

(1996) 10 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 6607 of 1988

M/s. Gopalakrishna Textile Mills Private Limited, Bangalore

APPELLANT

Vs

The Regional Provident Fund Commissioner, Bangalore and
Another

RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

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

Citation : (1997) 5 KarLJ 181

Hon'ble Judges : M. P. Chinnappa, J

Judgement

1. In this writ petition, the short question that arises for consideration is as to whether the respondent was right in imposing penalty even after a lapse of 12 years to take action, if yes, whether he is justified in levying penalty as stated in the impugned order.

2. The brief facts which are necessary for the disposal of this writ petition are that the petitioner is a textile mill engaged in the production of cotton yarn and fabrics located in a rural area at Subramanyapura, Bangalore South Taluk. The petitioner has failed to remit the Provident Fund amount to the authority within the stipulated date. Therefore, show-cause notice was issued as per Annexure-A on 16-2-1985 under Section 14-B of the Act. On 24-4-1985 the petitioner sent a reply as per Annexure-B. Thereafter, the 1st respondent finalised the proceedings and forwarded the same along with its letter dated 12-6-1987 as per Annexures-C and B respectively. In the said order, the respondent 1 directed the petitioner to pay a sum of Rs. 1,06,545.65 as damages on Provident Fund Contributions, Administration Charges, Family Pension Fund Contributions, Deposit-linked Insurance Fund Contribution and Administrative charges for the periods from March, 1972 to February, 1984. The said order as per Annexures-C and D are illegal, arbitrary and unenforceable and void. On these grounds that petitioner has questioned the said orders.

3. Heard the learned Counsel for the petitioner and the learned Counsel for the

respondent.

4. The learned Counsel for the petitioner has vehemently argued that the respondent has initiated proceedings after 12 long years and therefore they are unenforceable and the same is liable to be set-aside and in support of his argument, he placed reliance on a decision in *National Marketing Corporation v Regional Provident Fund Commissioner and Others*, (1994) LLR Bom. 379, wherein it is held that the case is vitiated on account of the long delay ranging between 10-13 years in initiating action under Section 14-B of the Act for the alleged delay in depositing the contribution for which no explanation is also forthcoming.

5. Similarly in a decision in *Orissa Forest Development Corporation Limited and Another v Regional Provident Fund Commissioner, Orissa*, 1995(71) FLR 388 (Ori.), it is held that it is undoubtedly true that Section 14-B of the Act itself does not provide for any limitation of initiation of a proceeding for levy of damages. But even where the statute does not provide for any limitation, it has been held in several decisions of the Apex Court as well as this Court that the power should be exercised within a reasonable period. The period of default is ranging from 1971 to 1980 and 1987 to 1989 and the initiation of the proceeding is in the year 1992 and no justifiable reason has been indicated for this gross delay on the part of the Commissioner in initiating the penalty proceeding. In that view of the matter, the ratio of the earlier Bench decision of this Court in Original Jurisdiction Case No. 503 of 1991 squarely applies. Accordingly, the order was quashed.

6. Relying on these two decisions, the learned Advocate for the petitioner submitted that in this case also it is clear from the order that the show-cause notice was issued in 1985 though the payment was pertaining from March, 1972 to January, 1980. Therefore, he submitted that the order is liable to be quashed.

7. Per contra, the learned Counsel for the respondent however admitted that it has admitted that the proceedings were initiated after a lapse of 12 years. Still the order does not call for interference. While emphasising this argument he submitted that the petitioner has collected the amount from the employees and the employer is bound by the statute to contribute equal amount according to law and he has been given 15 days time from the date of payment of the wages to the employees to remit the amount to the Provident Fund. He also submitted that irrespective of the fact that whether the employer deposited the amount or not, the Provident Fund being in the nature of Trust has to remit the interest to the account of each individual employees, thereby the very object of the Act is defeated causing loss to the 1st respondent. He also further argued that when the statute does not prescribe any limitation, it cannot be construed that the Act of the respondent is barred by time. In addition to that, it is not a solitary case default committed by the respondent in remitting the amount to the fund. On the other hand, it is a continuous process.

8. The explanation offered by the petitioner was not accepted by the respondent

as the grounds alleged are not valid. It is the statutory duty of the employer. Under the circumstances, the Commissioner also has been authorised to levy penalty to the extent of 100%.

9. In support of his argument he placed reliance on a decision in *M/s. S.H. Salvekadam and Company v Regional Provident Fund Commissioner*, ILR 1985 Kar. 4244, wherein it is held:

"Section 14-B prescribes no period of limitation for the authority to initiate action for damages against erring employers. 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 willful 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 employer's and employees' shares and since the employees have no right of action under the Act, though they 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.

The interpretation put on a penal provision in a taxing statute stands on a different footing from the interpretation of a penal provision in a piece of social legislation. All taxing statutes act harshly upon the tax payers and hence mere technical breach or a breach which flows from a bona fide belief would absolve

the tax payer from the rigours of its penal provisions.... Adoption of the views with regard to a taxing statute to labour legislation, would prejudicially operate against the interest of labour."

This decision was rendered by this Court placing reliance on a decision in *Hoogly Docking v Inspector of Employees' Provident Fund*, (1980)56 FJR 456, wherein the Supreme Court has held:

"The power of the Regional Provident Fund Commissioner to impose damages under Section 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute. Having regard to the punitive nature of the power exercisable under Section 14-B and the consequences that ensue therefrom, an order under Section 14-B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which in Section 14-B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz., the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word "damages" in Section 14-B lays down sufficient guidelines for him to levy damages."

From this it is abundantly clear that our High Court has also come to the conclusion that the 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. And further the Supreme Court also has held that the imposition of damages under Section 14-B is a quasi-judicial function. Therefore, the question of limitation as contended by the learned Counsel for the petitioner does not arise.

10. The learned Counsel for the petitioner however contended that the principle of natural justice has not been followed. This argument is unsustainable. The notice was issued to the petitioner and the petitioner offered an explanation. The said explanation was considered by the Commissioner while passing the impugned order. It is stated by the petitioner in his explanation that he has taken a contention that the period in question was marked by incessant labour trouble of the worst type, a deathnel slump in the cotton textile industry throughout the whole country between the period from 1972 to 1976 which affected the factory very badly in all aspects. It is also contended that there was a small delay that has taken place in the remittance of contribution. This fact was also considered by the Commissioner under the impugned order. Even otherwise, it is clear that the petitioners have not placed any materials to show that there was any deathnel slump in the cotton textile industry. On the other hand, the petitioner has paid the wages to the workman. While paying the wages, the petitioner has collected the contribution from the workman payable to the Provident Fund. The petitioner should have paid the contribution of the employees and remitted the

same with the 1st respondent. Under the circumstances, the reasons assigned for committing default in remitting the amount cannot be accepted and rightly the same was rejected by the respondent.

11. The learned Counsel for the petitioner further argued that the 1st respondent has not applied his mind in imposing penalty or non-remittance of the amount. This argument also is unsustainable. From a perusal of the impugned order, it is abundantly clear that the Provident Fund Commissioner fixed the penalty on the basis of the duration in remitting the amount. It is clear that the Commissioner has fixed penalty for the delays up to 15 days at 2%; between 15 days and 1 month at 5%, between 1 month and 2 months at 10%; between 2 months and 3 months at 15%; between 3 months and 4 months at 20% and between 4 months and 5 months at 25% and further held that no damages be levied in respect of the months for which the cheques were presented to the bank on or before 20th of the following month, etc. On the basis of this percentage, the calculation was made and the 1st respondent has come to the conclusion that the petitioner is liable to pay Rs. 1,06,545.65. It is an admitted fact that the 1st respondent is empowered to levy penalty up to 100%. But in this case, as indicated above, the maximum penalty imposed is only 25% and that too depending on the long delay in remitting the amount. Thus, it is clear that the 1st respondent has taken into consideration the representation made by the petitioner and after applying his mind has come to the conclusion that the penalty imposed is just and reasonable. This finding of the Commissioner does not call for interference.

12. The learned Senior Standing Counsel however submitted that the Commissioner should have awarded interest on this amount. This question does not arise for consideration. For the foregoing reasons, I do not find any reason to interfere with the impugned order. Hence, this writ petition is dismissed.