
(1990) 04 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 16125 of 1982

M/s. Balaji Structural, Bangalore

APPELLANT

Vs

Regional Provident Fund Commissioner, Bangalore

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

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

Citation : (1991) 4 KarLJ 319

Hon'ble Judges : R. Ramakrishna, J

Judgement

1. The petitioner is a partnership firm registered under the Indian Partnership Act and are manufacturers of Technical Equipments, Pressure Vessels and agricultural implements.
2. The petitioner factory is covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") and they are required to pay provident fund contribution, family pension fund contribution, employees deposit linked insurance scheme contribution and administration charges.
3. The petitioner establishment failed to pay in time the above contribution from February 1974 to February 1978. Consequent to non-payment, after giving an opportunity to the petitioner-establishment, the Regional Provident Fund Commissioner has passed an order on 5-10-1981 to remit a sum of Rs. 24,954-15 ps. and further issued Annexure-C calling upon the petitioner to pay the amount within 15 days from 20-3-1982. This order is challenged in this writ petition.
4. Learned counsel for the petitioner Sri S.N. Murthy has fairly conceded that his client has made delayed payments as found in the statement enclosing the order Annexure-C. But the contention of the learned counsel is that due to power shortage, shortage of raw materials, labour problem, etc., from 1974 was compelled the delayed remittance towards provident fund contribution and hence the respondent is not justified in levying the penal damages to the extent of

100% in some instances and the penal damages to the extent of 25% would be reasonable. The learned counsel further submitted that this fact was brought to the notice of the respondent and requested to waive the proposed penal damages under Section 14-B of the Act and since this fact has not been considered by the respondent, the order requires interference. The learned counsel further submits that the order at Annexure-C is not a speaking order, that since the petitioner-establishment was closed during 1978, levy of penal damages is not proper as the respondent cannot make payment to the workmen who had left job during 1978 after the closure of the establishment.

5. Against this submission, learned Central Government Standing Counsel has submitted that by the pronouncement of the Judgment in *Organo Chemical Industries v Union of India*, AIR 1979 SC 1803 and the latest Judgment of our own High Court reported in *M/s. S.H. Salvekadam & Co. v Regional Provident Fund Commissioner*, ILR 1985 Karnataka 4244, law is well settled that under Section 14-B of the Act, the Provident Fund Commissioner is empowered to levy penal damages for non-payment or delayed payment of provident fund. Learned counsel further submitted that once the authority considers the case in a proper perspective, the Courts should be slow in interfering with such an order. He further submitted that even the workmen have left the establishment, the collection of provident fund is a trust, it goes to the funds and again it will be to the benefit of some of the employees who are working in order establishments after they left this establishment.

6. Section 14-B of the Act was incorporated in Act No. 37 of 1953 after having undergone number of changes. It presently reads as follows:

"14-B: Where an employer makes default in the payment of any contribution to the fund, the family pension fund or the insurance 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 Act or of any scheme or insurance scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears, as it may think fit to impose:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard."

When the constitutional validity of Section 14-B of the Act was questioned in *Organo Chemical Industries*" case before the Hon"ble Supreme Court of India, the validity of Section 14-B was upheld by their Lordships Mr. Justice V.R. Krishna Iyer and Mr. Justice A.P. Sen in a separate but concurring Judgment. It was held by the Judgment rendered by his Lordship Krishna Iyer, J. (as His Lordship then was) thus:

"The fund not merely loses the interest consequent on the non-payment but receives a shock in that its scarce resources are further furnished by the employer's default. There is great social injury to the scheme when an employer defaults; so that the lash of the law is delivered when its purpose is frustrated. What is more denunciatory is the fact that the employer makes deductions from the poor wages of the workers (and makes them suffer to that extent) and diverts even those sums for his private purpose by failing to make prompt remittances. Thus, default in contribution is compounded embezzlement, as it were. Naturally, damages will take an exemplary character and inflict a heavy blow on the shandy defaulter.

Damages, as imposed by Section 14-E includes a punitive sum quantified according to the circumstances of the case.

Penal levy can take the form of damages because the reparation for the injury suffered by the default is more than the narrow computation of interest on the contribution." In *M/s. S.H. Salvekadam & Co.*'s case, this Court observed thus:

"Section 14-B prescribes no period of limitation for the authority to initiate action for damages against erring employees. It confers a statutory right without the prescription of limitation and the plea of waiver or acquiescence cannot operate against the rule that there could be no estoppel against statute...It has to be held that delay in issuing the notice for levying damages, would not confer any right on the defaulting employer to claim that he should not be proceeded against for recovery of damages under Section 14-B of the Act...Delay is a relevant consideration for deciding whether damages should be recovered from the employer and if so to what extent-There is no doubt as the section stands now, the defaulting employer would be put to considerable inconvenience and harassment by delayed action on the part of the authorities. But on the language of Section 14-B, such delay could be a mitigating factor in the recovery and assessment of damages and not to claim immunity from action for damages on the ground of waiver or acquiescence which may be relevant for a cause of action founded on tort or contract.

These defaults may not be wilful but all the same they are defaults. The liability being strict liability, as soon as the employer defaults in complying with the provisions of Section 14-B of the Act, the right to impose damages accrues to the authorities under that section...Under the Act, the default lies in not remitting the contribution of the employers' and employees' shares and since the employees have no right of action under the Act, though levy may have suffered an injury by the delayed contributions, the concepts of strict liability and strict interpretation are attracted by Section 14-B of the Act...The considerations that prevail in the quantification of damages in an action in tort or contract cannot be imported into proceedings under Section 14-B of the Act in determining the question of arbitrariness. Such considerations will bring into play a high degree of arithmetical wizardry or casuistry to work out the permutations and combinations of various mitigating and aggregating factors for arriving at an exact figure which

would be an exercise in futility to achieve the object of Section 14-B of the Act. The contention that since the delayed contributions had been accepted, there were no defaults at all, merits no consideration since the right to levy damages accrues the moment the employer makes default in making the contributions or other payments indicated in Section 14-B of the Act."

If we examine the facts of this case in the background of the Judgments rendered by the Supreme Court and our own High Court, the respondent has absolutely not committed any error in passing the impugned order at Annexure-C. It is found that at some instances, the employer has not remitted the employees' contribution though it was with-held by him. The petitioner has shown cause to waive the proposed penal damages only on 29-1-1981 as per Annexure-B. The averments made in Annexure-B have not been substantiated by placing corroborating material that the delayed payment was due to the reasons stated in that letter. As rightly pointed out in the latter decision of our own High Court, sufficient opportunity is one of the criteria before passing an order and if such opportunity is given, the reasoning adopted by the authority cannot be questioned unless it is found to be perverse.

In the result, I make the following:

ORDER

This writ petition is without any merits and the same is hereby dismissed.

Parties to bear their own costs.