

(1982) 10 BOM CK 0029

In the Bombay High Court

Case No : Misc. Petition No. 723 of 1979

Josts Engineering Limited, Bombay

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 06-10-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226

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

Citation : (1983) 85 BOMLR 12 : (1983) 2 LLJ 436 : (1983) MhLj 454

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This writ petition impugns the order of the Regional Provident Fund Commissioner, Maharashtra (the second respondent) levying damages against the petitioner under the provisions of S. 14B of the Employees Provident Funds & Miscellaneous Provision Act, 1952.

2. It is an admitted position that the petitioners were guilty of delays in making payments of contributions to the provident fund, the family pension fund and for administrative charges under Act. On 22nd January, 1975 an Inspector from the office of the second respondent visited the petitioner and recorded the delays. On 12th February, 1975 the petitioners wrote to the second respondent claiming that they had been in financial and administrative difficulties and that was why the contributions had been delayed. On 4th February, 1978 the second respondent served the petitioners with a show cause notice dated 28th January, 1978. The show cause notice stated that the second respondent proposed to levy damages against the petitioners as specified in the statement accompanying it. The statement gave, columnwise, a break-up of the periods for which damages were due, the amounts which were due, the dates on which they had become due, and were paid, the period and number of defaults, the percentage on which the damages were calculated and the amounts of damages. In the aggregate, the second respondent proposed to recover damages in the sum of Rs. 2,60,682.35. On 16th February, 1978 the petitioner showed cause stating that

monetary and administrative difficulties had caused the delays, they requested that the delays should be condoned and damages should be waived. On 7th June, 1978 the petitioner were heard. On 8th August, 1978 the impugned order was passed. The order recorded that the petitioner had failed to pay in time the aforesaid contributions for the months of March 1974 to November 1976. A show-cause notice had been served and a personal hearing had been given. The petitioner had raised contentions about monetary and administrative difficulties. The second respondent had applied his mind to all the relevant facts and had gone into the reasons stated by the petitioners in reply to the show-cause notice and at the hearing. He found that administrative difficulties could not override the petitioners' statutory obligations and damages could not be waived merely because the petitioners had incurred losses. The loss of interest caused to the provident fund and the need that employers deposit statutory dues in time in future were of more importance. The order said :

"Having regard to the periods of defaults I consider that the ends of justice would be met if damages are assessed as under : (i) All defaults where the defaulted payments have been made before the payments for the immediate succeeding months shall be treated as fresh defaults. Fresh defaults shall be charged at 1% or 2% of dues according as the payments are made within the months of defaults or in any case before a period exceeding one month.

(ii) Other defaults where the defaulted payments have not been paid before the payment for the immediate succeeding months fell due shall be treated as continuous defaults. Continuous defaults shall be charged at the prescribed rates depending on the number and periods of defaults."

For these reasons, the second respondent levied damages in the aggregate sum of Rs. 36,256.65. A representation was again made by the petitioners but it was turned down.

3. This petition was filed on 30th March, 1979. It challenges the order on various grounds, of which two have been pressed before me. It was contended by Mr. Damania, learned Counsel for the petitioners, that the order was not a speaking order and did not indicate what portion of the damages levied was allocable to the head of actual loss and what was allocable to the head of punitive damages. In Mr. Damania's submission, it was incumbent upon the second respondent to have applied his mind to this aspect and to state such allocation in the order. Mr. Damania placed great emphasis upon the judgment of the Supreme Court in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, I shall have an occasion to refer to this judgment in some detail.

4. Mr. Damania also submitted that the second respondent had mechanically followed a table for levy of damages issued by the Central Board of Trustees of the Employees' Provident Fund. Mr. Damania drew sustenance for this plea from the affidavits filed on behalf of the respondents. In paragraph 10(e) of the affidavit-in-reply to the petitioner of C. K. Nair dated 10th September, 1982 it is

stated that the provisions of S. 14B of the Act gave the officer assessing damages the discretion to impose such damages which in his opinion were correct after having looked to the facts and circumstances of the case and "further after having determined the suitable quantum of damages according to the facts of that particular case." The determination of damages was a quasi-judicial function and just as Courts were not guided as to what damages should be fixed under what circumstances by any pre-conceived formula under the law of contracts and of torts, it was not necessary for the Legislature to lay down standards for the determination of damages in the Act. In paragraph 17 of that affidavit, it is stated that the damages proposed in the show-cause notice issued to the petitioners were in accordance with the "guidelines" fixed by the Central Board of Trustees of the Employees' Provident Fund which was the administrative authority. It was a statutory measure for the guidance of officers who acted u/s 14B. This method of determining the quantum of damages was entirely reasonable and fair and it showed that no officer acting under S. 14B could act arbitrarily or capriciously "but that the officer of the respondents are bound to follow the reasonable guidelines laid down by the Central Boards of Trustees." In paragraph 8(bb) of the affidavit of N. G. Desai dated 6th October, 1981, also in reply, it is submitted that there can be no scale which would weigh and measure the quantum of damages in terms of loss to the fund when primarily the object of the Act was to deter. Mr. Damania placed reliance upon the judgment of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, . Their Lordships of the Supreme Court there stated "that it was basic and elementary postulate of the rule of law the it exercising quasi-judicial functions the authority must be absolutely free to deal with the matter according to its best judgment. It was of the essence of fair and objective administration of law that the decision must be absolutely unfettered by any extraneous guidance by the administrative or executive wing of the State. If the exercise of the discretion conferred on a quasi-judicial authority was controlled by any such direction, that forges fetters on the exercise of the quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process."

5. Mr. Sethna, learned Counsel for the respondents, submitted that the second respondent had applied his mind in passing the impugned order and this was shown by the portion thereof which has been quoted by me. He submitted that the second respondent had relied upon the "guidelines". These were merely guidelines and did not hamper the second respondent's desecration. But it was necessary that such guidelines should be provided to officers exercising powers under S. 14B of the Act for otherwise their orders quantifying damages were characterised as arbitrary and capricious.

6. Mr. Sethna stated that it was the standard practice of the respondents to give to workers on their contribution to the fund interest at 8 1/2 per cent per annum. 8 1/2 per cent of the damages levied were, therefore, allocable to the head of

actual loss and the rest to the head of punitive damages. Mr. Sethna could not give any reason, when asked, why this was not stated in the affidavits filled on behalf of the respondents. In Mr. Sethna's submission, it was not necessary to state such allocation in the order. In his submission, the impugned order was a speaking order even though it did not mention what damages were attributable to the head of actual loss and what to the punitive damages. He relied upon several judgments of this Court. In all these cases the orders had not mentioned such allocations, but the orders had not been set aside. Mr. Sethna conceded that in none of these cases had this point had been canvassed or decided. This according to him, showed that the point had no merit. Mr. Sethna urged that since the officer assessing damages under S. 14B worked under the constraints of a minimum of 8 1/2 per cent, of a maximum of 100 per cent (under the terms of the section itself) and of the guidelines he had no scope for acting arbitrarily.

7. The judgment of the Supreme Court in the *Organo Chemical Industries*" case must be looked at in same detail. The order in that matter levied damages in three separate sums having regard to the periods in which three deposits of the contributions had been made. The petitioners before the Supreme Court under Art. 32 challenged the order on the ground that S. 14B was ultra vires Art. 14 of the Constitution.

8. Krishna Iyer, J., observed that the power to affect citizen's rights, especially by way of punitive damages for wrong doing, was quasi-judicial in character, even if exercised by executive echelons. He cited an earlier case of the Supreme Court which stated that it was now settled law that where an authority made an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. It was an imperative of S. 14B, that the Commissioner should give reasons for his order imposing damages on an employer. The constitutionality of the power, tested on the anvil of Arts, 14 and 19, necessitated this prescription. Such a guarantee ensured rational action by the officer, because reasons implied relevant reasons, not capricious ink and the need for cogency riveted the officer's mind to the pertinent material on record. Moreover, once reasons were set down, the order readily exposed itself to the writ jurisdiction of the Court under Art. 226 so that perversity, illiteracy, extraneous influence, mala fides and other blatant infirmities got caught and corrected. Damages as imposed by S. 14B included a punitive sum quantified according to the circumstances of the case. Constitutionally speaking, such a penal levy included in damages was perfectly within the area of implied powers and the Legislature could while enforcing collections, legitimately and reasonably provide for recovery of additional sums in the shape of penalty so as to see that avoidance was obviated.

9. A. P. Sen, J., expressed similar views. I quote the following passage from his judgment upon which Mr. Sethna placed reliance.

"The power of the Regional Provident Commissioner to impose damages under S. 14B is a quasi-judicial function. It must be exercised after notice to the defaulter

and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable under S. 14B and the consequences that ensue therefrom, an order under S. 14B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which in S. 14B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz., the number of defaults the period of delay, the frequency of defaults and the amounts involved. The word "damages" in S. 14B lays down sufficient guidelines for him to levy damages."

The learned Judge went on to say that the conferral of the power to award damages under S. 14B was dependent on existence of certain facts; there had to be an objective determination, not subjective. The Regional Provident Fund Commissioner had not only his mind to the requirements of S. 14B but was cast with the duty of making a speaking order, after conforming to the rules of natural justice. The word "damages" in S. 14B, in the context in which it appeared, meant penal damages, i.e., a penalty, and not merely actual loss to the beneficiaries. The imposition under S. 14B served a two-fold purpose. It resulted in damnification and also served as a deterrent. It was not merely to "provide compensation for the employees". It was also meant to penalise the defaulting employer.

10. An analysis of the judgment shows that the Supreme Court held first, that the damages contemplated under S. 14B covered (a) compensation for actual loss and (b) the punitive element; and, secondly, that the authority assessing the damages was obliged to write a speaking order of his assessment setting out the reasons for it so that it was readily exposed to the scrutiny of a Court exercising writ jurisdiction; this was the guarantee against arbitrariness.

11. Let me test the impugned order upon this touchstone. No differentiation is made therein between the two heads of damages. In fact, no mention is made in it of damages for actual loss or of punitive damages. It does not appear from the order that the second respondent was aware that he had to assess damages under these two heads.

12. Mr. Sethna's submission that the impugned order is a speaking order is a speaking order because it deals with the petitioner's contentions is not acceptable. The assessment of damages is a vital aspect of the function of the quasi-judicial authority under S. 14B. The speaking order that the quasi-judicial authority is obliged to pass must show the authority's application of mind to the assessment of the actual loss and of penal damages and must state what the allocation between the two heads is.

13. The judgments referred to by Mr. Sethna do no help, for it is admitted

position that the point under consideration was not raised in those matters.

14. The impugned order does not state that 8 1/2 per cent of the damages levied are allocable to the head of actual loss. Mr. Sethna's statement at the bar to that effect, even assuming, I accept it, does not save it. And I do not see how it can be submitted that there is, therefore, no scope for arbitrariness and caprice in the authority assessing damages. The difference between the minimum of 8 1/2 per cent 100 per cent is very large indeed.

15. This brings me to the standard table for levy of damages prepared by the Central Board of Trustees of the Employees' Provident Fund. It has been tendered in these proceedings. It has 14 columns. The first relates to the serial numbers of the defaults. The other columns relate to the periods of the defaults, starting with "1 month or less" and going on to "over 12 months." It is difficult to accept Mr. Sethna's submission that this table is merely a guideline and the authority's discretion is not fettered in any way in view of the categorical statement in the affidavit of Naik in reply to the petition that all the officers of the respondents acting under S. 14B "are bound to follow the reasonable guidelines laid down by the Central Board of Trustees." It needs no authority for the proposition that no executive or administrative authority can in any manner channel the discretion of a judicial or quasi-judicial authority by directives or guidelines. When the judicial or quasi-judicial authority acts upon the directives or guidelines his decision is impaired. The second respondent has acted upon what he calls "the prescribed rates" though he does not specify what they are or who has prescribed them. Upon this count too his order must fall.

16. Mr. Sethna's submission that the table has been formulated so all those assessing damages under S. 14B can conform and not pass orders which were characterised as arbitrary or capricious begs the question. A quasi-judicial authority is not expected to conform but to use his own judgment and support it by a speaking order.

17. The impugned order must be set aside. It will, however, be open to the respondents to hold a fresh enquiry upon the show cause notice dated 4th February, 1978. The second respondent shall permit the petitioners a fresh opportunity to show cause in writing and at a hearing. The second respondent shall consider the points raised by the petitioners; He shall thereafter, having regard to what is stated hereinabove, consider what are to be levied and shall make a speaking order.

18. The second respondent's order dated 8th August, 1978 is set aside. Rule accordingly, with costs.

19. The petitioners are allowed to withdraw the sum of Rs. 9,000 deposited by them in Court pursuant to the interim order dated 3rd April, 1979. The Prothonotary and Senior Master to act on a certified copy of the minutes.