
(1979) 04 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 865 of 1978

Atlantic Engineering Services (P) Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-04-1979

Acts Referred:

Citation : (1979) 39 FLR 176 : (1979) 1 ILR Delhi 401 : (1979) ILR Delhi 402 : (1979) 2 LLJ 136

Hon'ble Judges : V.S. Deshpande, C.J.;N.N. Goswamy, J

Bench : Division Bench

Advocate : G.S. Vohra, M.S. Vohra and R.C. Chawla, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) The decision of this case depends mainly on the construction of section 14-B of the Employees' Provident Funds and Family Pension Fund Act, 1952. Section 14-B is as follows :

"WHEREan employer makes default in the payment of any contribution to the Fund the Family 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) of section 17 or in the payment of any charges payable under any other provision of this Act or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears as it may think fit to impose. Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard."

(2) Respondent No. 2, the Regional Provident Fund Commissioner, Delhi, sent a show cause notice at annexure B of the writ petition, dated 17th October, 1977, accompanied by a chart at annexure C, asking the petitioner to show cause why

damages as per the chart at annexure C should not be levied and recovered from the petitioner employer in view of the defaults in the payments of contributions to the employees' provident funds made by the employer from time to time. It was stated therein that if no reply would be received within time, it would be considered that the employer had no Explanation to offer about the proposed levy of damages and then action would be taken to impose the damages at the rates specified in the chart at annexure C. The petitioner employer gave a reply to the said show cause notice explaining the reasons why the payments were not made by the petitioner in time. After considering these reasons indicating the facts of this particular case, respondent No. 2 passed a detailed order on 14th June, 1978, a copy of which is at annexure A. In this order the reasons given by the employer were considered and respondent No. 2 gave his own reasons why the reasons given by the employer could not be accepted in full, but at the same time holding that these reasons were such as to make it just that damages should be levied only at half rates that were proposed to be levied in the show cause notice accompanied by the chart at annexure C.

(3) The present writ petition challenges the validity of the order imposing the damages on the following grounds. (1) It is argued first that section 14B is unconstitutional inasmuch as it gives uncanalised and uncontrolled discretion to the Government to impose damages and as such it contravenes Article 14 of the Constitution. We are unable to agree to this contention. We understand section 14-B to give to the Government discretion to impose damages as it necessary for the legislature to lay down the standards for the determination of the damages in the statute itself. The reason is that determination of damages is a quasi-judicial function or a judicial function and just as under the law of contract and the law of torts the courts are not guided as to what damages should be fixed under what circumstances by any pre-conceived formula but are left to their discretion to determine the damages on the facts of each case. Similarly, section 14-B gives the same function and the same discretion to the Government. No fault can be found with it. It is only if in actually applying section 14-B the Government acts without considering the facts of the particular case and without attempting to determine the proper quantum of damages that the particular order may be assailed as arbitrary. But section 14-B itself cannot be regarded as contravening Article 14. In *The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons*, the Supreme Court was dealing with section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, which is in pari materia with section 14-B of the Act before us. The court did not express any doubt as to the validity of the statutory provision before it and laid down the guidelines as to how the schedule of damages also laid down by the administrative authorities in that case should be worked and how damages in each case should be determined after hearing the party on the facts of a particular case. To the same effect is a Division Bench decision in *F. Fernandes and others v. State of Mysore and others*, Air 1969 Mys 196. (2) The learned counsel then argued that the word "damages" has the same meaning as it has in

the law of torts or contract and that no damages can be levied u/s 14-B unless and until it was proved that some loss was caused to the employees" provident fund. This contention is also unacceptable. We take note of the language of section 14-B in which the following words are important: "Where an employer makes default in the payment of any contribution to the fund....." The cause of action thus is the default made by the employer. It is for this default that damages are to be imposed by the Government. This takes the place of legal injury or damage which may be the cause of action in a case arising under the law of torts or contract. The default in itself gives the cause of action whether or not such a default causes any loss or not. This is the clear intention of section 14-B and we would not be justified in imposing any further requirement in section 14-B that in addition to the default there must be some loss also.

(4) Further the words that matter are as follows : "the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears as it may think fit to impose". The damages cannot exceed the amount of arrears. The ceiling on the quantum is thus 100 per cent. The damages are to be imposed. The word "imposed" is more akin to the imposition of penalty rather than the determination of damages as is done in a case under the contract or torts. The reason is that in section 14-B the default in payment itself is sufficient to enable the Government to recover damages from the employer without proof of loss since such loss to the fund must have been implied by the legislature when this provision was made. That may be the reason why the word "damages" instead of the word "penalty" was used in section 14-B. It is for the legislature to give meaning to the word "damages" as it may think fit. In the context of the scheme of the Act as a whole, the use of the word "damages" in section 14-B cannot be said to be in the same sense in which the word is used in the law of contract or torts. Even if it is assumed that it was so used section 14-B cannot be given effect to unless some loss is presumed by the mere fact of the delay in making payment which is the default on the part of the employer. The learned counsel relied on two single Bench decisions, namely. *The South Indian Flour Mills Pvt. Ltd. v. The Regional Provident Fund Commissioner*, 1978 Lab. I.C. 1187 and *the Murarka Paint & Varnish Works Ltd. and another v. Union of India and others*, 1976 Lab. I.C. 1453, for the observations made therein that the use of the word "damages" implies that damages are recoverable for loss which is suffered and not otherwise. There may be two answers to this argument. Firstly, that the loss is presumed by the legislature when the employer makes default in payment of contributions. The quantum of the loss only has to be determined by the Government before damages are levied and recovered. Secondly, the word "damages" need not be given the same meaning as it has in the law of contract and torts and no loss need be proved. In fact, since it is presumed in law and, Therefore, no evidence of loss is necessary before the order of levy of damages is passed, the use of the word "impose" would show that damages u/s 14-B are somewhere between the damages in law of torts and contract and a penalty in

some of the tax laws such as the Income Tax Act. It is entirely open to the legislature to give a special meaning to the damages as we have observed above. (3) 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 u/s 14-B. Under the table the amount of damages is related to the delay in payment of the contribution. This method of determining damages is entirely reasonable and it shows that no officer acting u/s 14-B can act arbitrarily, but must follow this reasonable guideline made by the Government. Further, this is only a guideline. I 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 per cent 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 reason should be given namely by reducing the damages by 50 per cent. We express our appreciation for the reasoned order passed by the Regional Provident Fund Commissioner at annexure A, which is as good as any judicial order could have been.

(5) For the above reasons, the writ petition has no merit and. is dismissed in liming.