Provident Fund Contributions from November, 1980 to May, 1983 were made as follows:

Contribution relating to Date of encashment Date of deposit of the cheque of the cheque
November 1980 to Feb. 1981 23.12.1981 19.12.1981 March 1981 to Sept. 1981 14.1.1982 12.1.1982 Oct. 1981 to Dec. 1981 17.2.1982 15.2.1982
January, 1982 26.2.1982 24.2.1982 February, 1982 20.4.1982 16.4.1982
March, 1983 22.4.1983 20.4.1983 May, 1983 18.6.1983 15.6.1983

5. On the above basis the petitioner further submitted that there was no default in depositing the Provident Fund contribution as the code number was allotted only on October 31, 1981 in spite of the request of the petitioner in September, 1981. It was also contended that the delay in initiating the proceedings also vitiate the recovery and assessment of damages and Section 14-B of the Act.

6. The learned counsel for the petitioner has submitted that respondent No. 2 has erred in law in passing the impugned order dated September 19, 1985 as there was no inordinate and intentional delay in deposit of the contributions by the petitioner. Reliance is placed on the judgment reported in The South India Flour Mills Pvt. Ltd. Vs. The Regional Provident Fund Commissioner 1978 Lab. I.C. 1187 in which the scope of the power u/s 14-B of the Act is considered in paragraph 6 which read as follows:

"Learned Counsel for the respondent however, would urge that determined action is called for whenever there is a belated payment since there is every possibility of the moneys belonging to the employees which have been entrusted to the employer might be utilised by the employer. No doubt, one should welcome the anxiety of the authority to enforce the provisions of the Act and thereby enrich the coffers of the State, but the anxiety does not mean, ride the rough shod over the provisions of the Act. Nor does it mean a discretion untrammelled. It is a discretion controlled or exercisable on an application of the mind. It is mere over-anxiety or over-zealousness on the part of the officers which has led to this unwholesome orders. Neither has the authority understood the scope of the provisions, nor has he applied his mind to the case. Along with this writ petition, I have heard arguments concerning few other cases also. In not one case I could hold that the authority had exercised his mind in the manner he is required to do under the section. I was even somewhat surprised when my attention was drawn to the show cause notice issued, which was nothing more than a printed form stating that the damages at a certain percentage for one month, two months, three months etc., would be levied. How wooden has that exercise been is what requires to be noted. From any point of view, I am unable to hold that the impugned order could be sustained. Accordingly it is quashed. The writ petition will stand allowed with costs and the matter will be remitted to the respondent for fresh determination in the light of the observations made above. Counsel's fee Rs.150".

7. Reliance is also placed on the judgment of the Karnataka High Court as reported in Karnataka Agro Industries Corporation Ltd. Bangalore Vs. The Regional Provident Fund Commissioner, Karnataka, Bangalore 1979 Lab. I.C. 72 to reiterate that it is the duty of the Authority to determine reasonable amount and application of mind to facts and circumstances of the case is necessary. Paragraphs 4 and 5 of this judgment read as under:

"4. From the wordings of the above section it is clear that what the section prescribes is the maximum amount that can be recovered from the defaulting employers. Therefore, in the nature of things it is necessary for the authority to come to a conclusion as to the reasonable amount that should be recovered by way of damages from the employers having regard to all the facts and circumstances of the case. Interpreting the power of the authority u/s 14-B of the Act this court in the case of Fernades Vs. State of Mysore (1969) 2 Lab LJ 442: 1969 Lab IC 691 observed as follows :

"7. Section 14-B does not compel recovery of damages in each case in which there is a default nor does it specify the amount of damages which should be recovered, it confers on the appropriate Government the power not only to decide whether in the circumstances of the case any damages should be recovered from the employer and to further decide if it comes to the conclusion that such recovery should be made, how much should be recovered from him. And when it reaches the conclusion that the case is one in which damages should

be recovered, the quantification of the damages should be made on the materials before it and having regard to all relevant circumstances and facts of that case."

9. The power created by Section 14-B is to determine the amount of those damages as Government may think fit to impose. The words may recover occurring in the concluding part of the section demonstrate that in a given case Government have the power, if the circumstances justify the conclusion, to decide against the recovery of any damages, and it is that power of which the State Government stood denuded by the prescription of rigid formula which in its opinion should settle all cases arising under that section. That formula also resulted in the abdication of the duty to consider the facts of the each case even with respect to the measure of damages . The words as it may think fit to impose clearly display the legislative intent that in each case there should be an application of the mind of the appropriate Government to its relevant features which should guide the conclusion both on the question whether any damages should be demanded and of their quantum. The formation of their quantum. The formation of the opinion that the case is a fit one for the demand for payment of damages and of a particular sum of money as damages, is what Sec.14-B clearly insists upon, and it is plain that opinion has to be formed independently in case of each default to which Sec.14-B refers."

Therefore in the present case also it was obligatory for the respondent to have come to the conclusion as to what is the reasonable amount of penalty that should be recovered from the petitioner having regard to the genuine difficulties explained by the petitioner which only resulted in delayed remittance of the amounts.

5. The impugned order suffers from non application of the mind of the authority as required u/s 14-B of the Act as could be seen from para 9 of the said order. According to the said para, the petitioner is required to pay damages to the extent of 7-1/2 per cent or the amount of interest credited to the members account during that period in default whichever is higher. It is admitted that if penal damages are calculated on the basis of 7- 1/2 percent, the total amount payable by the petitioner comes to Rs. 8618.75P. If on the other hand the penal damages are calculated on the basis of loss of interest during the period of default, it would come to a little less than Rs.1,000/-. In other words the impugned order made by the respondent imposes that the petitioner should pay a sum of Rs. 8,613.75 p. or about Rs.1,000/- whichever is higher. If the loss caused on account of delay made by the petitioner comes to Rs. 1000/- why more than Rs. 8,000 should be recovered from the petitioner as penal damages, is not at all supported by any reason given by the respondent. Therefore, the impugned order suffers from patent error of law and the same is liable to be quashed."

8. The Regional Provident Fund Commissioner in the present case has carefully considered the assessment of damages as will be indicated from reading of the following paragraph of the order:

"I have considered the submissions made by establishment. The establishment has failed to justify the late deposits. It is well settled that provisions of the Act apply at its own face and are not dependent upon the allotment of code number by the Regional Provident Fund Commissioner. The dues for May 1983 were paid timely, Therefore, not liable for damages. The dues for the remaining months are liable for damages, but keeping in view the circumstances, it will be too harsh to levy the damages equal to the amount in arrears as provided u/s 14-B of the Employees' Provident Funds and Misc. Provisions Act, 1952. In my opinion it will meet the ends of justice if damages are levied at the rates mentioned in the enclosed statement."

9. The Supreme Court in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, has rejected the plea that Section 14-B of the Act confers unguided, uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such damages as he may think fit as violative of Article 14 of the Constitution of India. Paragraphs 13 and 14 of the judgment as delivered by A.P. Sen, J. read as follows:

"13. The contention that Section 14-B confers unguided and controlled discretion upon the Regional Provident Fund Commissioner to impose such damages as he may think fit is, Therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages u/s 14-B is a quasijudicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute. Having regard to the punitive nature of the power exercisable u/s 14-B and the consequences that ensue there from, an order u/s 14-B must be a 'speaking order' containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word 'damages' the liability for which in Section 14-B arises on the 'making of default'. While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz., the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word 'damages' in Section 14-B lays down sufficient guideline for him to levy damages.

14. Learned counsel for the petitioners, however, contends that in the instant case, the period of arrears varies from less than one month to more than 12 months and, Therefore, the imposition of damages at the flat rate of hundred per cent for all the defaults irrespective of their duration, is not only capricious but arbitrary. The submission is that if the intention of the legislature was to make good the loss caused by default of an employer, there could be no rational basis to quantify the damages at hundred per cent in case of default for a period less than one month and those for a period more than 12 months. It is urged that the fixation of upper limit at hundred per cent is no guideline. If the object of the

legislation is to be achieved, the guidelines must specify a uniform method to quantify damages after considering all essentials like loss or injury sustained, the circumstances under which the default occurred, negligence, if any, etc. It is said that the damages u/s 14-B, which is the pecuniary reparation due, must be correlated to all these factors. In support of his contention, he drew our attention to Section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1958, which uses the words "damages not exceeding twenty-five per cent" like Section 14-B of the Act, and also to a tabular chart provided under that Act itself showing that the amount of damages was correlated to the period of arrears. We regret, we cannot appreciate this line of reasoning, Section 10-F of the Act of 1958 came up for consideration before this Court in Commissioner of Coal Mines Provident Fund, Dhanbad Vs. J.P. Lalla. This Court observed, firstly, that the determination of damages is not "an inflexible application of a rigid formula : and secondly, the words "as it may think fit to impose" show that the authority is required to apply its mind to the facts and circumstances of the case. The contention that in the absence of any guidelines for the quantification of damages, Section 14-B is violative of Article 14 of the Constitution, must, Therefore, fail."

10. The concept of damages as explained by V.R. Krishna Iyer, J. is stated in paragraph 38 which may be reproduced as under :

"What do we mean by damages ? The expression 'damages' is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrong doing of another, (b) reparation awarded to the injured through legal remedies and, (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or 'punitory' damages for 'vindictive' damages, and (vulgarly) "smart-money". It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the court finds

the Commissioner traveling beyond, the blow will fall. Section 14-B is good for these reasons."

11. The reading of the impugned order along with Annexures as annexed thereto will clearly show that respondent No. 1 has clearly applied his mind to the facts and circumstances of the case and awarded damages which were considered reasonable and proper. The respondent Regional Provident Fund Commissioner was in law entitled to levy penalty and damages not exceeding the amounts of arrears as may be specified in the scheme in accordance with the provisions of Section 14-B of the Act. The said Officer, however, chose to levy damages by carefully analysing the delay in each case as will be indicative from reading of the statements filed with the impugned order. He has considered the matter by due application of mind and by considering the facts for each levy. In *Jagdish Prasad Vs. Smt. Angoori Devi*, it has been held that "The jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a court of appeal. That necessarily means that the findings of fact arrived at by the inferior court or Tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, however, grave it may appear to be."

12. This Court in a judgment reported as *Indian Refrigeration Industries, New Delhi and another Vs. Presiding Officer, Labour Court and another*, 1975 Lab. I.C. 52 has clearly held that no interference can be called for under Article 226 of the Constitution of India in a finding which was based on proper appreciation of evidence and did not suffer from any legal infirmity. As the order passed in the present case also does not suffer from any legal infirmity and is based on proper appreciation of evidence, Therefore, it cannot be interfered with by this Court in exercise of its writ jurisdiction.

13. For the aforesaid reasons, the present petition is dismissed. Rule is discharged. There will be no order as to costs.