(2010) 09 AHC CK 0170

In the Allahabad High Court

Case No : C.M.W.P. No. 40030 of 1994

Indian Oxygen Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

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

Citation : (2010) 6 AWC 6449 : (2011) 2 LLJ 474 : (2011) LLR 100

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Prem Chandra, for the Appellant; Rakesh Tiwari, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—This writ petition has been filed by M/s. Indian Oxygen Ltd., Fazalganj, Kanpur against an order, levying damages u/s 14B of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''Act 1952'') dated 3rd October, 1994.

2. Facts in short giving rise to the present writ petition are as follows:

A show cause notice u/s 14B of the Act, 1952 was issued to the employers on 9th February, 1994 calling upon them to state as to why necessary contributions towards provident fund, family pension fund, employees'' deposit linked insurance fund, administrative charges on employees provident fund, administrative charges/inspection charges on employees'' deposit linked insurance were not deposited within 15 days of the close of each month, as required by law, for the period March, 1973 to May, 1990 in respect of ad hoc D.A. Paid to employers.

3. Although employers took time to submit reply but in fact they did not submit any explanation, qua the delay in deposit of the contribution, in the background that the industrial unit itself had been closed and the records were lying inside

the premises. The explanation furnished by the employers was not accepted and the Provident Fund Commissioner, after noticing the various dates which were fixed in the matter, on the asking of the employees proceeded to levy the damages for delayed contributions to the tune of Rs. 1,14,815,15. It is against this order that the present writ petition has been filed.

4. Counsel for the Petitioner Sri P.K. Mukherji and Sri Prem Chandra submitted before this Court that from a bare reading of the order it would be apparently clear that there are 11 period mentioned qua which damages have been levied. Period mentioned at item Nos. 1 to 10 cover the period 1973 to 1983. In respect of these first ten items the notices were issued after nearly 21 years to 11 years of the due date. They point out that notice was admittedly issued on 9th February, 1994. With regard to last period i.e. March, 1990 they point out that the notice has been issued after four years of the period subsequent to which the deposit was actually made. They submit that even if there had been no explanation on behalf of the employers for non-submission of the contribution within the period permitted, the initiation of the proceedings u/s 14B at such a belated stage itself was arbitrary. For the purpose reliance has been placed upon the judgment of the Bombay High Court in the case of K.T. Rolling Mills Pvt. Ltd. v. R.M. Gandhi and Ors. 1993 Lab IC 1466 , wherein the High Court has held that long delay ranging between 8 to 17 years in initiating action u/s 14B, for omission or commission on the part of employers, has to be quashed on the ground of extraordinary delay in initiating such action. The Bombay High Court in turn has placed reliance upon the law laid down by the Hon''ble Supreme Court in the cases of S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others, and Mansaram Vs. S.P. Pathak and Others, wherein the Hon''ble Supreme Court has laid down as proposition of law the following:

But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well-established to need buttressing by a precedent.

5. It has thereafter been recorded that although no period of limitation is provided for levy of damages u/s 14B, yet such notice u/s 14B has to be issued within reasonable time and the period of 8 to 17 years for issuance of such a notice has been held to be unreasonable.

6. For the same reasons as recorded by the Bombay High Court, this Court finds that in the present case also there is inordinate delay ranging between 20 to 11 years in respect of item Nos. 1 to 10 and 4 years in respect of item No. 11. Such long delay cannot be said to be reasonable and therefore this Court has no hesitation to hold that the initiation of the proceedings u/s 14B itself is bad.

Accordingly, writ petition is allowed. The order dated 3rd October, 1994 is hereby quashed.

