

(2001) 09 MAD CK 0107
In the Madras High Court
Case No : W.A. No. 21 of 1997

Regional Provident Fund Commissioner	APPELLANT
Vs	
Snap Tap Machine Accessories India (Private) Ltd.	RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

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

Citation : (2002) 94 FLR 413 : (2002) 1 LLJ 788 : (2002) 1 MLJ 132

Hon'ble Judges : N.V. Balasubramanian, J;A.K. Rajan, J

Bench : Division Bench

Advocate : P. Narashiman, for the Appellant; S. Ashok Menon, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—The above writ appeal is filed against the judgment of the learned single Judge in W.P. No. 8154 of 1987 dated June 25, 1996.

2. In the writ petition, the petitioner challenges the award of penalty imposed by the Commissioner of Provident Fund for delay in making the payment of provident fund.

3. Learned single Judge has set aside the order passed by the Commissioner of Provident Fund and held as follows:

.....there was no warning or even demand issued to the petitioner by the respondent.

.....

The Authority constituted under the Act given a responsible duty, is expected to perform his duty promptly.

.....

In my view the respondent is also responsible in a way for the lapse on the part of the employer which has encouraged him to commit subsequent defaults.

.....

Since in this case, there is no assessment or determination of loss sustained by the organisation or department and as there is no application of mind at all on this aspect by the respondent, I am of the view that the entire order of the respondent has to be set aside.

4. Learned counsel for the appellant relied on a decision reported in *Organo Chemical Industries and Another Vs. Union of India (UOI) and*

Others, : which has held as follows at p. 429 of LLJ:

The traditional view of damages as meaning actual loss, does not take into account the social content of a provision like Section 14-B contained in

a socio-economic measure like the Act in question. The word "damages" has different shades of meaning. It must take its colour and content from

its context, and it cannot be read in isolation, nor can Section 14-B be read out of context. The very object of the Legislation would be frustrated if

the word "damages" appearing in Section 14-B of the Act was not construed to mean penal damages. The imposition of damages u/s 14-B serves

a two-fold purpose. It results in clarification and also serves as deterrent. The predominant object is to penalise, so that an employer may be

thwarted or deterred from making any further defaults.

5. The Supreme Court has also given the reasons as to why penalty is imposed. It is to be seen that the entire account is transferred to the

provident fund amount deducting only the service charges by the Department. In this case, the Supreme Court has categorically held that the

purpose of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") is not

only to make the employer paying the amount promptly but also deterrent from committing the delay in future. The Supreme Court has also held

that it is not correct to state that Section 14-B of the Act deals with unguided powers while the Authorities are imposing penalty. Therefore,

learned counsel for the appellant submits that the order of the learned single Judge is patently against the law laid down by the Supreme Court.

6. Learned counsel for the respondent relied on a decision of a Division Bench of this Court reported in *Presidency Kid Leathers (P) Ltd. v.*

Regional Provident Fund Commissioner 1999 III LLJ (Suppl) 980, wherein it is held as follows at p. 984 of LLJ:

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.

7. Learned counsel for the respondent argued that in this case there was a delay of nine years for issuance of show-cause notice. Learned counsel

pointed out that in the decision cited *supra*, the delay was nearly 4 1/2 years to 8 years. Hence he argued that in this case since there was a delay

of nine years, the delay has to be taken into account and default is not only due to the act of the employer, but also due to the inaction on the part

of the appellant. Learned counsel also argued that had the demand been made in time, the employer would have made the payment promptly. In

the circumstances, he argued that the penalty may be waived completely.

8. We are unable to accept the findings of the learned single Judge that as the entire demand is illegal, the same is set aside. If the findings of the

learned single Judge are accepted, it is against the law laid down by the Supreme Court. If the contention of the respondent that as there is a delay

in issuing the show-cause notice, the employer is not liable to pay the penalty is accepted, it will ultimately affect the employees only. The

employees will not get any interest for the contribution made for them.

9. If there is a delay in making the payment, the sufferers are only the employees. Hence the liability of the employer is to pay the amount within the

time stipulated and the Statute itself imposes the duty on the employer to make the contribution amount within the prescribed period. Hence, the

employer cannot claim that as there is a delay in issuing show-cause notice, the penalty is to be set aside even for non-compliance of the provisions

of the Act.

10. In this case, the Commissioner imposed the penalty at 50% in the case of delay of two years in making the payment, the Commissioner

imposed 25% penalty. If the delay is persistent, he imposed 50%. In some cases, he imposed 25%. Considering the facts and circumstances of the

case only, the Commissioner imposed the penalty. Hence, it cannot be said that the Commissioner has not applied his mind before imposing penalty.

11. Hence, we are unable to agree with the contention of the learned counsel for the respondent. In the circumstances, the order of Commissioner is restored and the order of the learned single Judge is set aside.

12. Learned counsel for the respondent pleaded that considering the totality of the circumstances of the case, the amount i.e., Rs. 28,633.40

directed to be paid as penalty may be reduced to 50% in which the respondent has already paid Rs. 10,000.

13. Considering the facts and circumstances of the case, we are of the view that the amount of compensation, directed to be paid can be limited to

Rs.20,000. Since the respondent has already paid Rs. 10,000 he is directed to pay Rs. 10,000 within a period of one month from this date.

14. The writ appeal is allowed in the above terms. No costs.