
(1978) 09 OHC CK 0008
In the Orissa High Court

Prajatantra Prachar Samiti

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 26-09-1978

Acts Referred:

Employees Provident Fund and Family Pension Act, 1952 — Section 14B, 8

Citation : (1978) 46 CLT 490 : (1979) 1 LLJ 136

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Petitioner is a registered trust and publishes a local Oriya daily called the "Prajatantra" and an English weekly named "Eastern Times." It also runs a press where the newspapers referred to above are printed. The Samity is covered under the Employees' Provident Fund Scheme and the provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 and the Scheme made thereunder. It failed to make payment of its contribution to the Funds in time as provided by statute and upon such failure, the Regional Provident Fund Commissioner (opposite party) directed recovery of the contributions under the provisions of the Orissa Public Demands Recovery Act as provided by Section 8 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the "Acts"). Several certificate cases for different periods have been instituted. Along with the recovery of contributions, damage has been claimed u/s 14B of the Act. Though several contentions had been raised in the writ application and learned Counsel for the petitioner was pressing several of them, ultimately one ground has been pressed before us, namely, while quantum of contribution is not in dispute, the manner in which damages have been levied u/s 14B of the Act cannot be sustained.

Where an employer makes a default in the payment of any contribution to the Fund or the Family Pension Fund or in the transfer of accumulations required to be transferred by him under Sub-section (2) of Section 15, or Sub-section (5) of Section 17 or in the payment of any charges payable under any other provisions

of this Act or of any Scheme or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears, as it may think fit to impose: Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Until amendment of the provision by Act 40 of 1973, the limit of damage was 25 per cent of the arrears.

2. A counter-affidavit has been filed by the Assistant Provident Fund Commissioner supporting the action. When a rejoinder was filed on behalf of the petitioner, the Assistant Provident Fund Commissioner filed a further affidavit including a chart showing the calculation of penal damages marked as Annexure A. In the chart, reference has been made to penal damages. The Act does not authorise levy of any penal damage and Section 14B of the Act refers to damage only.

3. During hearing of this application, we directed the learned standing counsel appearing on behalf of the opposite party to furnish a detailed statement of arrears and damages by clearly indicating the period of default. In compliance with the direction, an affidavit has been filed on 11th, September, 1978, by the Regional Provident Fund Commissioner. To the affidavit a chart has been enclosed on reference to which it would appear that no uniform basis has been maintained in the matter of levy of damages.

4. Since the Act authorises the levy and recovery of damage only Mr. Das for the petitioner contends that there is no material for supporting the levy of damage or its quantum and, therefore, the assessment is vitiated. The same problem as raised here came for consideration before the Mysore High Court in the case of *Fernandes Brothers Cashew Factory v. State of Mysore* (1969) 35 FJR 145, it Was observed (at pages 148-149):

Section 14B does not compel recovery of damages in each case in which there is a default, nor does it specify the amount of damages which should be recovered. It confers on the appropriate Government the power not only to decide whether in the circumstances of the case any damages should be recovered from the employer and to further decide if it comes to the conclusion that such recovery should be made, how much should be so recovered from him. And when it reaches the conclusion that the case is one in which damages should be recovered, the quantification of the damages should be made on the materials before it and having regard to a relevant circumstances and facts of that case.

5. In the case of *Murarka Paint & Varnish Works Ltd. v. Union of India* (1978) 52 FJR 51, a learned single Judge of the Calcutta High Court examined the difference between "penalty" and "damage" and observed (at pages 57-58):

...Section 14B deals with the power to recover damages. It is not the power to impose penalties. Though the maximum amount of damages that can be recovered has been indicated in the section, damages must have some correlation with the loss suffered as a result of delayed payments. The authority imposing the penalty (damage) must apply its mind to this aspect of the matter. The impugned order is not a speaking order in the sense that it does not indicate why the amount of penalty (damage) was imposed. It does not indicate that the amount imposed had any correlation with the loss suffered. From this aspect of the matter, in my opinion, the order is unreasonable.

Reference was made to the decision of the Supreme Court in the case of Commissioner of Coal Mines Provident Fund v. J.P. Lalla and Sons (1976) 49 FJR 37, dealing with the provisions of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, where similar provision has been made. Similar opinion was expressed by the Kerala High Court in the case of Bharat Plywood and Timber Products (P) Ltd. v. Employees' Provident Fund Commissioner, Trivandrum (1977) 50 FJR 74, where a learned single Judge observed (at page 76):

Section 14B clearly indicates that an employer is liable to pay damages if he has made default in payment of the contribution. Merely because the amount had been paid earlier to the order u/s 14B, it cannot be contended that there was no default in payment on the due date if the amount was paid only subsequent to the due date. Any delay in paying the amount u/s 6 causes loss to the beneficiaries of the Scheme : such as loss of interest and the like. This is the loss that is sought to be recovered from the defaulter for the purpose of indemnifying the beneficiaries of the Scheme--namely, the employees--to the extent of the loss suffered. The defaulter u/s 14B is, therefore, liable to pay damages which represent the loss; but not anything more, as such recovery would amount to penalty, and that is not permitted under the section.

In a recent judgment of the Madras High Court in the case of South India Flour Mills Pvt. Ltd. v. Regional Provident Fund Commissioner (1978) 52 FJR 62, on a reference to these authorities, a learned single Judge observed (at page 67):

A reading of these authorities will clearly show that it is not a mere arithmetical computation or a rigid application of law by which damages could be recovered. There must be an exercise of the mind and there must be an examination of the merits of each case. But, the order, to say the least, is far from satisfactory when examined in this light.

What was stated by the learned single Judge in the Madras decision equally applies to the present case.

6. We are in full agreement with the view expressed by the Calcutta High Court that "damage" is different from "fine" and "penalty" and we are also inclined to agree with the view expressed by the Kerala High Court that damage u/s 14B of the Act is intended to compensate the loss to the beneficiaries of the Scheme.

7. Since under the Scheme, the employer is liable to contribute to the Funds held in trust for the employees by a prescribed date, default to contribute to the Funds by the prescribed period is likely to deprive the employees who are the beneficiaries of the Funds from the advantage of accrual of interest on the contribution in respect of which default has been committed. There is force in the contention of learned standing counsel that if the terms of the statute are not meticulously enforced, the employees may be deprived of the benefits contemplated by the Scheme. Levy of damage, however, is not a must in every case. Discretion seems to have been vested in the appropriate authority to recover damage along with the contribution. There may be cases where for good reasons, the authority may decide not to assess damage and once he decides to levy damages, it is in the discretion of the authority to quantify the damage, within the upper limit depending upon the facts of the case. "Damage" has not been defined under the Act and, therefore, the meaning of the term in common parlance has to be adopted. According to the dictionary, the term means: "the pecuniary reparation due for loss or injury sustained by one person through the fault or negligence of another", and it is for the authority under the Act to quantify the same.

8. We accordingly quash the several orders of the opposite party and direct that for the entire period in dispute, a fresh demand shall be raised of the contribution and the damage. If there be default in payment of the same within such time as the opposite party allows, it is open to the opposite party to recover the amount as prescribed by statute. There will be no order for costs.

B.K. Ray, J.

9. I agree.