
(2006) 01 AHC CK 0136

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10668 of 1981

Pioneer Limited (M/s.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

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

Citation : (2006) 01 AHC CK 0136

Hon'ble Judges : Bharati Sapru, J

Final Decision : Disposed Of

Judgement

Bharati Sapru, J.—The issues involved in this matter are about 35 years old.

2. The petitioner has filed this writ petition in the year 1981 against an order dated 13.1.1970 by which the petitioner was directed to pay a sum of Rs. 48,476.50 and Rs. 4,968.50 towards the damages and Rs. 1,396.70 and Rs. 114.45 towards the administrative charges and for delays made in payment of Provident Fund contributions. The amount related to the period April, 1966 to January, 1969 and February, 1969 to January, 1970.

3. I have heard learned Senior Counsel Sri V.B. Singh very ably assisted by Mrs. Kritika Singh for the petitioner and Sri Rakesh Kumar for the respondent Corporation and have perused the entire record.

4. Sri V.B. Singh has argued that the provisions of Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act No. 19 of 1952) provide for the levy of damages and penalty in case of default in payment of any contribution to the Fund or in case of the delay, he has argued that in fact the petitioner had not made any default for payment and all the contributions were paid to the corporation but he admits that there was some delay in making of these payments. He further states that petitioner was a newspaper company and is no longer in existence in the shape as it was when the petition was filed.

5. Sri Singh has argued that Section 14B of the Act provides that before

imposition of penalty and damages, an opportunity of hearing be given before any penalty or damages is so levied or imposed. It is the petitioner's contention that although the amount were claimed for the period 1969 to 1970, the first demand was made by way of an order dated 13.1.1970 which was not put in the execution till 1974 and thereafter also i.he petitioner states that no recovery had been issued against the petitioner as provided under Section 8B(1) of the Act.

6. Learned Senior Counsel for the petitioner submits that on the other hand the petitioner company had filed a representation which is enclosed to the Rejoinder Affidavit by which the petitioner company had prayed for a waiver of the damages and penalty so imposed on account of various facts and circumstances under which the petitioner would not be able to pay the said amount.

7. According to the learned Counsel for the petitioner before passing of any order under Section 14B of the Act, it is also contemplated that after giving due opportunity of hearing, the authority while passing any order under Section 14B of the Act acts in quasijudicial capacity and therefore, must record reasons for passing such order and the order must be a speaking order reflecting the grounds on which the order is passed.

8. Learned Counsel for the respondent corporation has not controverted the facts as stated by the learned Counsel for the petitioner that no recovery has been issued against the petitioner under Section 8B(1) of the Act. The corporation is yet to take recourse to recovery proceedings against the petitioner. Section 14B of the Act is quoted hereinunder :

"14B. Power to recover damages. Where an employer makes default in the payment of any contribution to the Fund (the pension fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under subsection (2) of Section 15 [or subsection (5) of Section 17] or in the payment of any charges payable under any other provision of this Act or of (any Scheme or Insurance Scheme) or under any of the conditions specified under Section 17, (the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme :

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard :

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

9. In view of the above provision, there is no doubt that before the imposition of any penalty or damages, aggrieved party has a right of being heard.

10. It is also not open to have any kind doubt that any authority while acting as a quasijudicial authority must pass a reasoned and speaking order after proper application of mind.

11. It is also clear from the provision that there is power under the said provision to either reduce or waive the damages so imposed under this provision.

12. In view of the facts stated in the petition and in view of that no recovery" has been issued under Section 8B(1) of the Act as yet and also in view of facts stated in the representation dated 24.7.1974 is pending before the authority concerned. I deem it appropriate that the matter be sent back to the authority under the Act to decide the representation of the petitioner with regard to the order passed on 13.1.1970. The matter shall be reopened immediately after production of a certified copy of this order and the authority shall give a proper opportunity to hearing to the petitioner and shall pass a proper reasoned and speaking order preferably within a period of three months.

13. It is alleged that since 35 years have passed and subsequent events have taken place, the petitioner prays for and is allowed to adduce such additional evidence or file such representation as may be necessary.

14. With these observations, the writ petition is finally disposed of. There will be no order as to costs. Petition disposed of accordingly.