
(1992) 06 KL CK 0053
In the High Court Of Kerala
Case No : O.P. No. 8151 of 1988

Cannanore Shop	Vs	APPELLANT
Regional P.F. Commissioner		RESPONDENT

Date of Decision : 05-06-1992

Acts Referred:

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

Citation : (1992) 65 FLR 714 : (1995) 3 LLJ 134

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : G. Sivarajan, for the Appellant; T.P.M. Ibrahim Khan, for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—Ext. P-1 is the order of the 1st respondent imposing damages u/s 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Petitioner delayed payment of contribution to the Fund for one month and 7 days in the month of June and 7 days in the month of July in the year 1985. Where an employer makes default in payment of contribution to the Fund, damages not exceeding the amount of arrears can be recovered. The words "makes default" is synonymous with failure to pay. With a view to impose damages for the delay in payment of provident fund contribution required under the Act, notice u/s 14-B was issued to the petitioner. Petitioner submitted a reply stating that he is a person making payment regularly and in the month of June and July, he failed to make the payment in time only because of the absence of the accounts clerk who is dealing with the provident fund matter. Personal hearing has been given to the petitioner thereafter when he reiterated the above stand. But by Ext.-1 penalty was imposed at 80%. There is no reason mentioned in Ext. 1 why this quantum is fixed. It is only stated that exemplary damages are inflicted on the establishment to ensure such defaults are not repeated in future and the dues are deposited, in time. u/s 14-B of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952, penalty can be imposed. The authority has to consider relevant facts. Whether the employer is in the habit of making payment regularly, nature, number and frequency of the defaults, the period of the delay involved, the amounts involved and all other considerations have to be taken into account. The authority is required to apply its mind on the facts and circumstances of the case. But there was no consideration of the same in Ext. P-1. Of course an attempt has been made by counter-affidavit to supply the reason. The reason given in counter-affidavit cannot be read into in Ext. P-1. In view of the decisions of the Supreme Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. 1978 SC 851 and in W.P. Ponnuswami v. Returning Officer, Numakkal and Ors., 1952 SC 64 it has to be held that the reasons mentioned in the order cannot be allowed to be supplemented by fresh reasons by way of affidavit. If that is permitted the order which is invalid at the admission stage for lack of reasons will become valid at the stage of final hearing. The Division Bench of this Court in the decision in State and Anr. v. P. Balakrishnan 1992 (1) CLR 545 applied the principle laid down in Mohinder Singh Gill's case (supra) and refused to rely on affidavit giving reasons for validating the Government order, when the order or file did not disclose reason. Ext. P 1 is not a considered order advertent to relevant facts. Ext. P-1 is, therefore, quashed. This will not prevent the first respondent from taking fresh proceedings if they are so inclined. Ext. P-4 is a revenue recovery proceeding initiated against, the petitioner pursuant to Ext. P-1. Since I have quashed Ext. P-1, Ext. P-4 will not survive and there will not be any revenue recovery proceeding pursuant to Ext. P-1.