
(2005) 01 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6055 of 1986

Kamla Spinning Mills

APPELLANT

Vs

The Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 5, 6

Citation : (2005) 106 FLR 833 : (2005) 3 LLJ 254 : (2005) 140 PLR 609

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Sanjay Bansal and Sweeta Kaushik, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—The petitioner has challenged the order dated October 22, 1985 copy Annexure P4, vide which an amount of Rs. 6,094.10 has been levied as damages u/s 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). It is the admitted case that the petitioner was required to deposit the contributions as envisaged under the provisions of the Act as the same is admittedly applicable to the petitioner. The plea of the petitioner is that the amount was deposited, but under the erroneous conception, the same was deposited with State Bank of Patiala and Punjab National Bank, Charkhi Dadri. It was a case of an error apparent on the part of the petitioner as the said amount was required to be deposited with the Provident Fund Commissioner. It is further the case of the petitioner that no delay in this regard has occurred except the error. The petitioner received a notice from the Provident Fund Commissioner for remitting the amount and on realising the mistake the requisite amount was deposited with the Provident Fund Commissioner and that the amount deposited with the aforesaid banks were withdrawn accordingly. In this regard, a communication dated December 15, 1983, was sent to the Regional Provident Fund Commissioner. So far as the

petitioner is concerned, the matter stood closed.

2. It was in 1985, the petitioner received a notice u/s 14-B of the Act for levying damages on account of the delayed contributions under the provisions of the Act. In this regard, a show cause notice dated 2.9.1985, copy Annexure P2, was received by the petitioner. The notice was contested and a communication in this regard was sent vide letter dated 9.9.1985. However, as per the petitioner, no opportunity of being heard was granted and that the Order dated 22.10.1985, was passed levying damages amounting to Rs. 6,094.10. The petitioner filed an appeal against the said order but later on it was indicated that the order dated October 22, 1985, is not an appealable order nor any review is maintainable.

3. The petitioner had no other efficacious, appealable remedy and resultantly, the present petition has been filed, making the order dated October 22, 1985, the subject matter of challenge. The petition was admitted vide order dated 6.11.1986 but the interim relief was declined. Resultantly, the petitioner has deposited the amount levied by virtue of the impugned order.

4. Learned counsel for the petitioner has argued that the impugned order is not sustainable under law as the show cause notice was issued after a period of two years and by no stretch of imagination can be termed as reasonable period. It has been further contended that levying of damages pursuant to Section 14-B of the Act, is penal in nature and certainly can be defined as a warning to the employers in general not to commit a breach of the statutory provisions. If that be so, it was imperative on the part of the authority to give a finding that the act of the petitioner was contumacious in nature and that in this regard a categorical finding was required to be given. He has placed reliance upon *Hindustan Steel Limited v. The State of Orissa* 1970 (25) S.T.C. 211, *Organo Chemical Industries and Anr. v. Union of India* and *Ors. AIR 1979 S.C. 1803* and *Mansaram Vs. S.P. Pathak and Others*, .

5. It may be noticed that despite service no one has put in appearance but in the interest of justice vide order dated September 22, 2004, it was directed by this Court that respondent No. 1 be served once again for the date fixed. Consequently, respondent No. 1 was duly served but despite service no representation has been made. In fact, vide order dated December 1, 2004, respondent No. 1 was proceeded against ex parte. Even today, there is no representation for and on behalf of the respondents.

6. I have heard learned counsel for the petitioner and have also perused the paper book. I am of the considered opinion that the petitioner had been accorded opportunity of being heard after the show cause notice had been served. The petitioner has contested the same by giving a reply. He has further pleaded that the show cause notice was issued after a gap of about two years after the petitioner had been permitted to deposit the amount along with all charges with the appropriate authority. At that time, the mistake on the part of the petitioner was also noticed and by the deemed act of the authority concerned, the same

was accepted, though no communication in this regard has been put on record as none seems to have been sent by the authority concerned. The perusal of the impugned order shows that the plea of depositing the contributions, as envisaged under the Act, with the State Bank of Patiala and Punjab National Bank, Charkhi Dadri, has been admitted, however, the same has been diluted by not accepting the plea that it was for want of the appropriate knowledge that the petitioner was required to deposit the amount with the regional Provident Fund Commissioner. It has also been noticed that the contributions were transferred paid vide the demand draft dated December 15, 1983. The amount of interest was also paid by depositing the amount of Rs. 1089.20 on 21.3.1984. The only reason spelt out for levying the damages is that the petitioner cannot take shelter of "ignorance of the law" and that the errors or error apparent cannot absolve the petitioner from suffering the damages as envisaged under the provisions of the Act. However, the amount of Rs. 867.40 has been declared to be loss caused to the statutory fund on account of interest payable to the beneficiaries from the due date, irrespective of the delay in deposit of the dues by the petitioner. The amount of Rs. 5,226.70 has been ordered to be charged as penal part of the damages to serve as deterrent against the defaults in payment. Admittedly, the act of the petitioner has not been examined as to whether the same is contumacious in any manner as the factum of depositing the amount has been admitted. The Regional Provident Fund Commissioner has categorically observed that the amount of Rs. 5226.70 is penalty by way of damages which has to be caused and levied.

7. In this view of the matter it was appropriate that the Regional Provident Fund Commissioner should have taken a categoric decision vis-a-vis act and conduct of the petitioner. The only reason which has weighed with the Regional Provident Fund Commissioner is that the plea of ignorance of law is not sustainable and, therefore, the petitioner is liable to be subjected to the damages as envisaged u/s 14-B of the Act. I am afraid that such opinion is not justified. Hon"ble the Supreme Court has categorically observed in Organo Chemical Industries case (supra) that while fixing the amount of damages the Regional Provident Fund Commissioner generally takes into consideration the various factors vis-a-vis the number of defaults, the period of delay, the frequency of defaults and the amount involved. For levying "damages" pursuant Section 14-B of the Act, the employer has to be given reasonable opportunity of being heard. This hearing would not mean mechanical hearing but has to be construed upon some principles. In this regard, Hon"ble the Supreme Court has categorically observed that while fixing the amount of damages various factors are expected to be taken into consideration by the competent authority. It shall be apposite to notice the observations in para Nos. 38, 47 and 49, which read as under:

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"38. The contention that Section 14-B confers unguided and uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such

damages as he may think fit is, therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of Regional Provident Fund Commissioner to impose damages u/s 14-B is a quasi-judicial function. It must be exercised 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 u/s 14-B and the consequences that ensue therefrom, an order u/s 14-B 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 Section 14-B 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 Section 14-B lays down sufficient guidelines for him to levy damages.

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47. The expression damages occurring in Section 14-B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/s 14-B is not merely to provide compensation for the employees. We are clearly of the opinion that the imposition of damages u/s 14-B serves both the purposes. 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 employers 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. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme. The word damages in Section 14-B is related to the word default. The words used in Section 14-B are default in the payment of contribution and, therefore, the word default in Section 14-B must mean failure in performance or failure to act. At the same time, the imposition of damages u/s 14-B is to provide preparation for the amount of loss suffered by employees.

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49. There appears to be a misconception that the object of imposition of penalty u/s 14-B is not to provide compensation for the employees whose interest may be injured, by loss of interest and the like. There is also a misconception that the damages imposed u/s 14-B are not transferred to the Employees Provident Fund and the Family Pension Fund, of the employees who may be adversely affected, but the amount is transferred to the General Revenues of the appropriate Government. We find that this assumption is wholly unwarranted. In assessing the damages, the Regional Provident Fund Commissioner is not only bound to take into account the loss to the beneficiaries but also the default by the

employer in making his contributions, which occasions the infliction of damages. The learned Additional Solicitor General was fair enough to concede that the entire amount of damages awarded u/s 14-B, except for the amount relatable to administrative charges must necessarily be transferred to the Employees Provident Fund and the Family Pension Fund. We hope that those charged with administering the Act will keep this in view while allocating the damages u/s 14-B of the Act to different heads. The employees would, of course, get damages commensurate with their loss i.e. the amount of interest on delayed payments, but the remaining amount should go to augment the Fund constituted u/s 5, for implementing the Scheme under the Act."

8. In the case at hand, the Regional Provident Fund Commissioner has not applied his mind vis-a-vis the number of defaults, the period of delay, the frequency of defaults and so also the amount involved. Admittedly, no default can be said to have been committed by the petitioner as the amount due and payable under the provisions of the Act was deposited but under erroneous belief that the same was statutorily required to be deposited with a nationalised bank. The moment this mistake was realised upon receipt of the show cause notice, the amount was deposited with the Provident Fund Commissioner and that the amount deposited with the bank was withdrawn. This fact was categorically pointed out to the Regional Provident Fund Commissioner while submitting reply to the show cause, which is evident as the same has been noticed in the impugned order by the Regional Provident Fund Commissioner. I am further of the considered opinion that the Regional Provident Fund Commissioner has not really applied his mind in examining the conduct of the petitioner which does not suffer from delay, defaults or the like. However, so far as the loss caused by way of interest amounting to Rs. 867.40 is concerned, I find ample justification in charging the same but the amount of Rs. 5,226.70, imposed as penal damages by invoking Section 14-B of the Act, is not justified.

9. Resultantly, the petition is allowed and the impugned order dated 22.10.1985, copy Annexure P4 is quashed subject to the interest which has been charged. The charging of interest shall not entail any criminal liability upon the petitioner.