(1968) 12 KL CK 0014

In the High Court Of Kerala

Kathayee Cotton Mills (Private), Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 16-12-1968

Acts Referred:

Constitution of India, 1950 — Article 14
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (1970) 1 LLJ 77

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The petitioner is a private limited company owning an establishment engaged in textile industry at Alwaye. The petitioner''s establishment came under the coverage of the Employees'' Provident Funds Act, 1952 (hereinafter referred to as the Act), and the scheme with effect from 31 January 1956. On the ground that the petitioner had defaulted in payment of contribution and administrative charges for the periods February 1963 to March 1964, May, August and November 1965 and February 1966, the Regional Provident Fund commissioner issued a notice dated 22 September 1966 to the petitioner-company calling upon them to show cause within ten days of receipt thereof why damages at the rate up to 25 per cent of the total arrears should not be recommended to the Government of Kerala to be imposed on the petitioner in exercise of the powers vested in the Government u/s 14B of the Act. It was further stated in the aforesaid notice that any explanation given by the petitioner within the time specified thereunder will also be forwarded to the Government. A copy of the aforesaid show-cause notice has been produced along with the counter-affidavit and marked as Ex. R. 1. In reply to the above, the petitioner sent Ex. R. 2, letter, dated 4 October 1966 stating their reasons for the delay in remitting the contributions and administrative charges for August 1965 and contending that the contributions for May 1965 and February 1966 had been remitted by them in due time and that therefore there was no default committed by them in respect of these two periods. The representation, Ex. R. 2, closed with the request that the company should not be charged damages for the reasons they had mentioned in the said communication. Thereafter the petitioner was served with an order passed by the Government (G.O Rt. No. 3841/66/HLD, dated 2 November 1966) whereby Government, in exercise of the powers conferred by Section 14B of the Act read with Government of India notification, dated 10 April 1957, levied damages on the petitioner-company at the rates specified in the schedule appended thereto for the delayed remittance of provident fund contribution and administrative charges due from them for the months of February 1963 to March 1964, May, August and November 1965 and February 1966. The Government order contained also a direction to the Regional Provident Fund Commissioner to take steps to recover the said damages from the petitioner-company; the total damages imposed on the petitioner-company is Rs. 6,700 20. A copy of the aforesaid Government order has been produced and marked as Ex. R. 2 and the petitioner has filed this original petition seeking to quash this order.

2. Although the petitioner has raised a contention that Section 14B of the Act is violative of Article 14 of the Constitution and is liable to be struck down as unconstitutional on that ground, I have not permitted him to argue this point since the Central Government had not been impleaded as a party to this writ petition and the original petition so far as it relates to the aforesaid prayer for declaration of unconstitutionality of the Act is defective for non-joinder of necessary parties.

3. That in exercising the powers conferred by Section 14B of the Act, the Government are called upon to function as a quasi-judicial authority, does not appear to me to admit of any doubt. As a result of the adjudication by the Government, civil consequences are visited on the employer whenever damages are levied and it is, therefore, mandatory that in conducting such adjudication the Government have to act in conformity with the principles of natural justice. Any decision rendered by the Government being subject to scrutiny by this Court in proceedings for certiorari, it is also essential that the order passed by the Government should be a speaking order containing at least some indication that there has been a consideration by Government of the relevant aspects governing such adjudication and a brief statement of the reasons that weighed with the Government for the imposition of the damages.

4. A reference to Ex. P. 2, order, shows that the above requirements have not been complied with by Government in passing the said order. The petitioner had admittedly put forward some explanation in regard to the default committed by it in remitting the contributions and administrative charges during the month of August 1965. It had also raised a contention that the amount due in respect of May 1965 and February 1966 had been remitted by the company in due time and that there was, therefore, no default in respect of 9th aforesaid periods. Justice and fairplay required that the Government should have adverted to those contentions while passing the order imposing the penalty and should have given

its reasons as to why they were not found acceptable. Excepting for the subject heading, given in Ex. F.2, there is no indication anywhere in the body of the order that the points put forward in the said application had received any consideration at the hands of the Government. I have no hesitation to hold that Ex. P. 2 is not a speaking order and that it cannot be regarded as satisfying the requirements of law in respect of an adjudication of this kind.

5. Counsel for the respondents brought to my notice the fact that in the explanation filed by the petitioner, no pointed objection has been taken to the levy of damages in respect of the default committed by the petitioner for the period February 1963 to March 1964. Since I am of the view that there has not been a proper adjudication by the Government u/s 14B of the Act, I do not wish to express any opinion regarding the merits of this contention, but would leave it for consideration by the Government at the appropriate stage in passing fresh orders in the matter.

6. The order, Ex. p. 2, is, therefore, quashed. The Government will be free to pass fresh orders in the matter in accordance with law and in the light of the observation and directions contained in this judgment.

7. The original petition is allowed as above but in the circumstances, I direct the parties to bear their respective costs.