

(1983) 08 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 512 of 1983

Insulation and Ele. Products

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 29-08-1983

Acts Referred:

Citation : (1984) RLR 184

Hon'ble Judges : Rajinder Sachar, J;D.R. Khanna, J

Bench : Division Bench

Advocate : D.R. Thadani and Arun Kumar, for the Appellant;

Judgement

Sachar and Khanna, JJ.

(1) We have already dilated at length on the different legal contentions raised in the connected writ petition No. 396 of 1978, which was heard along with the present petition. The respondent's counsel has not disputed before us that so far as tendering of amounts by cheques, it is the dates of the tendering of the cheques with the Regional Provident Fund Commissioner (RPFC) which should be taken into account for the purpose of computation of delay, if any, for levy of damages, and not the dates of the actual encashment of the cheques. This, of course, is subject to the cheques being honoured. The respondents' counsel further assured that discrepancies in the computation of delays and damages in this regard will be rectified by the RPFC, and the petitioners will be at liberty to point them out to him.

(2) Notwithstanding that we are disposing of the petitions we make it clear and the respondents' counsel accept that if any of the petitioners are able to show that the default has been calculated not by taking the date of the tender of the cheque but from the date of encashment of the cheque, the same will be corrected, on evidence to this effect being produced before the RPFC. Counsel also stated that if on account of this rectification the period of default is found to be less, it will naturally mean imposing less damages than have been upheld,

and we permit the Commissioner that notwithstanding our order, he may make suitable alterations because of the new facts being proved before him.

(3) So far as the family pension scheme, we have after taking into account all the aspects, held that no damages be levied for period between 1971 and 1973 till the amend- ment in Section 14B enlarging the connotation of the term "fund" so as to include family pension scheme that was introduced. Appropriate relief in this regard will be allowed by the RPFC in these cases as well.

(4) So far as the circular dated 3.11.1982 which as envisaged the levy of damages at the penal rate of interest of 25% per annum commensurate with the extent of delays, it was initially made applicable to matters which were pending for adjudication on that date and not those which had already been decided. The emphasis thus was on tendencies irrespective of the period they involved. The latter circular of 13.5.1983 made a different basis for the levy of the said 25% damages. Thereby defaults for the period up to Sep. 1982, were to be governed by the graded rates of damages in standard table mentioned in the older circular.

(5) We are further of the opinion that minor defaults committed during the periods prior to four years of the issue of show-cause notices should as well be ignored, or nominal damages levied inasmuch as for those minor defaults it may be too much to require and expect the establishments to recapitulate and submit the sufficient causes which had justified the delays. Such minor defaults can be treated as extending to a week or two after the lapse of grace period of deposit of the amounts. We have already commented adversely on the department of the RPFC remaining dormant for long and then suddenly waking up to levy damages for the delays committed so long back. To an extent, Therefore, the establishments could treat that minor defaults had been ignored, and, Therefore, now to require them to justify them would somewhat prejudice them in laying before the authority the sufficient cause for the delays. Of course, longer contumacious defaults need no protection, and they have to face the consequence of paying the damages.

(6) There is no gain-saying that when certain guidelines are laid by the Board of Trustees or otherwise for the computation of damages, they basically remain as guidelines. They have not to be treated an absolute dictum which the authority concerned has to rigidly and mechanically adhere to. The purpose of guidelines is to bring a sort of coherence and uniformity in the working of the authorities concerned while sitting at different places in the country. They tend to eliminate possible individual fads or arbitrariness. At the same time, assessment of facts of individual cases cannot be ignored and it is in their context that it has to be judiciously considered how far the guidelines fit in. The statutory discretion, however, cannot be fettered or put into a straight jacket of immutability.

(7) It further cannot be that in case guidelines are issued by the department for computation of damages, and they are given effect to by the concerned authorities, the person against whom they are being levied be apprised of them

in order to enable him to ascertain if his case falls under any particular clause of guidelines, and further to ensure that the authorities correctly and in right manner give effect to them. Their non-disclosure, Therefore, potentially prejudices him. The guidelines in the present cases were placed before us during the hearing of these petitions and have not been treated as confidential. We do not, Therefore, see why they should be withheld from the parties who are likely to be affected by them. [Above observations are then applied to individual cases.]