

(1968) 10 MAD CK 0052
In the Madras High Court

Madras-Bangalore Transport Company	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 30-10-1968

Acts Referred:

Constitution of India, 1950 — Article 20, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14B, 15, 17, 7A

Citation : (1969) 2 LLJ 136 : (1969) 82 LW 90

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—The Madras-Bangalore Transport Company has filed this writ petition under Article 226 of the Constitution, aggrieved against an order of the Regional Provident Fund Commissioner, Madras, the respondent herein, dated 9 June 1965, making a demand on the petitioner to pay Rs. 97,974.75, by way of damages which by a subsequent order of the Department of the Industries, Labour and Co-operation of the Government of Madras dated 31 August 1965, was reduced to 40 percent.

2. It appears from the particulars supplied to me at the time of the hearing by the respondent, that, during the years 1962 and 1963, the petitioner had delayed payment of the amounts due as provident fund contribution under the Employees' Provident Funds Article, from the due dates by certain periods of delay which varied from month to month. From time to time, the accounts officer of the respondent had intimated that a particular sum of money should be remitted by the petitioner, under the heading of damages, for the delayed remittance. It is this amount which accumulated to the total amount of damages mentioned above. The petitioner applied to the Government for waiver; but the Government, in their order mentioned above, declined to waive the entire demand for damages but restricted it to 40 per cent.

3. The petitioner alleges two grounds, for his relief in this writ petition. Firstly,

after the petitioner had actually remitted the amounts due from him though after some delay, there can be no default within the meaning of the provision under the Employees' Provident Funds Act, regarding the levy of damages, viz., Section 14B of the Article. Secondly, it is urged by the petitioner that the damages are in the nature of penalty, and the petitioner should, therefore, have been given an opportunity to show cause, before such a claim is made against him. In particular, it is urged that Section 7A of the Article makes it obligatory that an opportunity should be given to the petitioner, before damages are levied and the quantum of damages are fixed. This had not been done in this case. The view of the department in their counter-affidavit, is that Section 14B gives power to the appropriate Government, viz., the State Government, to recover damages from the defaulting employers not exceeding 25 percent of the amount of arrears, as it may think fit to impose. In order to have a uniformity in the procedure regarding the levy of damages, the State Government has, in G.O. No. 5951, Labour, dated 14 December 1962, prescribed the rates at which damages have to be calculated, having regard to the period of default by the employer. The quantum of damages levied against the petitioner was calculated at the rates prescribed in the above said Government order. The petitioner became a defaulter and admitted liability u/s 14B, when he did not pay the contribution on the due dates. Under the provisions of the Provident Fund Scheme framed under the Article, there is no question of a person ceasing to be a defaulter on the subsequent payment of the amount due after a period of delay. In regard to the plea about want of notice, it is urged that Section 14B, neither expressly nor by implication, contemplates the issue of a show-cause notice or the holding of an enquiry prior to the order of demand for damages. It is urged that Section 7A of the Article deals with an entirely different matter, viz. determination of the amount of contribution from the employer payable under Para. 29 of the scheme and not damages leviable u/s 14B of the Article. It is also urged that that part of Section 7A of the Article which relates to the conduct of enquiry is only an enabling provision and not obligatory in nature.

4. Section 14B of the Article, which is thus referred to, reads thus:

Where an employer makes default in the payment of any contribution to the fund or in the transfer of accumulations required to be transferred by him under Sub-section (2) of Section 15 or Sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Article or of any scheme or under any of the conditions specified u/s 17, the appropriate Government may recover from the employer such damages, not exceeding 2 percent of the amount of arrears, as it may think fit to impose.

Seeing that this section uses the word "damages," I felt at first a doubt as to whether the amount has any relationship to the loss which the beneficiaries of the fund or the authorities who maintain the fund might have suffered by the default of the contributor, and whether, therefore, the word "damages" has been used in the section in the sense of providing compensation or indemnity for the

loss. If that were the meaning to be given to the word "damages," obviously an enquiry would be necessary, to ascertain the extent of the loss and what would be the appropriate compensation for it. But the above doubt on this point is set at rest, by a decision of the Patna High Court in *R.B.H.N. Jute Mills (Private), Ltd. v. Regional Provident Fund Commissioner, Bihar*, and Ors. 1958 1 L.L.J. 598, There, Ramaswami, C.J. (as he then was) who delivered the judgment of the Bench, observed at P 600:

...In my opinion, the amount of damages imposed u/s 14B is penal in It character and is, therefore, tantamount to punishment within the meaning of Article 20(2) of the Constitution. The reason is that the amount of damage imposed u/s 14B is not transferred to the account of the provident fund of the employees who may be adversely affected. On the contrary, the amount is transferred to the general revenues of the appropriate Government. In other words, the Infliction of the damages u/s 14B is not meant to provide compensation or redress to the employees whose interest may be injured. It is not meant to provide reparation to such employees and the quantum of damages imposed has no relation to the amount of loss suffered by the employees.... It is a warning to employers in general not to commit a breach of the statutory rule.... The object of the legislature in enacting Section 14B is clearly to punish the recalcitrant employers and not to provide compensation for the employees....

5. No doubt, that decision was given in the context of an attack that the award of damages u/s 14B following a prosecution u/s 14 of the Article would bring in the principle of double Jeopardy under Article 20(2) of the Constitution. The learned Counsel of the Patna High Court were able to repel this argument based on the principle of double jeopardy, on the ground that, while punishment by way of prosecution is inflicted by a Court the penalty by way of damages is awarded by an administrative authority, and, therefore, that principle would not stand In the way of damages by way of penalty being Imposed in addition to a criminal prosecution.

6. Ones it is held, as laid down in the above decision which is respectfully follow, that the damages u/s 14B a penal-levy, though imposed by an administrative authority, it will be necessary that the affected party la given an opportunity to show cause, before It is levied on him. He may have several defences which may be valid, and which he may urge, for mitigating the penalty. Learned counsel for the respondent has referred to a Government order which has prescribed slab rates for the computation of the amount of damages, giving it almost an automatic character with no margin for the exercise of discretion by the authority who imposes the damages in the first instance. Though Section 14B states that the damages have to be recovered by the appropriate Government, it Is urged by counsel for the respondent that what happens in practice is the Provident Fund Commissioner, by virtual of a delegation, automatically imposes damages according to the slab rates in the Government order leaving it to the party to move the Government subsequently for relief by way of reduction of the amount.

It appears to me that such a method of imposing a levy, which is definitely penal in character, cannot be upheld. To begin with, the section uses the word "may," thereby importing an element of discretion which can be invoked by the affected party, if he has adequate reasons to explain the delay in making the remittance in any given month. Under the scheme of the slab-system introduced by the Government order, it would appear as if the authority who imposes the damages initially, has no discretion to deviate from slab-system which he has got to follow automatically. But it is that authority who has to deal first with the contributor, and consequently the same authority has to consider any explanation that the contributor has got to offer. Therefore, the provision under the slab-system by which one authority automatically levies certain amounts by way of penalty without reference to any mitigating circumstances, and then the affected party thereafter has to move the higher authority, namely, the Government, for relief against such levy, cannot, in my opinion, be viewed as a substitute for the normal rule of natural justice which has to be followed in the case of penal levies, viz., that the party affected should be given a chance of making representations contra even before the original itself.

7. As regards the argument about the non-applicability of Section 7A of the Article to the levy of damages u/s 14B, there is a decision of a Bench of this Court in which I was a party, in *Regional Provident Fund Commissioner, Madras v. K.R. Subbaier Tape Factory, Woriyur* 1966 11 L.L.J. 676, where dealing with a claim for damages for default u/s 14B, the Bench observed that Section 7A of the Article has provided for an examination of the question of liability to pay damages (under Section 14B) in disputed cases. It cannot be held that in the present cases the petitioner has not disputed the levy of damages, merely because he waited until successive demands for damages for a number of months were received by him, and made thereafter a request to the Government for a waiver, and subsequently made an application, in this Court, for relief under Article 226 of the Constitution. He has mentioned times disputed the levy, and it is clear that, following the decision above mentioned, an enquiry is necessary, before the quantum of damages is levied or demanded.

8. The writ petition is, therefore, allowed as prayed for. It will be open to the appropriate authority to give an opportunity to the petitioner to show cause, before taking a decision in the matter. There will be no order as to costs.