
(1992) 11 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 3271 of 1987

K.T. Rolling Mills Pvt. Ltd.

APPELLANT

Vs

R.M. Gandhi and Others

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

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

Citation : (1994) 1 BomCR 75 : (1994) 68 FLR 562 : (1994) 1 LLJ 66 : (1993) 1 MhLj 947

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

This Judgment has been overruled by : M/s. Hindustan Times Limited Vs. Union of India and Others, (1998) 1 JT 18(1) : (1998) 1 SCALE 34 : (1998) 2 SCC 242 : (1998) 1 SCR 4 : (1998) 1 UJ 368 : (1998) AIRSCW 352 : (1998) 1 Supreme 174

B.P. Saraf, J.—By this writ petition, the petitioners have challenged the order dated November 5, 1986, passed by the Regional Provident Fund Commissioner ("the R. P. F. C."), Maharashtra and Goa, levying damages u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ("the Act")), for the alleged failure of the petitioners to pay the contributions under the Act for the months commencing from July 1968 to October 1977.

2. Admitted position in this case is that these proceedings were initiated for the first time by issue of notice to show cause on April 19, 1985. The challenge to the order is on the ground, inter alia, that the initiation of proceedings in the year 1985, for the alleged delay in payment of the contribution for the period from July, 1968 to October, 1977, is most unreasonable. A notice issued after long 17 years from the first alleged default and 8 years from the last alleged default is no show-cause notice in the eye of law. The contention of the petitioners is that the entire proceedings should be quashed on this ground itself.

There are other grounds too.

3. One of the other grounds is about the applicability of the provisions of Section 14B to the alleged defaults committed between July, 1968, and September, 1973. The other challenge is on the ground that even if the proceedings are found to be valid and the Act is found to be applicable, the calculation of damages is not in accordance with law. There is no dispute as to the maximum amount of damages that could be levied u/s 14B till October 30, 1973, which was an amount not exceeding 25 per cent thereafter. Certain circulars were also issued from time to time by way of guidelines in the matter of levy of damages u/s 14B. Disputes were also there in regard to the applicability of these circulars. These circulars and guidelines came to be challenged before this Court from time to time. The question that arose was whether the circulars which were operative on the date of the adjudication would be applicable or the circulars effective on the date of commission of the default would apply to the adjudication, no matter when the adjudication took place.

4. The last controversy has been decided, of late, by a Division Bench of this Court on an appeal from a judgment of the single Judge in Appeal No. 45 of 1992, in Writ Petition No. 150 of 1986, and a batch of connected cases. It has been held that though the law as applicable on the date of the default will apply, the circulars and guidelines issued for determining the quantum of damages subject to the maximum prescribed in the Act would be those which are effective on the date when the adjudication is made. The issue, so far as it relates to the present case, was also decided by the Division Bench in that appeal and batch of case referred to the Division Bench. The Division Bench, however, did not go into any other issues raised by the parties or by the petitioners in those cases and left it open to them to raise the same before the single Judge when the case is taken up for disposal. That is how this matter has come before this Court today.

5. The controversy regarding the applicability of the circulars or the guidelines having been decided by the Division Bench of this Court, the calculation of the damages will automatically be governed by their judgment. The only two issues that remain to be decided in this case are applicability of Section 14B to levy of damages for delay made in payment of contribution for the months from July, 1968 to September, 1973 and the issue regarding the validity of the initiation of the proceedings which have been initiated after a long lapse of time ranging from 8 years to 17 years.

6. I shall deal with the second issue first because, in case that is decided in favour of the petitioners, it may not be necessary to go into the first issue.

7. Counsel for the petitioners submits that in the instant case damages have been levied u/s 14B of the Act only for the alleged delay in the payment of contributions and on no other ground. The petitioners were already registered as employer with the Provident Fund Commissioner and had been paying the contribution regularly for years. It is not one of those cases where there is any

dispute about the liability to pay the contributions. The petitioners continued to pay the contributions despite the fact that owing to some problems in the running of the business of the petitioners in the early 1970, the petitioners had to close down indefinitely its manufacturing activities in the rolling mill.

8. Never any grievance was made by the Regional Provident Fund Commissioner about any delay in making the payments. According to petitioners, the alleged delay is very marginal and might have been caused due to delay on the part of the banks in the collection of the cheques. The case of the petitioners is that the Regional Provident Fund Commissioner himself never treated it as a default within the meaning of Section 14B of the Act as, otherwise, he would have issued a show cause notice soon after noticing the delay. It was only in the year 1984, when the petitioners, on being advised that they had no liability to pay the provident fund contribution, wrote a letter to the Regional Provident Fund Commissioner to clarify and confirm the legal position in regard to its liability. It was in response to this letter of the petitioners that the Regional Provident Fund Commissioner arose from his long slumber of 17 years and found out that there was some delay in payment of the contributions by the petitioners for various months during the period from 1968 to 1977, which amounted to default within the meaning of Section 14B of the Act, and, accordingly, on April 19, 1985 issued a notice asking the petitioners to show cause why damages as envisaged u/s 14B of the Act should not be recovered from them.

9. In reply, the petitioners pointed out to the Regional Provident Fund Commissioner that the alleged delay was marginal and might have been caused due to the delay on the part of banks in collection of the cheques. It was also pointed out to him that the action sought to be initiated by the impugned notice dated April 19, 1985 for levy of damages for delay in making payment during the period from July, 1968 to October, 1977 was vindictive as, otherwise, there was no reason to rake up such petty matters after a lapse of 17 years. It was also contended that exercise of power u/s 14B after such long lapse of time was arbitrary unreasonable and not tenable in law. Before dealing with the reason of the petitioner, it may be expedient to observe that, even on his own finding, the total amount of damages payable for the delay committed during the period of 10 years was only a sum of Rs. 52,034.80 (an average of about Rs. 5,00 per year), the computation of which is again subject matter of challenge. The reaction of Regional Provident Fund Commissioner, as is evident from his order dated November 5, 1985, was very curious. He rejected the first contention of the petitioner as follows :

"The delay whether marginal or not attracts damages. The employer has not produced any documentary evidence in support of his contention that delay has been caused due to delay on the part of banks in collection of their cheques. So his plea is rejected".

The Regional Provident Fund Commissioner also found the plea regarding the long lapse of 17 years was untenable, as according to him, the liability for damages

was known to the employer and what was sought to be done by him was only to quantify it. He referred to some observations of this Court to the effect that there was no limitation provided under the Act for levy of penalty u/s 14B, in support of his view that long delay laid not in any way affect the validity of initiation of proceedings u/s 14B.

10. It is interesting to note here that the Regional Provident Fund Commissioner, while rejecting the plea of the petitioners that the delay, if any, might have been caused due to collection of cheques by the bank, on the ground that documentary evidence had not been produced by the employer, totally overlooked the fact that it was after long 18 years that he had asked the employer to produce evidence regarding the late collections of cheques by the banks. He did not even think for a moment whether it was practically possible on the part of the petitioners to produce such evidence after such long lapse of time.

11. The Regional Provident Fund Commissioner, as is evident from the impugned order, did not try even to ascertain as to how the default went unnoticed for 17 long years. There is nothing to show any concern on his part. On the other hand, he took a bold posture that there being no period of limitation prescribed by law, on objection can be taken on the ground of long delay in initiating action. It appears that, according to him, Section 14B by not prescribing any period of limitation has given a licence to him to sit over the matters for any period of time and initiate proceedings as and when he feels like doing so. This approach is evident from his following observations in the impugned order :

"I consider that the establishment had defaulted in the payment of statutory dues without any valid reasons. Not only the loss of interest caused to the funds is to be made good but increase in the cost of administration is to be taken into account. In view of persistent and continuous defaults it is necessary that exemplary damages are inflicted on the establishment to ensure that such defaults are not repeated in future and the dues are deposited in time..."

Taking this view of the matter, he determined the amount of damages in this case and then further observed :

"The damages levied are being exemplary and punitive having regard to the nature, extent and persistency of default and calculated to deter this and other similarly placed establishments from defaulting further....."

12. Counsel for the petitioners submits that powers of the Regional Provident Fund Commissioner in the matter of levy of damages u/s 14B are quasi-judicial. That approach is totally lacking in the present case. The submission of counsel is that what has been stated in the order about the employer applies more appropriately to the Regional Provident Fund Commissioner himself. If the employer was in default in making payment, it could have been discovered just by looking at the accounts of the employer and notices could have been issued, unless, in view of the marginal delays, the Regional Provident Fund Commissioner himself did not think it to be a default worth levying damages u/s

14B. The submission of learned counsel is that damages u/s 14B being not automatic, in a given case, damages may not be levied even if there is default of delay in payment. Non-issue of notices for long 17 years in the present case, according to the petitioner, can be attributed only to such a view taken earlier.

13. In the instant case, admittedly, only allegation is that there was delay in payment of contributions. It is also not disputed that the delay was marginal. The explanation of the petitioner also could not be rejected except on the ground that the documentary evidence was not produced in support thereof and that too without having regard to the fact that the employer was called upon to give evidence regarding the delay in collection of cheques by the banks after a long lapse of 8 to 17 years.

14. Learned counsel for the respondent Regional Provident Fund Commissioner relies on the provisions of Section 14B of the Act, and submits that in the absence of any limitation provided in the said section for initiating any proceedings and/or passing final order thereunder, no such period can be inferred. The delay, according to learned counsel, be that of 8 years or 17 years, cannot be a ground for holding the action as illegal. Learned counsel also pointed out that it is a social welfare legislation and nothing can come in the way of enforcing it. The employer should not be allowed to get out of the clutches of law once he is in it, no matter how many years have lapsed. He also tried to explain the long delay in initiating action by pointing out that only one Regional Provident Fund Commissioner was appointed for the whole of Bombay till recently, who could exercise powers u/s 14B. Only recently, the Government has reviewed the situation and vested 4 more officers with such powers. Learned Counsel also referred to the decisions of the High Court of Punjab and Delhi in support of his contention that the delay is not a relevant factor in such a case.

15. While appreciating the sincere attempts made by learned counsel to defend the action or inaction of respondents by taking shelter behind the absence of any prescribed period of limitation in the Act, I find it difficult to agree with him. It is true that the Employees' Provident Funds Act is a social welfare legislation. But, that being so, it is also expected that the officers entrusted with the task of administering such enactments are aware of this fact and know their duties and responsibilities. They should be conscious that they are administering a law which has been enacted for the welfare of the employees. So also, the Government who has enacted the law, owes a duty to set up proper machinery to administer it. It cannot be said that the Government did not know how many employers in Bombay were covered by the provisions of the Act and whether one Regional Provident Fund Commission was sufficient or not. If it needed 17 years to issue notice which only required turning the pages of a register with a view to seeing the date of payment, it is difficult to understand what sort of administration of this social welfare legislation is being done by the authorities concerned in the State of Maharashtra. This case, in my opinion, is a glaring example of the way the social welfare legislations are being dealt with and

administered. It is not enough to enact a law with the object of welfare of the employees in mind. What is most important is the administration of the law. The whole of the legislative purposes may be frustrated by administrative in efficiency, inaction or negligence. No more glaring a case can be there than the present one to demonstrate the existing state of affairs. It is high time, the appropriate Government looks into these matters and if it finds that those entrusted with the task of administering these social welfare legislations are not doing their duty, to deal with them sternly. If any loss is caused to the employees by their inaction, negligence or remissness, responsibility may be fixed and the amount recovered from the person so responsible. That will be a real deterrent and thereby the cases of default may go down. Action taken after long 17 years for levy of damages of Rs. 53,000 for a default committed for a period of ten years can neither be exemplary nor act as deterrent for other employees.

16. Reverting to the legal controversy, the main question that falls for determination is whether the impugned order in the instant case can be quashed on the ground of extraordinary delay in initiating the proceeding u/s 14B of the Act. There is a catena of decisions of the Supreme Court, this Court and other High Courts dealing with such a controversy under different enactments. I shall refer briefly to those decisions.

17. Before referring to the decisions, it may, however, be expedient to observe that there is a distinction between delay in initiation of proceedings and delay in completion of proceedings. There is also a difference between proceedings which can be initiated on the basis of records available with the authorities and cases where action can be initiated only on the basis of some information or material that might come to the possession of the authorities from external sources. Different considerations may apply in dealing with these different categories of cases.

18. I do not propose to go into all types of cases. I shall confine myself to the facts of present case, where the alleged default is delay in payment of contributions. If the payment is not made within time, default is committed. Liability u/s 14B is attracted. The Regional Provident Fund Commissioner can initiate proceedings thought he employer may be able to satisfy him about the reasonable cause for the delay or the circumstances which gave rise to the delay. Thus, for initiation of proceedings u/s 14B, nothing more is needed than looking at the records and verifying the payments and the dates of payment. That should not require more than two or three months at the most. Even if inefficient administration is to be assumed, which I do not propose to do, then also a period of six months or eight months should be good enough to issue notice u/s 14B. In any event, ordinarily one year should be the upper most limit in such cases.

19. In the instant case, the delay is 8 to 17 years. There is no explanation whatsoever for this delay from the Regional Provident Fund Commissioner. There is nothing to show how this case remained unattended for such a long time and how it suddenly came to surface except the plea that no period of limitation

being provided in the law, action may be taken at any time.

20. On a careful consideration of the matter, I find it extremely difficult to agree with such a contention. In my opinion, this contention is most unreasonable and not tenable in law. As earlier stated, there are a number of decisions of the Supreme Court, this Court and other High Courts where a somewhat similar controversy came up for consideration. I shall refer to some of these decisions.

21. The first decision that may be referred to in this connection is the decision of the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, . This was a case under the Bombay Land Revenue Code, 1879. The subject-matter of challenge was the power of the Commissioner to revise an order made u/s 211 of the said Act, which empowers the Commissioner to revise an order in question. No period of limitation was prescribed. It was contended before the Supreme Court that the power must be exercised within a the power must be exercised within a reasonable time. Accepting this contention, the Supreme Court observed as follows (at page 1301) :

"It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the case and the nature of the order which is being revised".

22. Similar observations were made by the Supreme Court in *S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others*, . This case related to the exercise of suo motu power of revision u/s 20(3) of the Bengal Finance Sales Tax Act, 1941 (6 of 1941), (as extended to Delhi). No time limit was prescribed for that purpose in the said section. The question was, in the absence of any prescribed period of limitation in the statute, whether unreasonable delay in exercise of such power will affect the validity of the order. The Supreme Court observed (at page 1120) :

"No time limit has been prescribed for it. It may well be that for an exercise of the suo motu revisional power also, the revisional authority is to initiate the proceedings within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case".

In this case, from the facts, it was noticed by the Supreme Court that the Commissioner proceeded to revise and revised the order within few months of the passing of the same by the Subordinate authority. It was, therefore, held that there was no undue or unreasonable delay made by the Commissioner.

23. Somewhat similar question came up before the Supreme Court for consideration again in *Mansaram Vs. S.P. Pathak and Others*, . It was a case under the C. P. and Berar Letting of Houses and Rent Control Order, 1949. The subject-matter of challenge before the Court was the power of the House Allotment Officer to evict a person on the ground that he entered the premises in

contravention of the provisions of the Order long after 22 years of such contravention. There was no period of limitation prescribed in the Control Order itself for taking such an action. The Supreme Court observed (at page 1245) :

"Undoubtedly, power is conferred on the Collector to see that the provisions of the Rent Control Order which disclosed a public policy are effectively implemented and if the Collector, therefore, comes across information that there is a contravention, he is clothed with adequate power to set right the contravention by ejecting anyone who comes into the premises in contravention of the provisions. But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand aghast that a landlord to some extent in *pari delicto* could turn the tables against the person who was in possession for 22 years as a tenant. In such a situation, even though the House Allotment Officer was to reach an affirmative conclusion that the initial entry 22 years back was an unauthorised entry and that failure to vacate premises till nine years after retirement was not proper, yet it was not obligatory upon him to pass a peremptory order of eviction in the manner in which he has done. In such a situation, it would be open to him not to evict the appellant".

Summing up the discussion, the Supreme Court reiterated the proposition of law in this regard in the following words (at pages 1245 and 1246) :

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

24. The Supreme Court also referred with approval to its earlier decision in the case of *State of Gujarat v. P. Raghav*, (supra) where dealing with the revisional power of the Commissioner the Supreme Court held that in the absence of prescribed period of limitation, the revisional power must be exercised within a reasonable time and period of one year was held to be "too late".

25. It will be evident from the aforesaid decisions of the Supreme Court that exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. The reasons being the policy of law, as observed by the Supreme Court in the case of *Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot*, that there must be a point of finality in all legal proceedings and that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activities.

26. In *Parashuram Pottery Works Co. Ltd.*'s case (supra) the Supreme Court was dealing with a case under the Income Tax Act where one of the contentions of the Revenue was that if the proceedings were quashed, it might result in loss to

national ex-chequer. This contention was repelled by the Supreme Court in the following words (at page 10) :

"It has been said that the taxes are the price that we pay for civilisation. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of national ex-chequer and must necessarily result in loss of revenue".

27. Reference may be made also to a decision of this Court in the case of *Sushma Fabrics Pvt. Ltd. v. Union of India*, (1991) LIC 1946. This was a case u/s 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 itself. In this case also, the effect of delay in initiating action u/s 14B, in the absence of prescribed period of limitation for initiating proceedings u/s 14B came up for consideration. It was held (at page 1948) :

"Absence of a prescribed period within which Section 14B becomes operational does not mean that the authorities can initiate action at any time. They must move within a reasonable interval of the commission of the lapse. Ascertainment of compliance with this requirement would depend upon the circumstances of each case".

28. In the case of *Bhagwandas S. Tolan v. B. C. Aggarwal*, (1983) ELT 44 (Bom.), a case under the Foreign Exchange Regulation Act, 1973, adjudication was held after a lapse of 11 years from the date of alleged violation of the provisions of the Act. The action was challenged on the ground of unreasonable delay though no period of limitation had been prescribed for such adjudication. This Court observed (at page 46) :-

"I am of the opinion that this is otherwise also a stale matter which cannot be allowed to be reopened, since to allow it to be reopened would cause serious detriment and prejudice to the petitioner...."

29. In my opinion, the department is not entitled to take up old matters in this manner. If the department's contentions as to limitation were to be accepted, it would mean that the department can commence adjudication proceeding 10 years, 15 years or 20 years after the original show-cause notice which can not be permitted. The position might have been different if there had been any default on the part of the petitioner or any act of omission or commission on his part which had resulted in this long period of delay. Then is such a case, the petitioner could not be permitted to take advantage of his own wrong. This is not the department's case in the present matter.

30. There are a number of decisions of some other High Court also wherein same view has been taken while dealing with a somewhat similar situation under different enactments. Reference may be made to the decision of the Allahabad High Court in the case of *MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II (V)*,

KANPUR., . It was a case under the Indian Income Tax Act, 1922. Proceedings for levy of penalty were taken after expiry of about 14 years. The proceedings were challenged also on the ground of delay though no period of limitation was prescribed in the Act for imposing penalty. The Revenue's case that it was free to initiate proceedings as no period of limitation had been prescribed for the purpose. Repelling the contention, it was observed (at page 456) :

"It is true that no period of limitation is provided for imposing a penalty, but it is equally well-settled that where no period of limitation is provided, proceedings should be taken within a reasonable time. I do not see how it can be said that this long lapse of fourteen years is reasonable time. To my mind, it is not merely unreasonable, it is fantastic.

On materials placed before me, it is not possible for me to record a definite finding that that is necessarily so. It does, however, appear that the Income Tax Officer after having allowed the matter to lie in cold storage for a long term of years suddenly blazoned out into frenzied activity and concluded that proceeding with post-haste speed".

31. In another decision, in the case of Income Tax Officer Vs. Bisheshwar Lal, , the Allahabad High Court, dealing with the very same provision, reaffirmed its earlier decision and observed (at page 655) :

"To hold that a notice for which no period of limitation has been prescribed can be issued after lapse of any time whatsoever, would lead to absurd results, for it would mean that a notice might issue to an assessee after the lapse of 50 or even 100 years, when all the evidence originally in his possession that might enable him to show cause against the imposition of penalty might well have disappeared".

32. It was held that issue of a notice after unreasonable period of time amounts to abuse of power and such proceedings can be quashed by a writ by the High Court. The Court, however, made it clear that the answer to the question as to what is reasonable time will, of course, depend on the peculiar facts and circumstances of each case..

33. Reference was also made to a decision of the Punjab High Court in Amin Chand & Sons v. State of Punjab, AIR 1965 P&h. 441. This was a case of levy of damages u/s 14B of the Provident Funds Act. There was six years delay in taking action. The action being challenged on the ground of long delay, the High Court quashed the same. It was held that levy of damages after six years was arbitrary and had resulted in operation of law very harshly. Learned counsel for the respondent pointed out that the aforesaid judgment was alter reversed by a Division Bench of same Court.

34. Counsel for the respondent placed reliance on a decision of the Delhi High Court in Birla Cotton Spinning and Weaving Mills Ltd. v. Union of India, C. W. No. 396 of 1978, dated July 29, 1983, and a decision of the Gujarat High Court in

Gandhidham Spinning and Manufacturing Co. Ltd. v. Regional Provident Fund Commissioner, (1987) LIC 659 , in support of his contention that delay will not vitiate the proceedings under a social welfare legislation like the Provident Funds Act. I have carefully gone through the aforesaid judgments. I do not find that the various important decisions of the Supreme Court discussed above on this aspect of the matter were placed before the High Courts in these cases. The view taken in these cases does not appear to be in consonance with the ratio of the aforesaid decisions of the Supreme Court. I, therefore, find it difficult to agree with the reasonings and conclusions in these cases.

35. As already indicated, the fact that the legislation in question is a social welfare legislation cannot be stretched too far to give a licence to the authorities thereunder to sit over matters for years and years and to spring in action and initiate proceedings as and when they like. The law in this regard is well-settled by the various decisions of the Supreme Court. The principles that emerge from these decisions are clear and can be summed up thus : Where no period of limitation is prescribed by the law for the exercise of any power, it must be exercised within a reasonable time. Any unreasonable delay in exercise of the power may affect its validity. What is reasonable time, however, will depend upon the facts of each case.

36. In the instant case, there is long delay ranging between 8 to 17 years in initiating action u/s 14B of the Act for alleged delay in depositing contributions. No explanation is available for such unreasonable delay. Under the circumstances, the delay cannot be held to be reasonable. Such unreasonable delay will definitely vitiate the action taken by the respondents. In fact, the initiation of proceedings after such inordinate delay amounts to abuse of the power. The initiation of the proceedings and the impugned order passed in pursuance thereof, are liable to be quashed.

37. In the premises, the writ petition is allowed. The impugned notices initiating proceedings u/s 14B are quashed. The rule is made absolute in terms of prayer (a).

38. No order as to costs.