(1985) 01 MP CK 0009

In the Madhya Pradesh High Court

Case No : M.P. No. 11 of 1984

Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 11-01-1985

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17, 6, 6A

Citation : (1987) ILR (MP) 347 : (1985) JLJ 546 : (1989) MPLJ 51

Hon'ble Judges : G.L. Oza, C.J;Ram Pal Singh, J

Bench : Division Bench

Advocate : J.P. Gupta, for the Appellant; N.P. Mittal, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, C.J.

This is a petition Bled by the petitioner challenging the order passed by Regional Provident Fund Commissioner, Madhya Pradesh, Indore, imposing penalty u/s 14B of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952.

According to the petitioner, the petitioner Company is a Company registered under the Companies Act with its registered office at Gwalior and it runs a factory at Gwalior, which engages in the manufacture of rayon textiles and for that purpose at Gwalior, it engages about 3000 employees. It is also alleged that the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 are applicable to the petitioner factory at Gwalior. u/s 17 of the Act, the Government has exempted the petitioner from the provisions of the Act as the petitioner has a Provident Fund Scheme of its own. The petitioner has filed a copy of this Scheme. It is alleged that in exercise of powers conferred by Section 6-A of the Act the Central Government made a Scheme known as ''Employees'' Family Pension Scheme, 1971.

The respondent Regional Provident Fund Commissioner served a notice on the petitioner dated 10th June, 1982, copy of which has been filed along with the petition and in this notice the respondent has alleged that whereas according to section of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952, read with para 9(1) of the Family Pension Act, 1971 the petitioner was required to deposit family pension fund contribution to the fund within 15 days of the close of the month and whereas the petitioner defaulted to'' pay the family pension fund contribution for the periods March 1971 to July 1971, September 1971 to March 1972, June 1972 to November 1975 and January 1977 to May 1977 on or before the dates on which the payment was payable, the petitioner was made liable for payment of damages to the extent of amount in arrears u/s 14B of the Act. It is alleged that according to para 9(1) of the Family Pension Scheme, the employer has to remit 11/6 per cent of contribution payable by the employer and employee u/s 6 in such a manner as may be specified in this behalf by the Commissioner and it is alleged that the Commissioner has not prescribed any period during which the aforesaid amount is to be remitted. It is also alleged that para 39 of the Employees'' Family Pension Scheme, 1971 has provided that in regard to matters for which either there is no provision or there is an inadequate provision in the Scheme, the corresponding provisions in the Scheme shall apply. It is alleged that para 9(1) of the Scheme makes provision for depositing of family pension, hence it was contended that para 39 of the Scheme cannot come into play.

It is alleged that the petition that after the reply of the notice was submitted by the petitioner a hearing was given and by the impugned order the Regional Provident Fund Commissioner has imposed cent per cent damages against the petitioner u/s 14B of the Act. It is contended that the order passed by the respondent is not a speaking order and it does not consider all the contentions raised by the petitioner either made in their reply and/or oral submission at the time of the hearing.

The learned counsel contended that the Supreme Court in AIR 1979 SC 1803, Organo Chemical Industries vs. Union of India, has laid down that an order u/s 14B of the Act has to be a speaking order and as Section 14B provides a maximum limit of damages to be equal to the extent of the amount of contribution and it is the discretion of the Regional Provident Fund Commissioner to impose damages up to the maximum and therefore, it is expected that he should pass a reasoned order for imposing damages on the petitioner for any default. It was also contended by the learned counsel that it is not a case as if the contribution has not been deposited at all. But the only default which is alleged is late deposit of contributions, as according to the learned counsel neither the petitioner nor the Department was clear as to what should be the date before which the contribution should be deposited and these contentions were raised before the Regional Provident Fund Commissioner and also in reply to the notice and during oral submissions. Reply and oral submissions were also made to indicate that if at all there is any default technical default has occurred and that it has occurred on account of bona fide misunderstanding of the situation, as to what was the prescribed period during which the aforesaid amount is to be deposited, prevailing not only in the mind of the petitioner but in the mind of the authorities and it was because of this it was contended by the learned counsel that for this the Department took a long period of 10 years and then only a notice was issued for the first time. It was also contended that so far as part of the period is concerned, the learned Provident Fund Commissioner must have realised that no liability can be cast on the petitioner and for that explanation tendered by the petitioner has been accepted, but for the imposition of the damages and the quantum of damages which is imposed reasons have been stated by the Commissioner in his order and therefore, the order cannot be justified.

Learned counsel appearing for the Regional Provident Fund Commissioner on the other hand contended that the contentions advanced by the learned counsel about the doubt, the date before which the contribution had to be deposited was clear. There was no doubt in the mind of the authorities. He however, stated that although the notice has been issued after a lapse of a long time, but that has been issued because the Regional Provident. Fund Commissioner felt that the Petitioner is persistently making defaults and therefore, ultimately a notice was issued for imposition of damages u/s 14B of the Act. As regards the order the learned counsel contended that the order no doubt does not give reasons for imposition of the full damages, but it does not discuss all the contentions as clearly stated in the objections raised in the reply to notice and oral submissions, although all the contentions have been considered and then the order has been passed.

The order passed by the Provident Fund Commissioner does not mention any reasons to indicate as to why he chose to impose the maximum damages in a case in which even the notice u/s 14B of the Act was issued after a long time. There is nothing in the order also to indicate that the contentions advanced by the petitioner before the Regional Provident Fund Commissioner have been considered and have been disposed of. What has been said only this that the objections in reply and the oral submissions have been considered, but the order does not disclose application of mind to respective contentions advanced by the petitioner before the Commissioner. Looking to the order and in the light of the decision of the Supreme Court, it cannot be said that the order passed by the learned Commissioner is a reasoned order and it cannot be said from this order that the learned Commissioner has applied his mind to all the contentions raised, nor it indicates the reasons for imposition of maximum damages. Looking to these circumstances, therefore, it has to be observed that the order could not be said to be a speaking order and cannot be maintained.

In view of our conclusion that the order is not a speaking order, it is not necessary for us to go into the other questions raised by the learned counsel for the petitioner, as it will be open for the petitioner to raise the contentions before the Regional Provident Fund Commissioner when he hears the matter afresh.

The petition is, therefore, allowed and the order passed by the Commissioner dated 3-1-1984, communicated through letter dated 12-1-1984 of the Regional Provident Fund Commissioner (Annexure P-4) is hereby quashed and it is directed that the learned Regional Provident Fund Commissioner shall afford an opportunity of hearing afresh to the petitioner and dispose of the matter in accordance with law. In the circumstances of the case parties are directed to bear their own costs. Outstanding amount of security, if any, be refunded to the petitioner. Petition allowed.