(1980) 06 GUJ CK 0010

In the Gujarat High Court

Nirmala Dyeing and Printing Mills Pvt. Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 23-06-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1980) 2 GLR 361

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Judgement

M.P. Thakkar, J.—Having made persistent defaults almost every month commencing from March 1974 till March 1976 in making deposit

of Provident Fund and Family Pension contributions and administrative charges payable under the Employees'' Provident Funds & Miscellaneous

Provisions Act, 1952, a notice was issued against the petitioner on September 27, 1966 by the Regional Provident Fund Commissioner calling

upon the petitioner to show cause within one month of the service of the notice why penalty as proposed in Annexure ""A"" should not be imposed.

The petitioner was also afforded an opportunity of personal hearing before the Regional Provident Fund Commissioner by remaining present to

make submissions in this behalf on October 27, 1976 at 11-00 a. m. The petitioner Company did not care to show cause in writing in response to

the notice. Nor did the petitioner send any one to appear at the personal hearing on the appointed day. As no cause was shown the Regional

Provident Fund Commissioner passed the order levying penalty of Rs. 12, 473-25 by the impugned order as per Annexure ""B"" dated November

5, 1976. The petitioner neither paid the amount nor took any steps to challenge the order levying penalty for about 1 1/2 Years. On March 6, 1978 suddenly the petitioner Company woke up and instituted the present petition challenging the legality and validity of the impugned order

without having paid the penalty imposed on it.

2. The petitioner Company has not shown any justification for not showing cause in response to the notice served by the competent authority. The

petitioner Company has also not shown satisfactory cause for failing to appear on the appointed day in 1976. The petitioner has also failed to show

sufficient cause for the delay of about 11 years in the institution of the present petition. It is not disputed that till the institution of the petition on

December 22, 1977 the petitioner Company had not paid the penalty levied as per Annexure ""B"" dated November 5, 1976. Thus, the petitioner

has had the benefit of using the monies required to be paid in connection with the penalty for its own use without payment of the interest till the date

of the institution of the petition. Even today when the petition has come up for final hearing on June 23, 1980, Learned Counsel for the Company is

not in a position to state that the penalty amount has been paid. It, thus, appears that the penalty amount has been retained by the petitioner without

payment of interest for as many as four years. Under the circumstances, the penalty levied by the competent authority as per annexure ""B"" already

stands abated to the extent of about 50% if one were to take into consideration the fact that the rate of interest to-day is in the neighbourhood of

15% to 17%. Under the circumstances, we see no reason to disturb the impugned order. We may also say that in such cases deterrent penalty

deserves to be imposed because the amount payable under the Employees'' Provident Funds & Miscellaneous Provisions Act cannot be permitted

to be utilised by the Company concerned for its own benefit with impunity. One of the purposes of imposing penalty is to ensure that it deters the

defaulter as also others of a like mind from indulging in such practices. There is, therefore, no good reason to interfere with the order passed by the

competent authority. In fact the petitioner has already secured an undue advantage by his own default in payment of the penalty amount even

though the petition was not filed for a long time and even though no stay had been granted during the pendency of the petition. It would, therefore,

be neither legal nor proper to invoke the high prerogative jurisdiction under Article 226 of the Constitution of India.

The petition is, therefore, rejected. Rule is discharged. No order regarding costs.

