

(1984) 12 GUJ CK 0014
In the Gujarat High Court

Narayan Pottery Works

APPELLANT

Vs

Regional Provident Fund Commissioner, Gujarat State.

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

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

Citation : (1985) 1 GLR 149

Hon'ble Judges : R.A. Mehta, J;N.H. Bhatt, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—The above petitions are filed by different business concerns, but against the common respondent, the Regional Provident Fund Commissioner for the State of Gujarat, an authority under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Against these companies, separate orders had come to be passed by this respondent on different dates for various alleged defaults committed in paying the provident fund contributions and other contributions. The impugned orders are annexed to each of these petitions. They were challenged by the petitioners of these petitions essentially on the ground that while passing those orders u/s 14-B of the said Act. the guidelines issued by the Central Provident Fund Commissioner on 3-11-82 were not followed. It was also alleged that while exercising discretion of levying penalty, the respondent-authority applied a rigid formula common to all the cases and thereby abdicated its discretion while exercising judicial powers. It appears that the respondent-authority while deciding these cases thought that the guidelines issued by the Central authority, and which were in vogue upto the year 1982 from the year 1973 onwards, were to be rigidly adhered to and so the alleged compelling and constraining circumstances that made these industrial concerns commit defaults were summarily brushed aside presumably because the respondent-authority thought that it had no discretion left with it while following the said guidelines. It was also contended in some of these petitions that when on 3-11-82 the guidelines were issued, it was directed that in all pending cases 25% per annum on all belated remittances be charged as damages and this was ignored. In the

Special Civil Application No. 3179/84, it was specifically contended that on some occasions there was delay not because of any fault of the industry concerned, but because of the late clearance of the cheques by the concerned Banks, over which this industrial concern had no control. We would in this connection state that it has become notorious that these banking companies manned by the staff, who are proverbially alive to their rights but more or less oblivious of their duties, have their standards of efficient disposition of their business slackened considerably. If it be so, it is a factor to be reckoned. The common feature in all these petitions also is that the guidelines issued on 3-11-82 were not followed uniformly, and that a discrimination was committed in respect of the matters similarly situated by favouring them with the implementation of those guidelines whereas their cases were not so decided.

2. As far as the guidelines dated 3-11-82 are concerned, Mr. S.R. Shah came out with the clarificatory note or circular issued by the very authority on 13-5-83, which tried to show that the guidelines dated 3-11-82 were not intended to be so broad as to apply to all the defaults of all past periods if the chapter was not closed, but they were made to be applicable to the periods of defaults committed on or after 15-12-1982 if the cases were undecided. These clarifications are not required to be dealt with by us for the reasons, which we are just now mentioning.

3. With the expansion of activities of the welfare State, many judicial and quasi-judicial functions are to be left to administrative agencies. This in its wake has brought forth at times unpleasant situations, because more often than not these administrative authorities cannot disabuse their minds of the notion that they are essentially administrative authorities and quasi-judicial functions to be handled by them are incidental or subservient to their administrative duties. From the very nature of things, it cannot be so. When an administrative authority is discharging any judicial or quasi-judicial function it has to draw a clear line of demarcation between its executive functions on one hand and judicial or quasi-judicial functions on the other. While exercising the latter kind of its duties it is to be guided only by the guidelines provided by the law and if any general guidelines are issued from the higher administrative authorities and if they are to be treated as of peremptory and binding character so much so that the administrative authority like the respondent, exercising judicial functions thinks that he has no discretion left with him in the matter it will be abdication of judicial authority. This is the unfortunate aftermath of entrusting the administrative authorities with judicial or quasi-judicial functions, but in the present day we have to live with it with time and again emphasis laid by this High Court and other highest judicial bodies that these two functions are to be kept separate by those administrative authorities.

4. We find that in all these cases, the respondent has completely shut its eyes so to say to the various pleas put forward by the industrial concerns and their cases have been decided strictly according to the table to be found at page 56 of the

Special. Civil Application No. 3178 of 1984, the record of which has been taken by us as the basis for deciding this group of petitions. This obviously in legal parlance can be termed as abdication of judicial discretion by him. We, therefore, emphasise, following respectfully the judgment of S.P. Bharucha, J. of Bombay High Court dated 6-10-82 in the Misc. Petition No. 723 of 1979 on his file that "no executive or administrative authority can in any manner channel the discretion of a judicial or quasi-judicial authority by directives or guidelines and when the judicial or quasi-judicial authority acts upon the directives or guidelines, his discretion is impaired."

5. On the above ground, we set aside all the impugned orders in all these petitions. The result would be that all the proceedings shall now go back to the respondent who as we understand is a State level highest officer, can be certainly credited with the full view of the compass of his functions. We hope that he will now consider individual case on its own merits and while doing so he will not shut his eyes to the various compelling circumstances pleaded by the concerned industry. He may also view the case separately for delayed contribution regarding the employees' amounts and regarding the amounts to be contributed by the employer himself. An employer's unsurmountable difficulties, his helplessness in finding the funds to meet this statutory obligation are certainly factors to be reckoned. The respondent cannot say that statutory duty must be performed irrespective of the availability of the funds or not. Nobody is expected to carry out a statutory obligation by committing any robbery or any offence. This is always to be borne in mind. Unfortunately, we have found that the authority seems to be harbouring the opinion that statutory duty of contributing must be complied with under any circumstances. The Parliament has clothed the respondent with a discretion and it is so for good reasons.

6. The respondent shall not allow his judgment to be clouded by any guidelines. He will examine each case dispassionately, not as if he is the Custodian of these funds but as if he is the Judge to decide the merits or demerits of each individual case in every facet. Every Judge is expected to dispense justice tampered with mercy wherever it is called for. This is the essential attribute of justice and this also we hope, will not be lost sight of by the respondent. Every judicial authority will remember that in a complex society of ours, even industries have a right to live and their continued living is contributory to the common health of the society. The Government while issuing the so-called guidelines, which are treated by the respondent as binding and unflinching, itself has emphasised that they are only guidelines and no intention was there to fetter the discretion of the respondent. With the above directions, which are legal ones, we leave the parties to the judicial discretion of the respondent in all these matters.

7. The petitions are allowed accordingly by setting aside the impugned orders. Rule is made absolute with no order as to costs in each of these petitions.

8. As we have not dealt with the other contentions advanced by the petitioners in these petitions, it will be open to them to raise the same when the matter is

reconsidered by the respondent authority.