

(1991) 05 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 1121 of 1986

Radhanath Co-operative Press Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

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

Citation : (1998) 3 LLJ 1160

Hon'ble Judges : B.L. Hansaria, C.J.; D.M. Patnaik, J

Bench : Division Bench

Advocate : Jagannath Das, for the Appellant; P.N. Mohapatra, Addl. C.G.S.C., for the Respondent

Judgement

B.L. Hansaria, C. J.

1. The challenge in this application under Articles 226 and 227 of the Constitution is to the order of the Regional Provident Fund Commissioner, Orissa (hereinafter referred to as "the Commissioner") dated February 15, 1985 as at Annexure 3 by which he has asked the petitioner to deposit a sum of Rs. 12,590.55 towards damages for having defaulted in payment of contribution to the employees' provident fund and related accounts. The impugned order has been passed in exercise of powers conferred by Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the Act").

2. Before advertng to the submissions advanced by Shri Das in assailing the quantum of damages as fixed by the Commissioner, we may, in short, note the facts. The petitioner is a cooperative society consisting of the workers as the members. The main object of the society, inter alia, is promotion of economic interests of its members and is aimed at co-operation, thrift and mutual self-help for providing employment to its members. Thus, the normal relationship of employer and employee does not exist between the petitioner-society and its employees. Even though the society was registered as early as 1922, it has not yet been able to reach the stage of economic viability. Its case is that due to

capacity of capital and better managerial know-how, the society is unable to withstand the stiff competition in the market with other printing establishments. Consequently, it is compelled to work at lower rates and on credit basis awaiting months to collect its dues from the customers. However, being a worker's co-operative society, its members struggle hard to sustain its existence even though they do not get their wages regularly and timely and have to wait for months. The workers sustain themselves by taking paltry sums as advances against their unpaid wages. It is in these circumstances that the society could not make payment of the employees' provident fund dues within the scheduled time the payment being made as soon as funds were available after being collected from the customers. The delayed payment was thus beyond its control, states the petitioner.

3. The aforesaid being the factual background, it is urged by Shri Das that according of damages ranging from 15 per cent to 100 percent of the arrear was not in accordance with law. the learned counsel submits that as awarding of damages was held to be penal in nature in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, , existence of mens rea is essential before damages can be asked for. He urges that the peculiar facts relating to the financial hardship of the society and the type of employer and employee relationship which exists in the setup of the society must have been duly borne in mind by the Commissioner before awarding damages even up to 100 per cent.

4. Our attention is first invited to what was f stated in *Organo Chemical Industries (supra)* which is a leading decision on the validity and interpretation of Section 14B of the Act. This is what was stated by Krishna Iyer, J. in paragraph 15 regarding the rationals of enacting Section 14B at p 421 :

"The measure was enacted for the support of a weaker sector viz., the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages completing it with his own equal share and duly making over the gross the sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes, the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself."

5. Sen, J. dealt with the object of imposing damages in the following words in paragraph 47 at p. 429:

"The expression "damages" occurring in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The objection of imposition of penalty u/s 14B is not merely "to provide compensation for the employees". We are clearly of the opinion that the imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees.... The word "damages" in Section 14B is related to the word "default". The words

used in Section 14B are "default" in the payment of contribution" and, therefore, the word "default" must be construed in the light of paragraph 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month."

Earlier to this, it had been observed in paragraph 46 that " imposition of damages u/s 14B serves a two fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults.

6. The above would show that mens rea is not a necessary ingredient for awarding of damages u/s 14B inasmuch as the words used in this Section are "default in the payment of contribution". Therefore, the decision rendered in Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, , which has been relied upon by Shri Das in support of his plea that mens rea is necessary, cannot assist the petitioner inasmuch as in that case the Court was seized with the question of levying penalty for filing "false" returns which necessarily encompassed within its conception the element of mens rea.

The same is, however, missing in the present case for the reason that the default has not to be wilful. We, therefore, reject the first submission of Shri Das.

7. The learned counsel then submits that as Section 14B requires the authority to recover damages not exceeding the amount of arrears "as it may think fit to impose", mind has to be applied by the authority as to why the employer has defaulted. It is, therefore, urged that in determining the quantum of damages, the circumstances which go a long way to mitigate the gravity of the guilt have to be borne in mind as was stated in C.L. Anand v. Regional Director 1980 L.I.C. 901 in which decision financial hardship was regarded as a relevant circumstance. In this connection, Shri Das also refers to Regional Provident Fund Commissioner v. Bharat Plywood & Timber Products (Pvt.) Ltd. 1980 41 P.L.R. 103. Therein reference was made to The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, which has dealt with Section 10F of the Coalmines Provident Fund and Bonus Scheme, 1948, which is in pari materia with Section 14B of the Act. In Lalla's case, the Supreme Court had observed that the words "as it may think fit to impose" show that the authorities are required to apply their minds to the facts and circumstances of the case.

8. We have no difficulty in accepting the aforesaid submission of Shri Das, A perusal of the impugned order shows that the contention of the petitioner that because of the financial difficulties it could not pay the contribution in time had not cut much ice. We would, however, think that keeping in view the fact that the employer is a co-operative society in which the workers are the members, and that it was continuously under financial difficulty, the default might not have been seriously viewed as was done by the Commissioner, which is apparent from the fact that he had awarded damages in some cases even up to 100 per cent.

Another circumstance which weighed with the Commissioner was the fact that the petitioner was a "habitual defaulter". This also had happened, according to Shri Das, because of the persistent financial difficulty of the petitioner which was to such an extent that it was unable to pay its employees in time any wages who were compelled to obtain advances of paltry sums against their unpaid wages.

9. Shri Das had another grievance to make. The same is that the damages for the delayed payment occurring in 1981 were asked to be paid in 1985. The learned counsel submits on the strength of *Mansaram Vs. S.P. Pathak and Others*, that when a power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner as stated in page 136. Exercise of power in reasonable manner inheres the concept of its exercise within a reasonable time. As the damages related to the period 3/1981 to 3/1983, for which action was started in June, 1984, we do not, however, think if the present case can be regarded as one of delayed attempt to recover damage.

10. In view of all that is stated above regarding the composition of the members of the society and its financial difficulties, we are of the opinion that in the present case the Commissioner ought not to have awarded damages beyond 15 percent, and we would, therefore, direct him to reassess the damages accordingly. May we say that we have not felt impelled to exonerate the petitioner altogether from payment of damages as it had not Deposited in time even the employees' share deducted from their wages/ salaries, as stated in paragraph 4 (i) of the impugned order.

11. In the result, the petition is disposed of by quashing Annexure-3 by directing the Commissioner to make a fresh assessment of the damages, indicated above.

D.M. Patnaik, J.

12. I agree.