(1993) 09 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No. 7 of 1992

Bharat Heavy Electrical Ltd.	APPELLANT
Vs	
Regional Provident Fund Commissioner, Indore, Madhya Pradesh	RESPONDENT

Date of Decision : 02-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17(3A), 6C

Citation : AIR 1994 SC 1175 : (1994) JLJ 464 : (1994) 2 LLJ 409 : (1994) 2 SCC 723 Supp

Hon'ble Judges : Yogeshwar Dayal, J;P. B. Sawant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant-company filed a writ petition before the High Court challenging the order dated 7th October, 1982, passed by the Regional Provident Fund Commissioner (the ''Commissioner'') levying damages of Rs. 1,01,089.50 u/s 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'') for delay in payment of the inspection charges payable u/s 17(3-A)(a) of the Act.

2. The Employees Deposit Linked Insurance Scheme, 1976 (''the Scheme'') framed u/s 6C of the Act came into effect from 1st August, 1976. On 13th September, 1976, the appellant-company made an application to the Central Government u/s 17 of the Act for exemption of their establishment from the said Scheme. Eventually, the Central Government granted the exemption by its Notification dated 10th December, 1982. The Notification stated that the exemption was granted for 3 years. The Notification did not state as to from which date the exemption was granted and from which date, therefore, the period of 3 years was to be calculated.

3. Pending the application before the Central Government, the appellant-company had filed an application before the Commissioner under para 28(7) of the Scheme. The Commissioner by his order dated 30th April, 1981 granted the exemption from 1st August, 1976.

4. It appears that during the period when the said applications before the Central Government and the Regional Provident Fund Commissioner were pending for exemption and for the interim exemption respectively, the appellant-company paid all the inspection charges which were due up to February, 1981, by 3rd April, 1981. On 6th May, 1982, the Commissioner issued a show cause notice to the appellant-company demanding from it the Employees'' Provident Fund Contributions/Family Pension Fund contributions/Administrative Charges/ Inspection charges/Employees Deposit Linked Insurance Fund Contribution for the periods August, 1976 to April, 1979, June, 1979 to September, 1979 and September, 1979 to February, 1981. As per Annexure ''A'' to the said notice, the total amount so demanded was Rs. 1,50,484/-. Subsequently, on the 7th October, 1982, the final order was passed levying damages for the delay in payment of the Inspection charges amounting to Rs. 1,01,089.50. It is this order which was challenged by the appellant-Company by a writ petition before the High Court. The High Court by the order impugned in the present appeal, dismissed the writ petition holding that the appellant-company was liable to pay both administrative charges as well as inspection charges for the period in question and since there was a delay in payment of the said charges, the damages levied were valid. The High Court further held that since the damages were levied under the discretionary powers of the Commissioner, the Court was not called upon to interfere with the same while exercising its jurisdiction under Article 226 of the Constitution.

5. On the admitted matrix of the facts, it is clear that since the appellant-company was granted exemption by the Commissioner with effect from 1st August, 1976, the appellant-company was not liable to pay the administrative charges. The said charges were leviable under paragraph 8 of the Scheme in connection with the administration of the fund only if the fund had been handed over by the appellant-company to the Commissioner in case the exemption was not granted. Hence, the only charges that the appellant-company was liable to pay were the inspection charges u/s 17(3-A)(a) of the Act since such charges become payable when the exemption is granted. Further, on the admitted facts that the appellant-company had paid all the inspection charges due up to February, 1981, by 3rd April, 1981, i.e., even before the order dated 30th April, 1981 was passed by the Commissioner granting the temporary exemption as well as before the final order dated 10th December, 1982 passed by the Central Government granting exemption u/s 17, there was no delay in payment of the inspection charges. In fact, the first notice calling upon the appellant-company to show cause as to why they should not be saddled with the inspection charges among others was issued to them only on 6th May, 1982. In the circumstances, there was no delay in the payment of the inspection charges. Hence, no damages

could be levied. In the circumstances, we are of the view that the High Court was in error in dismissing the petition.

6. The appeal is, therefore, allowed and the order dated 7th October, 1982 passed by the Commissioner is quashed. There will, however, be no order as to costs.

7.In view of the fact that we have set aside the order dt. 7th Oct. 1982 levying the damages in question which have been paid by the appellant-company, the respondent-Regional Provident Fund Commissioner will refund the amount within three months from today.