
(1976) 05 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 1652 of 1971

National Coal Development Corporation Limited	APPELLANT
Vs	
Union of India(UOI) and Another	RESPONDENT

Date of Decision : 10-05-1976

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 10D, 10F, 2(e)

Citation : (1977) 25 BLJR 15 : (1977) 10 PLJR 85

Hon'ble Judges : S.K. Choudhuri, J;H.L. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.L. Agarwal and S.K. Choudhuri, JJ.—The petitioner, the National Coal Development Corporation Limited, an undertaking of the Government of India having its headquarters at Darbhanga House, Ranchi, by this writ application has challenged the order dated 8th of September, 1971 contained in Annexure 6 to the writ application, passed by the Commissioner, Coal Mines provident Fund Dhanbad (respondent No. 2) imposing a sum of Rs. 6,43,479.26 paise as damages upon the petitioner u/s 10-F of the Coal Mines Provident Fund and Bonus Schemes Act (Act 46 of 1948) - to be referred briefly as "the Act".

2. The relevant facts and circumstances leading to the passing of the impugned order are these. The petitioner admittedly owns several collieries in the State of Bihar as well as other States which are producing coal and is an "employer" within the meaning of Clause (e) of Section 2 of the Act and is liable to pay coal mines provident fund contribution u/s 10-D of the Act. One of the units owned by the petitioner is known as Kargali (sic). In this case we are concerned with the defaults made by the petitioner with respect to this colliery in payment of the contribution towards provident fund for the period April, 1969 to November, 1970 1 (excluding May, 1970). Section 10-D of the Act provides that the contribution payable in respect of a member under the Coal Mines Provident Fund Scheme framed under this Act, shall be payable by the employer (known as employee's

contribution) and by the employee (known as employee's contribution) at such rate as may be specified under the aforesaid Scheme and the employer shall pay the employer's contribution as well as the employee's contribution, whether or not he has recovered from any employee the employee's share of the contribution. It is admitted that the scheme contemplated u/s 10-D of the Act has already been framed. Under paragraph 33-A of that Scheme, the petitioner was bound to make the payment of the contribution on or before the 15th day (said to be now amended to be the last day) of every month following the month to which the contribution relate under any of the modes prescribed under the aforesaid paragraph of the Scheme.

3. The petitioner was served with a demand notice dated 20th of March, 1971, contained in Annexure 1 to the writ application, by respondent No. 1 in respect of the aforesaid damages. This notice stated that as the payments of the provident fund dues in respect of the period, already indicated above, have not been made within the prescribed time limit, damages thereon for belated payments as per provisions contained in Section 10-F of the Act "have become due for payment" in terms of the notification. O.S.O. 2977 published in the Gazette of India dated 8th of October, 1966. A statement was appended to this notice in pursuance of the rate of recovery of damages appended to the aforesaid notification by a schedule. We shall refer to the schedule later and consider it in a little greater detail. The petitioner was, however, called upon to make the payment of the said amount of Rs. 10,000 on or before the date of the receipt of the said notice failing which it was to be realised as arrears of land revenue through certificate proceeding. This notice was, however, modified by a registered letter of respondent No. 2 dated 29th of June, 1971 (Annexure 3 to the writ petition) by which the petitioner was provided with an opportunity to file an objection, if any, to the said demand within 15 days of the receipt of this notice (Annexure 3) either personally or through a duly authorised representative "when a date will be fixed, if necessary, for the hearing of the matter." It was further clarified that in the event of the failure of the petitioner to do so, the amount of demand covered by the notice would be deemed as final and conclusive and would be realised by taking proceedings u/s 10-A of the Act.

4. The petitioner submitted a reply to the notice, and a copy of the same has been made Annexure 4 to the writ application. The petitioner denied its liability to pay the damages on various legal grounds. As it appears from the impugned order, namely, Annexure 6 itself that in the personal hearing that was granted to the petitioner, its several representatives were present including its advocate, Legal Adviser and the Deputy Financial Adviser etc and on their submissions four contentions were formulated which are noticed in paragraph 7 of the impugned order. We may briefly indicate those contentions thus:

(i) The provisions of Section 10-F provide for recovery of damages for default in payment and not for delayed payments. The case of Kargali colliery was not a case of non-payment but was only a case of delayed payment.

(ii) The provisions of the Act were ultra vires as they as they did not provide for sliding rate of damages in the Act itself.

(iii) The acceptance of the delayed payments by the Provident Fund Organisation amounted to condonation of the delay.

(iv) There was no provision in the order regarding imposition of damages.

5. All the above contentions were rejected by respondent No. 2 and then he passed the ultimate order in these terms:

11. Damages are levied according to the provisions of the aforesaid Act and the scale prescribed by Central Government.

The petitioner accordingly has been called upon to pay the said amount as damages imposed u/s 10-F of the Act within a month from the date of the order which is under challenge.

6. A counter-affidavit has been filed on behalf of respondent No. 2 and his stand in the said counter-affidavit is that full opportunity was given to the petitioner to place its case and, in fact, the company was fully heard and, therefore, there has been no violation of the principle of natural justice much less of any law. The definite stand of respondent No. 2 is that "the company was served with a demand notice for the proposed damages which were calculated according to the rates prescribed in the notification."

7. Mr. K.D. Chatterj., appearing on behalf of the petitioner, has contended that respondent No. 2 has acted merely in a mechanical way in determining the damages in question when he was an authority enjoined with the duty to determine the damages, involving the rights of the petitioner, judicially. He has further contended that the delegation of power to respondent No. 2 by the Central Government by the notification, referred to above, namely, S.O. 2977 dated 8th of October, 1966, prescribing sliding rates, of recovery of damages has imposed conditions repugnant to his very power and has left him with no discretion. In order to appreciate the argument, we shall refer to the provisions contained in Section 10-F of the Act which provides for recovery of damages Relevant portion of Section 10-F of the Act. runs thus:

Where an employer makes default in the payment of any contribution or bonus or any charges payable by him under any scheme framed under this Act...the Central Government may recover from such employer or person, as the case may be, such damages, not exceeding twenty-five per cent, of the amount of arrears, as it may think fit to impose.

(Italicise is ours)

The Central Government has purported to delegate its power to respondent No. 2, namely, the Commissioner of Coal Mines provident fund, in exercise of the powers contained in Section 10-C of the Act. This section provides that the Central Government may, by notification in the official Gazette, direct that any

power exercisable by it under this Act or any scheme framed thereunder, shall subject to such conditions, if any, as may be specified in the notification; be exercisable also by the Coal Mines Provident Fund Commissioner or any officer authorised in this behalf by the Central Government. It is under this provision that the aforesaid notification S.O. 2977 dated 8th of October, 1966 has been made, and specified in column (1) of the Table therein shall, subject to the conditions specified in the corresponding entry in column (2) of the said Table, be exercisable also by the Coal Mines Provident Fund Commissioner. It will be necessary to refer to some of the relevant provisions of column (2) of this notification which deal with the power to recover damages u/s 10-F of the Act. While prescribing the power to recover damages u/s 10-F of the Act, some conditions have been imposed under the table itself under the column "condition". Reference may be made only to two of the conditions for the controversy raised before us which are as follows:

TABLE	Power Condition	(1) (2)
-------	-----------------	---------

2. Power to recover damages under (1) Subject to a maximum of 25% Section 10-F of the said Act,-- of the amount of arrears, reco- (i) from any employer who makes very of damages shall be made at default in the payment of-- the sliding rates specified in the (a) any contribution or charges Schedule annexed hereto, payable under the Coal Provided that- Mines Provident Fund (a) 5 days of grace may be allow- Schemes; or ed for making the payment during which period no damages shall be levied. (b) For delays upto 15 days, in- cluding days of grace, dam- ages at half the rate spec- fied in the said Schedule, may be levied. * * * * * (5) Where the amount of damages to be levied by the Coal Mines Provident Fund Commissioner does not exceed rupees two in any one case, he may, at his own discretion wave recovery of such damages.

Thereafter is the Schedule which reads as under:

Sliding rate of recovery of damages u/s 10-F of the Coal Mines Provident Fund and Bonus Schemes Act 1948.

PERIOD OF DEFAULT.

Sl. No. of Default One Over over over over over during the year, month one two three four five or less month months months months months. up to up to up to up to two three four five months. months months months.

1st default 2% of 5% of 10% of 15% of 20% of 25% of arrears arrears arrears arrears arrears 2nd default 5% of 10% of 15% of 20% of 25% of 25% of 3rd default 10% of 15% of 20% of 25% of 25% of 25% of 4th default 15% of 20% of 25% of 25% of 25% of 25% of 5th default 20% of 25% of 25% of 25% of 25% of 25% of 6th or subse- quent default 25% of 25% of 25% of 25% of

25% of 25% of Sd-Daljit Singh (sic)

8. On the basis of the above provisions it was contended by Mr. D.D. Chatterji that respondent No. 2, i.e., the Commissioner Coal Mines Provident Fund, by this delegation has not been left with any discretion as fetters have been imposed upon him to recover damages "at the sliding rates specified in the Schedule annexed here to" so much so that condition No. (5) has fettered his discretion to this extent that he cannot waive recovery of any damage which exceeds as small amount as rupees two. Some arguments were also advanced by him that the sliding rates of recovery of damages as prescribed under the schedule were ultra vires Section 10-F as the Parliament did not think to prescribe or impose any such limitation on the discretion of the Central Government or its delegate and decided to leave the matter entirely open to it to choose any rate or amount of penalty as might appear just and proper from case to case. Learned Counsel appearing on behalf of the respondents in order to meet this challenge of vires, however, adopted an argument that the Table of sliding rate was not absolute in its nature and only provided a guide-line for the guidance of the delegate, namely, the Commissioner of Coal Mines Provident Fund, therefore, it was still open to respondent No. 2 in his discretion and wisdom to apply any rate not exceeding 25% as he might think proper in appropriate cases.

9. The Central Government, however, does not appear to have intended to lay down the sliding rates as a matter of mere guide-line and as it appears to us, definitely purposing to fix different scales and rates of penalties to be imposed in a firm manner in given circumstances practically taking away completely the discretion of the Coal Mines Provident Fund Commissioner. This Court and the Supreme Court while considering this provision have made certain observations (to which we shall refer hereafter). On reference to the table, the Provident Fund Commissioner who had applied the rates as prescribed in the table, was directed to consider the case of the employer in a judicial manner and not in a mechanical manner. On the authority of those cases discussed little late, we are inclined to take the view that the direction in the table may be merely directory in nature but not mandatory. Respondent No. 2, however, in the instant case has acted in complete violation and breach of the provisions of Section 10-F under an erroneous impression that he was bound to impose the penalty only in terms of the Schedule having no right to exercise his own discretion and application of his judicial mind to the present case solely falling within the framework of the table appended to the schedule and, therefore, his order cannot be sustained in law.

10. The provision contained in Section 10-F of the Act had fallen for consideration before this Court as well as the Supreme Court, in this Court in the case of J.P. Lala and Sons v. Commissioner of Coal Mines Provident Fund, Dhanbad 1971 B.L.J.R. 998 which case itself went to the Supreme Court where the judgment of this Court was affirmed. To this decision we shall come a little later. The point urged in this case that Section 10-F of the Act suffered from the

vires of excessive delegation because Parliament in delegating the power to the Central Government to impose damages has given no guide-line for the exercise of that power. This argument was repelled by this Court on reference to paragraph 33-A(2) of the Coal Mines Provident Fund Scheme, where some time limit has been fixed for making the contributions and it was observed that the Parliament fixed the maximum rate of damages which could be imposed on the amount of arrears and left it to the discretion of the Central Government to determine damages in each case according to its circumstances. It was further observed that as the Parliament itself could not deal with all types of cases which might come up for consideration, it had to leave to the discretion of the Central Government to decide in the light of the special circumstances of each case what the rate of damages should be and that by putting a ceiling on the power of the Central Government to impose damages, it did not confer an uncontrolled power on the Central Government. On reference to various other Sections of the Act, particularly Section 7-B, it was further observed that the amount of damages u/s 10-F could be determined only after the employer has been given a reasonable opportunity of representing his case. On taking a view that in that case this opportunity was denied and the Commissioner had passed the order in a mechanical manner without giving reasonable opportunity to the petitioner of that case, the order of penalty was set aside. When the matter went to the Supreme Court in the The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, on considering the various provisions of the Act, the learned Chief Justice, who delivered the leading judgment for the court, observed that the provisions in Section 10-F of the Act also indicated that determination of damages was not a mechanical process. The expression "such damages not exceeding 25 per cent of the amount of arrears as it may think fit to impose" itself eloquently indicated that "the determination of damages is not an inflexible application of a rigid formula" and the expression "an it may think fit to impose" in Section 10-F of the Act shows that "the authorities are required to apply their mind to the facts and circumstances of the case."

11. The sliding table was quoted in both the above judgment and in spite of the definite and firm scales having been fixed by the Central Government for imposition of penalty for different class of cases of default for determining upon the extent of the default, the above observation were made which, in our view, clearly indicative that the sliding rates of recovery of damages as prescribed in the table were never intended to be applied as a matter of course. Because once that was so, then that would certainly amount to determination of damages by a mechanical process having no flexibility at all and putting the case in a. very rigid formula, rather in a steel jacket.

12. Some argument was advanced on behalf of the respondents that the petitioner was a habitual defaulter and no circumstances were placed before the respondent No. 2 to mitigate the damages in any way and, therefore, this Court should not interfere as the petitioner has nothing in its favour to argue before the respondent No. 2 for imposition of any lesser penalty. This argument (sic)

entirely misconceived, in as much as, Mr. K.D. Chatterji did not challenge for a moment the amount of damages determined by respondent No. 2. What he challenged was the application of his mind and the procedure adopted by him for the determination of the damages in question. It might well be, that the respondent No. 2 could in his wisdom and discretion still thought the same amount to be the proper and reasonable amount of damages, but reading his various orders passed from the stage of the demand notice (Annexure 1), already referred to earlier, up to the final order contained in Annexure 6, we have no hesitation in our mind that respondent No. 2 has always acted under an impression that once a case for damages is made out, he has no discretion in the matter and he is bound to follow the table prescribed by the Central Government under the notification. This is what which is bad and is attacked by Mr. K.D. Chatterji and we are satisfied that there is great force in this contention.

13. To emphasise the above contention we may again refer to the operative part of the impugned order contained in paragraph 11 of Annexure 6 that we have already quoted above. After dealing with the points that were raised before him on behalf of the petitioner, in one sentence in the 11th paragraph of his order he has come to the conclusion that damages were to be levied in terms of the Scheme prescribed by the Central Government. No argument is necessary, much less any discussion, to show that the respondent No. 2 was under a firm impression that he was bound as a matter of law to follow the table and to apply the same only in a most mechanical manner. There is nothing in the whole of the order or any other document that has been brought before us to show that respondent No. 2 could be said to have applied his own judicial discretion in the matter of imposition of the penalty in question.

14. In the result, the application succeeds and the order dated 8th of September, 1971 of respondent No. 2 contained in Annexure 6 is set aside. The matter is remitted back to respondent No. 2 for passing a fresh order in accordance with law after giving a fresh notice to the petitioner. In the circumstances we shall make no order as to costs.