

(1969) 07 KL CK 0009
In the High Court Of Kerala

Francis (K.J.) (Proprietor, Francis Tile Works) and Another	APPELLANT
Vs	
Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 16-07-1969

Acts Referred:

Constitution of India, 1950 — Article 14
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 15, 17

Citation : (1970) 1 LLJ 118

Hon'ble Judges : V.P. Gopalan Nambiyar, J; V. Balakrishna Eradi, J

Bench : Division Bench

Judgement

1. These two writ petitions raise common questions relating to the validity of Section 14B of the Employees' Provident Funds Act, 1952 (hereinafter referred to as the Act), the nature of the power conferred by the said section and the procedure to be followed by the appropriate Government in exercising such power and hence they have been heard together. The petitioner in Original Petition No. 721 of 1967 is the proprietor of a tile factory in Karuvannoor, Trichur. Original Petition No. 3216 of 1967 has been preferred by the managing director of a private limited company in Kottayam engaged in the business of operating motor transport service. Both these industrial establishments are governed by the provisions of the Act and the scheme framed thereunder.

2. On the ground that there was delay on the part of the petitioners in making remittances of provident fund contributions and administrative charges, the Government of Kerala levied damages against them and directed the Regional Provident Fund Commissioner to take steps to recover the said damages from the petitioners as per the impugned orders produced as Ex. P. 1 in each case. In the case of the petitioner in Original Petition No. 721 of 1967, the order passed by the Government is dated 27 January 1967 and the imposition of damages is in respect of the delay said to have been committed by the petitioner in making the remittances due for the months of February 1965 to May 1964 and July 1964 to January 1966; damages have been levied at a flat rate of 25 per cent of the

respective amounts of contributions and administrative charges covered by each of the delayed instalments.

3. In Original Petition No. 3216 of 1967, the impugned Government Order (Ex P. (1) is dated 30 August 1967 and the levy of damages is in respect of delay said to have been incurred in the matter of making remittances for the period June 1965 to August 1966. Here also the levy of damages is at a flat rate of 25 per cent of the amounts of the defaulted instalments.

4. The petitioners have challenged the validity of Section 14B of the Act on the ground that the said section confers a naked arbitrary and uncanalized power on the executive Government without enunciating any principles or rules of guidance as to how the said power should be exercised and that it suffers from the vice of excessive delegation and is also violative of Article 14 of the Constitution. It is also contended by the petitioners that, in any event the orders passed against them are grossly violative of the principles of natural justice since no notice had been issued to them by the State Government before passing the orders imposing: the heavy penalties in purported exercise of the powers conferred by Section 14B and the petitioners had not been afforded any opportunity whatever to show cause against the proposed action.

5. After hearing both sides, we have come to the conclusion that the petitioners are entitled to succeed on their second contention, namely, that the impugned orders are violative of the principles of natural justice and that the original petitions have to be allowed on this ground.

6. Section 14B of the Act reads:

where an employer makes default in the payment of any contribution to the 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 provisions of this Act or of any scheme or under any of the conditions specified u/s 17, the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears as it may think fit to impose.

The section empowers the State Government to levy damages against an employer who has committed default in payment of contributions to the fund or in the payment of any charges payable under the Act or the scheme, etc. A discretion is conferred on the Government to fix the quantum of damages at & sum not exceeding 25 per cent of the amount of arrears, which obviously has to be exercised on consideration of the relevant facts and circumstances relating to each case, one of the important factors to be so considered being whether the delay was wilful or could be explained as attributable to factors beyond the control of the employer. In our opinion, there cannot be the slightest doubt that in exercising the power conferred by the above section the appropriate Government is discharging a quasi-judicial function and is therefore legally obliged to comply with the basic essential norms of judicial procedure, namely, a

notice and hearing being given to the party likely to be affected. As pointed out by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, :

...The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially to implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

We have, therefore, to see whether the requirements of natural justice have been complied with by the State Government in passing the impugned orders.

7. It is not disputed before us by the Government Pleader appearing for the respondents that the State Government had not issued any notice to the petitioners before passing the orders levying damages against them. He however made a valiant attempt to sustain the legality of the impugned orders by contending that even though the State Government itself had not issued any notice to the petitioners before action was taken by it u/s 14B of the Act, the petitioners have been afforded an opportunity by the Regional Provident Fund Commissioner, Trivandrum, to make their representations as to why penalty should not be imposed against them under the said section and that therefore the requirements of natural justice had been substantially complied with. On this basis it was argued that inasmuch as there has been in effect and substance due compliance with the rule *audi alteram partem*, the Court should not set aside the impugned orders by applying any rigid or inflexible standards. The relevant portion of the notice relied on by the learned Government Pleader has been extracted in Para. 5 of the counter-affidavit filed by the Regional Provident Fund Commissioner in Original Petition No. 721 of 1987 and it runs thus:

It is seen that you have delayed remittance of employees' provident fund contributions and administrative charges in respect of your establishment payable in the months of February 1964 to January 1966. u/s 14B of the Employees' Provident Funds Act, damages at the rate up to 25 per cent of the total arrears are liable to be levied by the appropriate authority for the above default. Notice is hereby given to you to intimate this office within ten days of receipt of this communication, reasons if any, in duplicate why damages at the rates mentioned above should not be recommended to the Government of Kerala to be imposed on you in exercise of the powers vested in the Government u/s 14B of the Employees' Provident Funds Act. Any reasons given by you within the days specified will also be forwarded to the Government.

It is clear on a reading of the portion extracted that what the Regional Provident Fund Commissioner did was only to give the petitioners an opportunity to make their representations before him as to why he should not recommend to the Government that action should be taken against them u/s 14B of the Act for imposition of damages. It is no doubt stated therein that any representation received from the petitioners will also be forwarded to Government. We do not find it possible to treat this notice as one extending an opportunity to the petitioners to show cause before the Government as to why damages should not be levied against them by Government. To a specific question put to him by us the learned Government Pleader frankly stated that he has no case that this notice was issued by the Regional Provident Fund Commissioner on behalf of the Governor at their behest; in fact he admitted fairly that the Government was not at all seized of the matter at the time when the Regional Provident Fund Commissioner issued this notice and that it was only very much subsequent thereto that the matter reached the Government for the first time.

8. Section 14B of the Act vests the power of levying damages solely in the appropriate Government and in the exercise of this quasi-judicial function the Regional Provident Fund Commissioner has no statutory rule whatever. No provision in the Act or the scheme has been brought to our notice which invests the Regional Provident Fund Commissioner with any recommendatory function in the matter of the imposition of damages. The notice issued by the Regional Provident Fund Commissioner calling upon the petitioners to show cause as to why he should not recommend to the Government for the imposition of damages against them u/s 14B, cannot, therefore, be regarded as forming part of a proceeding u/s 14B of the Act. The petitioners were perfectly entitled to ignore the said notice. Under the statute a duty is cast on the Government to consider for itself independently all the relevant facts and circumstances before deciding to take action u/s 14B. The petitioners were, therefore, legitimately entitled to expect from Government a notice and a hearing before the Government took such decision.

9. The stand taken by the respondents in Para. 6 of the counter-affidavit is that because the petitioners had failed to submit any explanation in response to the notice issued to them by the Regional Provident Fund Commissioner, they were not entitled to any further notice or hearing before action was taken for imposing damages. This contention has been reiterated before us by the learned Government Pleader in the course of his arguments. We see no force in this argument. It is no doubt perfectly open to an authority exercising a quasi-Judicial function to cause the notice to the party likely to be affected to be issued on its behalf by any of its subordinates or any other agency authorized by it; but the notice must be one calling upon the party to show cause before the deciding authority itself as to why the proposed action should not be taken. In other words, by whomsoever the notice may be issued at the instance of the authority em-powered to act u/s 14B of the Act, the opportunity afforded to the party must be one to show cause before that very authority. This is so because it is an

elementary requirement of natural justice that the "hearing" must be by the authority who is invested with the power to decide.

10. In the present case, the notice relied on by the Government Pleader is one by which the petitioners were called upon to show cause before the Regional Provident Fund Commissioner as to why he should not make a recommendation to the Government that action should be taken against them for the imposition of damages. Admittedly this was not a notice issued on behalf of the Government or at their instance. The explanation was to be submitted not to the Government but for the consideration of the Regional Provident Fund Commissioner and the proposed action against which the petitioners were asked to show cause was not the imposition of penalty but a recommendation being made to the Government to take action in that regard. We have no hesitation to hold that the fact that such a notice was issued to the petitioners by the Regional Provident Fund Commissioner cannot be regarded as constituting sufficient compliance with the principles of natural justice on the part of the State Government in the matter of its discharging the Quasi-judicial function vested in it u/s 14B of the Act. The contention put forward by the learned Government Pleader is therefore without merit and cannot be accepted. From the above discussion it follows that the impugned orders have been passed without complying with the principles of natural justice and are therefore illegal and void.

11. Inasmuch as we have come to the conclusion that the impugned orders have to be quashed on the ground of violation of natural justice it has become unnecessary for us to consider the further point relating to the validity of Section 14B of the Act and that question is therefore left open.

12. The original petitions are allowed and Ex. P. 1 in each case will stand quashed. The parties will bear their respective costs.