

(1995) 02 OHC CK 0001
In the Orissa High Court
Case No : C.J.C. No. 782 of 1993

Orissa State Electricity Board and Another	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

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

Citation : (1999) 3 LLJ 353

Hon'ble Judges : D.M. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.R. Sarangi, for the Appellant; A.B. Misra, for the Respondent

Judgement

A. Pasayat, J.—Dispute in the case at hand relates to the propriety of levy of damages u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short the "Act"). By the impugned order dated November 5, 1993, damages of Rs. 2,35,928.00 have been levied by the Regional Provident Fund Commissioner, Orissa (in short the "Commissioner"), Opposite party No. 2 at the uniform rate of 25% of the defaulted amount, for the years of 1989-90 and 1990-91.

2. According to learned counsel for petitioners, damages as levied are excessive, and are far in excess of the maximum limits indicated by this Court in several cases concerning the petitioner itself, e.g. B.J.C. No. 2142 of 1986 disposed of on January 28, 1988. It is also submitted that date of payment by the Board by bank draft or cheque has not been taken note of, and date of encashment has been considered to be the relevant date. Further, levy has been made after long passage of time. Learned counsel for opposite parties however submitted that there was considerable delay in payment of the amounts, and damages levied are not unreasonable. It is also submitted that this Court in the disposed of cases, did not lay down any strait jacket formula as to maximum limit. It depends on the facts and circumstances of each case. In the earlier cases, considering the period of delay, and the peculiar facts involved, the quantum was

fixed.

3. It is rightly submitted by the learned counsel for opposite parties that no strait jacket formula was laid down by this Court. But, it goes without saying that the period of delay is a relevant factor while considering the appropriate damages to be levied. If the delay is unusually long, higher percentage would be appropriate. In case of marginal delay token damages can be levied. For periods upto one month 5% of the amount in default would be appropriate, while 12% would be appropriate for default upto one year. Though no time limit has been fixed within which damages have to be levied, it should, in the absence of compelling reasons, be done within a reasonable time from the expiry of the due date. Delay in performance of statutory duties amounts to an abuse of process of law. The Statute under consideration is a beneficial piece of legislation. Early action would be in the interest of all concerned. In a given case unusual delay in levying damages would be a mitigating factor while considering appropriate quantum. Long delay may full an employee to a false sense of condonation. The provision has a reformative element in it. That is an additional reason as to why levy of damages, if any should be done as early as practicable. Though delayed levy does not invalidate the same, yet, as indicated supra, it is in a given case a mitigating factor.

4. The appropriate date to be taken note of is date of payment by draft/cheque and not date of encashment. Otherwise, even if an employer has paid the amount due by cheque or draft, and the same has been received by the Provident Fund authorities within the due date, damages may be levied by taking date of encashment as the date of payment. There may be cases, where remittance is made in the manner prescribed under Employees' Provident Fund Scheme, 1952 (in short Scheme) within the time fixed, but amount is credited after due date on account of postal delay in encashment of the draft/cheque. In such cases levy of damages by taking date of credit to be the relevant date would be in appropriate and illegal.

5. Considering the fact that delay was more than one year in some of the months, we feel levy of damages @ 12% on the defaulted amount, would be appropriate. The opposite party No. 2, Shall work-out the damages on the basis of our direction, and intimate the details to the petitioners so that deposit can be made. As the amount would in any event exceed Rupees One Lakh, let the petitioner deposit Rupees One Lakh with the opposite party No. 2, by March 7, 1995 subject to condition that balance shall be paid within a month from the date of receipt of intimation from the opposite party No. 2 by March 7, 1995 subject to condition that balance shall be paid within a month from the date of receipt of intimation from the opposite party No.2 relating to balance. In view of this order recovery proceeding shall not be continued.

Copy of this order be handed over to the learned counsel for opposite parties for compliance.

Application is disposed of accordingly.

D.M. Patnaik, J.

6. I agree.