
(1997) 02 MP CK 0027
In the Madhya Pradesh High Court
Case No : M.P. No. 309 of 1985

Gram Sewa Samiti

APPELLANT

Vs

Regional Commissioner, Employees' Provident Fund

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

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

Citation : (1997) 2 LLJ 1202

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Dubey, J.—By this petition, under Article 226 of the Constitution of India the petitioner seeks a writ of mandamus or any other suitable writ, direction or order for quashment of Annexure-P/5 dated January 4, 1985 order of levy of damages u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act"), for the period from May 1962 to February 1982 totalling Rs. 2,65,550.45.

2. Facts: The petitioner is a registered society under the Societies Registration Act, 1960 and also under the M.P. Public Trusts Act, 1951 established with donations for carrying out and functioning since 1948 with its head office at Raipur and branch office at many places in the State of M.P. Petitioner avers that the society has been established with the object of village service by providing employment to the rural labour and for getting their leisure hours utilized. In pursuance of the objectives of the society, it is running spinning and weaving centres in order to propagate the cult of village and cottage industries and also runs centres for demonstration and training. It is also running Amber Charkha Training School. Besides, with the same object, it runs centres of 2 saop making by hand, Tel Ghani and shoe making by manual labour, and has also established a saw mill and carpentry for manufacture of parts and implements for Amber Charkha and Kargha. It is asserted that all the activities of the society are carried

on without any profit motive, each activity of the petitioner society is subsidized by the Government. The members of the society are neither partners nor shareholders having any money; to be utilized for carrying out of the activities of the society.

3. Respondent vide letter No. PFC/ 1273/ HP/1095 dated June 30, 1967-Annexure R.1 applied the provisions of the Act and the Scheme on the petitioner's establishment w.e.f. May 1, 1962. The petitioner contended that the provisions of the Act are not applicable, the petitioner society had its own provident fund scheme in the establishment as there is no profit motive or trading and commercial activity so as to apply the provisions of the Act in view of the notification G.S.R. 346 dated March 13, 1962 in exercise of the powers conferred by clause (b) of Sub-section (3) of Section 1 of the Act. The petitioner challenged the notice u/s 7A of the Act by Miscellaneous Petition No. 240/69 wherein Division Bench of this Court stayed the proceedings for determination of money due from the petitioner under the provisions of the Act and Scheme. Writ petition was dismissed by the Division Bench on January 5, 1971 vide order Annexure-R-III holding that it is a trading and commercial establishment within the meaning of the notification as the petitioner-society manufactures commercial articles and sells them, it is an industry. The petitioner filed a Special Leave Petition, on grant of leave in Appeal (Civil) No. 1918/71 on August 10, 1971, while modifying the order dated June 8, 1971 the Supreme Court extended the time to the petitioner for furnishing bank guarantees to the satisfaction of the Registrar of Supreme Court in sum of Rs. 2,25,000/- Thereafter, the petitioner in view of the law laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, applied for withdrawal of the appeal, the withdrawal of the appeal was allowed on December 2, 1981 vacating the stay order dated August 10, 1971. As there was no order for release of Bank guarantee the petitioner approached the Hon'ble Supreme Court, the Supreme Court vide order-Annexure 5 P/2 dated March 4, 1983 directed release of the Bank guarantee so that the petitioner may deposit the amount due from April 30, 1962 for a period of more than 20 years. The petitioner deposited the contribution according to the provisions of the Act and Scheme to the extent of Rs. 2,27,315.57 for the period from May 1, 1962 to February 28, 1982 vide Annexure P-3.

4. The respondent issued a show-cause notice u/s 14B of the Act, No. SDC/MP/1273/SEN/XVI/812 dated September 12, 1984 directing the petitioner to show -cause why the damages be not recovered as the petitioner made the default in payment of contribution and the amounts due under the provisions of the Act and Scheme. The petitioner vide Annexure-P-4 dt. December 15, 1984 submitted its reply and shown cause that the delay was bonaftde because of contest of applicability of the provisions of the Act. After considering the fact and the circumstances for the default the respondent passed a reasoned order dated January 4, 1985. Annexure P-5 levied the damages u/s 14B for the period from May 1962 to February, 1982 totalling Rs. 2,66,550.45 as detailed below:

Amount

Amount to which it relates

1 .

The Provident Fund Contributions.

Rs. 2,43,843.05

In. E.P.F. A/c No. 1

2.

The Family Pension Fund Contributions

Rs. 10,929.40

In E.P.F. A/c No. 10

3.

The Adm. Charges

Rs. 6,007.20

In E.P.F. A/c No. 2

4.

Deposit Linked Insurance Contributions

Rs. 4,809.00

In. E.P.F. A/c No. 21

5.

Adm. Charges.

Rs.961.00

In. E.P.F.A/cNo.22

Total

Rs. 2,66,550.45

5. Learned counsel for the petitioner contended that the petitioner society is an establishment for the upliftment of rural labour without any profit motive. Therefore, the petitioner contested bonafidely that the provisions of the Act are not applicable. After decision of the Supreme Court in case of Bangalore Water (supra), the petitioner withdrew the appeal and deposited the amount due of contributions under the Act and Scheme. The amount of damages referred to in Section 14B could have been levied after considering the facts and circumstances of each case. The damages could be levied not exceeding 25% of the arrears till

Section 14B was amended substituting the recovery of maximum damages by way of the penalty not exceeding the amount of arrears by Act No. 40/73 which came into force from November 1, 1973. Merely, default does not empower the respondent to impose maximum, penalty while determining the damages and its recovery the respondent has to consider all mitigating circumstances and the fact that the default was wilful or bonafide or not and then to exercise the judicial discretion after giving reasonable opportunity of hearing to an employer. The respondent even did not consider that during this period how many employees retired or left the employment and whether on vacancies so caused other employees were appointed or not. Therefore, it was submitted that the order being non-speaking order merely based on the default not disclosing any reason why maximum damages are imposed the recovery be quashed and/ or the matter be sent back for enquiry.

6. After close of the hearing the petitioner was granted an opportunity to file a statement to demonstrate how many employees retired or left the employment and further whether any employees were appointed or not, but, the petitioner did not place any material to establish the number of employees working in the establishment of the petitioner in each of the years in question.

7. The Act is a welfare legislation enacted for the employees engaged in the factory and the establishment. The entire act is directed towards achieving objective by enacting provisions requiring the employer to contribute towards provident fund, family pension and insurance and the Commissioner informed of it by filing return and submitting details in the form and time prescribed for the purpose in paragraph 36 of the Employees Provident Fund Scheme framed by the Central Government u/s 5 of the Act.

8. It is well settled that Section 14B gives power to recover damages where an employer makes default in payment of any contribution or fund (family fund or insurance fund) or other contribution under the provisions of the Act or any Scheme. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to the employer in general not to commit a breach of the statutory requirements of Section 6, but, at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. The word damages in Section 14B is related to the word default. The word used in Section 14B is "default" in the payment of Contribution and, therefore, the word "default" must be construed in the light of para 38, of the Scheme which provides that the payment of contributions has got to be made by the 15th of the following month and, therefore, the word default in Section 14B must mean "failure in performance" or "failure to act". Damages can be levied within the limit of 100% and enforcing agency is vested with the power to award damages depending on existence of certain facts, after objective determination and therefore casts a duty of making a speaking order after conforming to the rules of natural justice. See- *Organo Chemical Industries and Another Vs. Union*

of India (UOI) and Others,

9. After show-cause notice the petitioner submitted the reply stating the circumstances, all these circumstances were considered by the respondent and then the respondent passed the order. The grant of stay by High Court or by the Supreme Court which was without any specific direction in respect of the default of non-deposit of the contribution under the Act and Scheme which the petitioner may incur u/s 14B of the Act, therefore, the petitioner cannot contend that the petitioner was bonafidely contesting the applicability of the provisions of the Act and that when the decision of the Supreme Court came in Bangalore Water Supply (supra), the petitioner withdrew the appeal therefore, the respondent ought not to have imposed the damages on the petitioners u/s 14B of the Act. To say so I take support of the decision of the Supreme Court in case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, , wherein, the Supreme Court observed in relation to payment of arrears of sales tax as the stay of recovery did not prevent running of interest. This Court in W.P. No. 4410/94 (Associated Cement Companies Ltd. v. State of M. P. and Another) decided on September 6, 1996 in case of increased rate of royalty u/s 25 of the Mines and Minerals (Regulation and Development) Act, 1957 which was not paid as was challenged in W.P. 3308/92. and ultimately the petition was dismissed, has observed that the stay order passed will not prevent the demand of interest on the increased rate of royalty not so paid till the pendency of the petition. Therefore, merely because the petitioner even bonafidely was contesting that the provisions of the Act are not applicable, would not absolve the petitioner of its liability from depositing the amount of the contribution under the Act and Scheme created for the welfare of the employees, that is the view taken by the Division Bench of this Court in M.P. 915/83 (Pratap Talkies. Bilaspur and Anr. v. Regional Provident Fund Commissioner, Indore) decided on November 20, 1985 Annexure R- VII. From the return, it is clear that contributions were due to the tune of Rs. 3,84,156.35 and not Rs. 2,66,550.45 which is the figure of the amount remitted by the petitioner against the amount due. The damages so levied are 25% upto the period of coming to force of Act No. 40/73 and subsequent to that period the damages levied are to the extent of 69% (see para 10,15 and 18 of the return). The petitioner has not filed any rejoinder disputing the correctness of the averment made in the return. Not only this, after hearing the arguments, the petitioner was afforded opportunity of 15 days to file a detailed statement but that opportunity was not availed to establish that number of employees working in each year and that the demand of provident fund and / or damages in excessive. In the circumstances, this Court has no option but to dismiss this petition.

10. In the result the petition fails and is dismissed. However in the circumstances of this case parties to bear their own costs. Security amount, if any be refunded to the petitioner.