
(1987) 02 OHC CK 0007

In the Orissa High Court

Case No : O.J.C. No's. 2618 of 1981, 990, 1144, 1406, 2246, 2247 of 1982, 1051, 1052 of 1983, 2464, 2465, 2091, 1713, 1158, 1495, 2139, 157 of 1984, 2153, 833, 291, 381, 382, 555, 411, 1822, 534, 1635, 3043, 1014, 2055 of 1985, 52 and 945 of 1986

Executive Engineer, Orissa State Electricity Board	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

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

Citation : (1987) 64 CLT 98

Hon'ble Judges : H.L. Agrawal, C.J.; P.C. Misra, J

Bench : Division Bench

Advocate : G. Rath and B.K. Nayak, for the Appellant; K.C. Mohanty and S.S. Mohanty, for the Respondent

Judgement

H.L. Agrawal, C.J.—This batch of 31 cases, all by the Executive Engineers of different Division of the Orissa State Electricity Board, - are directed against the orders of the Regional Provident Fund Commissioner, Orissa. They have been heard together and are being disposed of hereby.

2. In all these cases, the Regional Provident Fund Commissioner, O. P. No. 2 has imposed damages on the Petitioner under different heads exercising powers u/s 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the "Act") on account of the defaults committed by them in payment of contributions to the fund.

The damages impose on the Petitioners in all the cases if taken together, may be in the neighbourhood of a crore of rupees.

3. The only point on which the impugned orders in all these cases were assailed by Mr. G. Rath, learned Counsel for the Petitioners was that the assessment of damages was wholly arbitrary, non-speaking and without application of mind. It is not disputed that the payments were made by the Petitioners beyond the

prescribed period of 15 days provided under the Scheme.

The copy of the impugned order levying damages on the Petitioners is Annexure 2 in each of these cases.

4. In order to bring home his point, Mr. Rath referred to the details of the damages attached to the impugned orders. To illustrate the point, let us see some of the items in the chart appended to the impugned order in O.J.C. No. 833 of 1985. In this case, the Regional Provident Fund Commissioner has assessed the damages @ 50 per cent for each default, without any variation for the deposits relating to the months of March, 1978 to December, 1981. During this period, the period of delay varies from 4 days to 3 months 21 days. Similar is the position in various other cases.

5. Learned Counsel for the Petitioners has prepared a synopsis for the sake of brevity to highlight his point, and I may quote some of the instances from the said synopsis.

Sl. No.

O.J.C. Period of delay

Rate of damages

No. assessed

1.

2139/84

27 days

25;

2.

2464/84

2 months 29 days

10;

8 months 14 days

100;

3.

555/85 15 days

100; 3 months 25 days

100;

4.

411/85

17 days

100;

3 months 10 days

1005;

5.

1822/

85 One month 1 day

20;

14 days

20;

6.

990/82

41 months 7 days

100;

7.

1014/85

14 days

100;

9 days

100;

3 months 27 days

100;

I do not think it necessary to multiply the instances.

6. Yet another point: was urged by the learned Counsel for the Petitioners that actions were taken several years after the default and that by itself was a mitigating circumstances as held in the case of M/s. S. H. Salve Kadam and Co. Nipani and Ors. v. The Regional Provident Fund Commissioner, Bangalore and Anr. 1981 Lab. I. C. 568.

7. The Supreme Court also in the case of Organa Chemical Industries and Anr. v. Union of India and Ors. AIR 1979 S.C. 1803, while considering the power u/s 14.B of the Act and holding that- the power was not unguided, observed that the

order u/s 14-B must be a "speaking order" containing the reasons in support of it and that the Regional Provident Fund Commissioner has not only to apply his mind to the requirements of Section 14.B, but is cast with the duty of making a "speaking order" after conforming to the rules of natural justice and that it should not be penal in nature and the imposition of damages u/s 14-B is to provide a reparation for the amount of loss suffered by the employees.

8. When it was contended by -the learned Counsel for the opposite party that the matter should be finally disposed of by this Court itself instead of remanding it to opposite party No. 2 which would cause further delay, we had given some suggestions keeping in mind that in any case there is bound to be some guess-work and imagination by the authority in the very nature of things, and that there cannot be a rigid or sliding formula for imposing the damages. But he did not agree.

9. Be that as it may on examining the facts of the cases we are satisfied that the rates of damages imposed are irrational and at random having been imposed without proper application of mind to each default which would be manifest from the illustrations given above. .

10. I would accordingly quash the impugned orders passed by opposite party No. 2 in Annexure-2 in each of the cases imposing damages on the Petitioners and remit back the matter to him for reconsideration and its disposal in accordance with law.

In the circumstances, I shall make no order for costs.

P.C. Misra, J.

11. I agree.