
(1997) 06 MAD CK 0020
In the Madras High Court
Case No : W.A. No. 992 of 1995

Presidency Kid Leathers (P) Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 23-06-1997

Acts Referred:

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

Citation : (1999) 3 LLJ 980

Hon'ble Judges : S.M. Sidickk, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : P. Ibrahim Kalifullah and V. Manivannan, in W.P, for the Appellant; P. Narasimhan, S.C.G. and Standing Counsel, for the Respondent

Judgement

Ar. Lakshmanan, J.—The Writ Appeal is directed against the order of GULAB C. GUPTA, J., as he then was, in W.P. No. 4454 of 1986

dated September 2, 1994. The said W.P. No. 4454 of 1986 was filed by the appellant aggrieved by the order of the respondent dated September

17, 1985 imposing damages under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred

to as the Act), ranging from 20% to 100% on the amount due. In this case, the appellant has delayed in making payment for five specific periods

viz., March, 1975 to October, 1975, December, 1975 to April, 1976, June, 1976, August, 1976 to January, 1978 and March, 1978 to February,

1980. The duration for which the payment has been delayed is specified in each case in the statement annexed to the impugned order. A show

cause notice was served on the appellants requiring them to show cause why damages made u/s 14-B of the Act should not be levied against them

for the delay in making the payment for the aforesaid period. It was contended

that though delay was alleged in making payment in March, 1975, the show cause notice for the same had been given only on November 24, 1984 and because of the long lapse of time between the period of delay and the show cause notice, the appellant could not effectively exercise its right to explain the circumstances relevant for the purpose. It was, therefore, submitted that the impugned order was illegal, and deserves to be quashed. It was further contended that the appellant/industry had suffered recession in 1970 and was facing financial difficulties and that was the reason for not making the payment in time, and that the authorities should have taken into consideration these facts while fixing the amount of damages and since it has not been done, the impugned order is illegal.

2. The learned counsel for the respondent submitted before the learned single Judge that no period of limitation is prescribed for initiating action for imposing damages for the delay in depositing the amount. It was also submitted that the appellant had deducted the employees' contribution from the salary of its employees and yet had not deposited even the said amount with the respondent and therefore, there is justification for levying damages.

3. The learned single Judge, in view of the discussions made in his order, dismissed the writ petition. Aggrieved by the said order, the writ petitioner had filed the above writ appeal.

4. Mr. P. Ibrahim Kalifullah, learned counsel for the appellant, at the time of hearing submitted that the delay in the initiation of proceedings u/s 14-

B of the Act by the respondent was not in dispute and that in the absence of any justifiable reason for the delay, the learned single Judge ought to

have set aside the impugned order. It is contended that the delay of 4 1/2 years to 8 years in the initiation of proceedings u/s 14-B of the Act was

fatal to the claim of the respondent especially when it was pleaded by the appellant that due to such inordinate delay, the appellant was not in a

position to trace the reasons with supporting materials which prevented the appellant from paying the contributions within the stipulated time.

Merely because the provisions of the Act do not prescribe any period of limitation for initiating any proceedings u/s 14-B of the Act, according to

the learned counsel for the appellant, the same shall not give the respondent a licence to sit over the matter for any length of time and initiate

proceedings as and when he feels like doing so. Because of the inordinate delay in the initiation of the proceedings, the appellant was totally

handicapped in putting forth the reasons for the alleged delay in the payment of contribution and therefore, the impugned order was liable to be set

aside. In conclusion Mr. P. Ibrahim Kalifullah submitted that the learned single Judge has failed to consider the relative hardship of the appellant

and the respondent by reason of the delay in the initiation of the proceedings and should have set aside the order impugned in the writ petition. In

any event, according to the learned counsel for the appellant, the levy of damages by the respondent can at best be on percentage per annum and

not on percentage of quantum and on this ground as well, the impugned order should have been set aside. It was also pointed out from the table

annexed to the impugned order that in some cases 100% levy of damages was made and in a few cases 50% and in the rest of the cases ranging

from 20% to 40%.

5. W.P. No. 9609 of 1988 : This writ petition was filed by the appellant in W.A.No. 992 of 1995, to call for the records relating to the order of

the respondent in Ref.No. TN/SDC/7832/Accts/88 dated March 24, 1988 and to quash the same. This writ petition was argued by Mr. V.

Manivannan. Under the order impugned in this writ petition, the petitioner was directed to remit the following amount by way of damages.

SI.No Amount Account to which it relates

i) The Provident Fund contributions Rs.2,01,905-45 in EPF A/C.No. 1

ii) The Administrative charges 5,467.60 "" 2

iii) Family Pension Fund contributions 31,800-40 "" 10

iv) Deposit Linked Insurance Contributions and 7,012-75 "" 21

v) Administrative charges 1,403-75 "" 22

Total Rs. 2,47,589,95

6. In this case, the damages was levied for the period from March, 1980 to July, 1981 and September, 1981 to February, 1984, totalling to Rs.

2,47,589-95. Mr. V. Manivannan, learned counsel for the petitioner contended that the petitioner-company was in great financial trouble,

particularly in view of the frequent power cuts, staggering power supply, restriction on the use of high tension power, restriction of usual

consumption, compulsory weekly holidays during the power cut, etc., with the result, the petitioner was undergoing huge losses and as such, the petitioner could not meet its commitments both to the financial institutions as well as other statutory liabilities including the liability under the various provisions of the Act. It was also contended that the Syndicate Bank after perusing the case of the petitioner thoroughly, considered the petitioner's proposal favourably and initiated a nursing programme in 1985 and granted various concessions such as waiver of interest, concession in interest rates, repayment holidays, etc. It is submitted that even though it is noted in the impugned order that the petitioner had cleared about rupees four lakhs between October, 1987, and March, 1988, the respondent has levied a huge penalty of Rs. 2,47,589-95 u/s 14-B of the Act for the period in question. According to Mr. V. Manivannan, the respondent has failed to take into consideration the vital factor that even though the petitioner-company was undergoing huge losses during the relevant period, it had not retrenched a single workman and on the other hand, it has been paying its workmen at the fixed wages system, which ran into several lakhs of rupees, and that the failure of the respondent to take into consideration this important aspect vitiates the order. Therefore, Mr. V. Manivannan contended that the relevant materials placed before him were not taken into consideration by the respondent, that there is no real application of mind on the relevant materials placed in regard to the total incapacity of the petitioner to pay the damages levied and that therefore, the entire order is vitiated.

7. Mr. P. Narasimhan, learned Senior Central Government Standing Counsel, in reply to the arguments of the learned counsel for the appellant and the writ petitioner, first invited our attention to Rule 38 of the Employees' Provident Fund Scheme, 1952, which deals with the mode of payment of contribution. The said rule provides that the employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as administrative charges of such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident

fund contributions are payable, as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the

Fund by separate bank drafts or cheques on account of contributions and administrative charges.

8. Placing reliance on the above Rule, Mr. P. Narasimhan argued that since the petitioner establishment has defaulted in payment of Provident fund

contribution and other statutory dues under the Act for the period in question, the Department had to invoke the power and function vested with it

u/s 14-B of the Act. It is also contended that the petitioner was given an opportunity for personal hearing and only after following the principles of

natural justice, the respondent had passed the final speaking order on March 24, 1988. It is then contended by Mr. P. Narasimhan that the

respondent had also taken into consideration all the reasons adduced by the petitioner for the default of the statutory dues under the Act and that

the reasons adduced cannot evoke a circumstance for mitigating the damage as contemplated u/s 14-B of the Act inasmuch as the respondent is

fastened with the obligatory liability of crediting interest to the individual provident fund subscribers account as if the petitioner has remitted the

statutory dues on time, and that this has resulted into an unbearable strain and injury to the Fund.

9. According to Mr. P. Narasimhan, Section 14-B of the Act has been invoked in this case since the employer has committed default in the

payment of its contribution to its Fund. The legislation has made it mandatory to invoke the provisions of Section 14-B of the Act when there is a

default. Further, successful working of the piece of beneficial legislation depends upon the prompt payment of the statutory dues by the petitioner

employees. Therefore, Mr. P. Narasimhan contended that the petitioner is liable for the damages levied under the Act, and that the contentions

raised by the respective counsel for the petitioner and the appellant are unsustainable in law.

10. As per Para 38 of the Employees' Provident Fund Scheme, the employer is required to remit both the employees' as well as the employer's

share of contributions together with administrative charges thereon before the close of 15th of every month. Para 30 of the Scheme imposes an

obligation on the employer to remit both shares of contributions in the first instance and para 32 of the Scheme enables the employer to recover

employees" contributions from the wages of the employees. The initial responsibility for making payment of the contributions lies on the employer irrespective of the fact whether the wages are paid in time or not. As such, the provident fund payments made after the due date will attract the penal damages u/s 14-B of the Act, fifty percent of the contributions defaulted are actual amounts deducted from the wages of the employees. The petitioner has failed to remit even these amounts in time. The respondent, as pointed out by Mr. P. Narasimhan, is striving its best to give optimum benefits to the provident fund subscribers. But, when the income to the Fund suffers a set back on account of defaults, it is forced to give a lesser benefit than what would have been possible if there had been no defaults. All belated payments cause loss of interest on investments besides increasing the cost of administration besides causing pecuniary loss to the Fund. The members are also put to inconvenience. Mr. P. Narasimhan also contended that in the instant case, the employees' share though deducted was not remitted, which amounts to misappropriation and attracts action under Sections 405, 406 and 409 of the Indian Penal Code.

11. In our view, though the employer is required to remit both the employees' as well as the employer's contribution together with administrative charges before the close of 15th of every month, the petitioner/appellant has miserably failed to remit the same in time. The employer has failed to discharge its obligation to remit both the shares of contribution in the first instance. Therefore, the payments made after the due date will attract penal damages u/s 14-B of the Act.

12. We have already seen that the respondent has levied damages in some cases at 100%, in a few cases at 50% and in other cases ranging from 20% to 40%. It cannot also be brushed aside that the respondent/Department had taken 4-1/2 years to 8 years in the initiation of proceedings u/s 14-B of the Act, which, according to the appellant/petitioner is fatal to the claim of the Department. It is pleaded by the employer that due to such inordinate delay, the petitioner/appellant was not in a position to trace the reasons with supporting materials which prevented it from paying the contribution within the stipulated time. Though it is contended by the respondent that there is no period of limitation for levying the damages, we are of the view, that the initiation of action after a delay of 4 1/2 years to 8 years is

wholly unreasonable and therefore, the order of the respondent is liable to be modified only with reference to the percentages of damages levied.

13. We cannot also ignore the legitimate contention of the learned counsel for the petitioner that by reason of the delay in the initiation of the

proceedings u/s 14-B of the Act, the petitioner/appellant was totally handicapped in putting forth the reasons for the alleged delay in the payment

of the contribution and therefore, the order impugned is liable to be modified. Though it is contended by the petitioner/appellant that the

respondent's failure in initiating the proceedings within a reasonable time viz., not later than one year, will render the impugned order non-est in law

and liable to be set aside, we are unable to accept the said contention. But, however, we hold that the initiation of proceedings with a delay of 4

1/2 years to 8 years cannot at all be easily ignored. Therefore, the interest of justice and fair play will be amply met if we reduce the amount of

damages levied by 50% in both the writ petition and the writ appeal for the relevant periods in question.

14. In the Writ Appeal, under the impugned proceedings dated September 17, 1985, which is the subject matter of W.P.No. 4454 of 1986, a

sum of Rs. 5,37,457-80 has been levied by way of damages. 50% of the same comes to Rs. 2,68,728-90. It can be rounded off to Rs.

2,67,000/-. The appellant shall pay the same in three instalments of Rs. 89,000 each. The first instalment shall be made on or before July 15,

1997, the second instalment on or before August 15, 1997 and the third instalment on or before September 15, 1997. If the appellant fails to pay

any one of the instalments within the time stipulated, the respondent is at liberty to proceed against the appellant for recovery of the entire amount

levied under the impugned proceedings.

15. In the writ petition, under the impugned proceedings, a sum of Rs. 2,47,589-95 was levied by way of damages. 50% of the same comes to

Rs. 1,23,794-97. The petitioner shall pay a sum of Rs. 1,20,000/- instead of Rs. 1,23,794-97. The petitioner shall pay the said damages of Rs.

1,20,000/- in three equal instalments of Rs. 40,000/- each, the first instalment shall be made on or before October 15, 1977, the second instalment

on or before November 15, 1997, and the third instalments on or before December 15, 1997. If the petitioner fails to pay any one of the

instalments within the time stipulated, the respondent is at liberty to proceed against the petitioner for recovery of the entire amount levied under the impugned proceedings.

16. In the result, the Writ Appeal and the Writ Petition are allowed in part as indicated above, However, there will be no order as to costs.