

(1962) 11 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 2845 of 1987

Mathur Alloy Steels Pvt. Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-11-1962

Acts Referred:

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

Citation : (1993) 2 LLJ 471

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : Lata Desai, for the Appellant; H.V. Mehta, for the Respondent

Judgement

1. The order dated December 8, 1986 passed by the Regional Fund Commissioner, the second respondent herein, levying damages u/s 14-B of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as "the Act") is impugned in the present petition. The order impugned shows that the damages ranging from 5% to 100% of the provident fund dues has been levied against the petitioner. The petitioners have challenged the imposition on the grounds inter alia that there has been an inordinate delay in issuing the show cause notice for levying damages has been waived and that the levy of damages over and above 25% is unjustified. In so far as the latter objection is concerned, the Government of India has by an amendment introduced a new para being para 32-A to the Employees' Provident Funds Schemes whereunder rates of damages, for different periods of default, has been laid down. The present case is, therefore, liable to be remanded back to the second respondent for reassessing damages in the light of the amended provisions of paragraph 32-A of the Scheme.

2. Ms. Desai, the learned Counsel appearing on behalf of the petitioners, has however contended that the period of default in the instant case is for the period May, 1974 to May 1982.

The show cause notice is issued on December 22, 1984. According to Ms. Desai the show cause notice is issued after an inordinate delay.

Because of lapse of time the petitioners were entitled to believe that the defaults on the part of the petitioner are condoned and the damages are waived. Ms. Desai further pointed out that prior to June, 1981 the business of the first petitioner was controlled by the fourth respondent. In June 1981 the business was transferred to the third respondent and it is only in December 1985 that the third respondent transferred the business to the second petitioner. Hence, according to Ms. Desai, the petitioners would be penalised for the acts of third and fourth respondents for which the second petitioner can hardly be held to be responsible. It would amount to visiting the second petitioner with a penalty for the defaults committed not by him but by the third and fourth respondents.

3. Another thing which also militates against imposition of penalty is that no action had been taken against the petitioner for a long period of nine years when it committed the first default. No doubt, the Act does not provide a period of limitation but it is presumed that an action of a penal nature is contemplated in Section 14-B of the Act, must be taken as quickly as possible and within a reasonable time, otherwise the subject is entitled to presume that default has been waived as the State Government has a power to waive the default and not to initiate proceedings, for the levy of damages."

4. In my view, no reliance can be placed on the above decision as the aforesaid decision has been dissented by a larger Bench of the same Court, in the case of *The Regional Provident Fund Commissioner U.P. v. M/s. Allahabad Canning Co.* reported in 1978 (2) L. I.C. 998 In the latter case the Court has observed thus :

"Section 14-B of the Act does not provide any limitation during which action against an erring employer can be taken for delayed deposits under the Act. In the absence of any bar of limitation, in our opinion there is no principle of law which debarred the Provident Fund Commissioner from exercising the statutory powers available to him u/s 14-B of the Act."

In view of the latter case decided by a larger bench of the same High Court, no reliance can be placed on the earlier case which has been specifically overruled.

4A. Moreover, we have a number of cases decided by our Court wherein the view propounded by the larger Bench in the later case has been assented. In the case between *Cosmos India Rubber Works. (P) Ltd. v. R.P.F. Commissioner, Maharashtra* reported in 1986 (53) F.L.R. 331, decided by my learned brother Pendse, J., on August 4, 1986, it has been observed thus :

"Mrs. Mhatre then urged that show cause notice was served on the establishment after a considerable period and, therefore, the proceedings should be quashed on that count. It is not possible to accept the submission for more than one reason. In the first instance, the Act does not prescribe for period of limitation for service of notice and commencement of proceedings. It must be borne in mind that the

Commissioner is required to undertake large number of proceedings and it is not possible to commence all these proceedings within short duration. In any event, if the proceedings commence after considerable time that does not cause any hardship to the establishment. Secondly, in the present case, the period in respect of which damages are levied is from March 1979 to February 1981, and the show cause notice was issued on August 26, 1981 and, in my judgment, it is impossible to suggest that the show cause notice was issued after a considerable delay. The petition, in my judgment, is without any merit and deserves to be dismissed."

5. In the case of M/s. Hind Metal Works v. Prasad, Regional Provident Fund Commissioner and others Writ Petition No. 520 of 1979, Corum Kanade and Pendse, JJ., decided on July 30, 1981, it was observed as follows :

It was first contended that the default was for the period commencing from December 1972 to February 1976 and the Show Cause Notice was issued by the Commissioner only on September 9, 1978. The submission is that the proceedings u/s 14-B of the Act were commenced after lapse of considerable time and it was not proper to adopt the proceedings so late. It is not possible to accept the submission because the provisions of the Act do not provide for a period of limitation for commencement of proceedings u/s 14-B of the Act. More passage of time is no answer for the fault committed by the petitioner."

6. In the case of Rameshkumar Manilal Shah and another v. V. Prasad and another decided by my learned brother Kurdukar, J., on April 30, 1982 it was observed as follows :

"It is next urged by Shri Mehta that since the first respondent failed to take action under the Act within reasonable time it must be deemed that the first respondent has condoned the delay or waived the right to levy the damages. This submission is again without any substance because under the Act no limitation is prescribed. It must be mentioned that only after the delay had been noticed by the first respondent in making the payment of the contributions the first respondent can initiate the proceedings for assessment of the damages u/s 14-B of the Act."

7. It seems to me that where the legislature has made no provisions for limitation, it would not be open to the Court to introduce any such limitation on the ground of fairness or justice. The words of Section 14-B are plain and unambiguous and it would be the duty of the Provident Fund Commissioner to give effect to the said provision without any considerations of limitation. Mrs. Desai no doubt emphasised the fact that such belated claims made on a large scale any cause considerable inconvenience to the employer, that is a consideration which the Legislature may take into account and if the Legislature feels that fair play and justice require that some limitation should be prescribed it may proceed to do so. In the absence of any provision, however, the Provident Fund Commissioner cannot import any such consideration in dealing with the

proceedings u/s 14-B of the Act.

In view of the above discussion, the submission of Ms. Desai that the proceedings for levying damages are vitiated on account of delay and laches, is liable to be rejected.

8. Before parting, it may be observed that though delay in issuing the show cause notice by itself cannot vitiate proceedings for levying damages u/s 14-B, it may, in certain cases, give room to a legitimate ground for considering the levy of damages at a rate lesser than the maximum prescribed under the amended provisions of paragraph 32-A. Paragraph 32-B specifically mentions regarding the terms and conditions for reductions or waiver of damages. Sub-Clause (a) of paragraph 32-B makes a provision for complete waiver of damages in case of change of management. Clause (c) prescribes for reduction of damages upto 50 per cent in cases not covered by Clauses (a) and (b) of the said paragraph. The second respondent, while deciding the case of the petitioner, will apply the provisions of paragraph 32-A as also paragraph 32-B of the Scheme to the facts of the case of the petitioner and thereafter decide the case.

9. In the result, the petition partly succeeds. The impugned order dated December 8, 1986 (Exhibit-I to the petition) is set aside and the matter is remanded back to the second respondent for deciding the case afresh in the light of the observations contained hereinabove. The second respondent will give a reasonable opportunity to the petitioner of being heard and thereafter decide the case on its own merits and in accordance with law.

10. Rule is made absolute in the above terms. No order as to costs.