(1997) 07 OHC CK 0026

In the Orissa High Court

Case No : O.J.C. No. 7868 of 1997

Saila Behari Das, Senior Manager, Orissa Construction Corporation Structural Steel Part I — APPELLANT

Vs

Regional Provident Fund Commissioner — RESPONDENT

Date of Decision : 08-07-1997

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

Citation : (1997) 2 OLR 182

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : Somanath Mishra and G. Tripathy, for the Appellant; H.K. Jena, Standing Counsel (Central), for the Respondent

Judgement

A. Pasayat, J.—Challenge in this writ application is to the imposition of penal damages u/s 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, "EPF Act"). Penal damage amounting to Rs. 1,89.579/- was levied for the year 1991-92 on account of delay in depositing the amount which was required to be deposited by way of provident fund. Orissa Construction Corporation is a Government of Orissa Undertaking. Structural Steel Part I is a unit of the said Corporation. Said unit is the petitioner in this case. Construction of a Power House structure in respect of National Thermal Power Corporation, a Government of India Undertaking, was undertaken by the petitioner at Kaniha in the district of Angul. Petitioner applied for a code number to be allotted in its favour. By letter dated 3.2.1992 the Regional Provident Fund Commissioner, Orissa (in short, "the Commissioner") informed the petitioner that as the unit is a part and parcel of M/s. Orissa Construction Corporation Ltd., which is covered under the Act under Code No. OR/1610, there was statutory obligation to report compliance by virtue of Section 2A of the Act. However, for convenience a sub-code No. OR/1610-E was allotted to the unit. Petitioner''s stand is that due to allotment of a sub-code belatedly there was unintentional delay in depositing the contribution. It is stated that the case of petitioner was disposed of ex parte without due and proper opportunity and, the quantum levied as penal damages is light.

2. Mr. H.K. Jena, the learned counsel for opposite party submitted that due and proper opportunity was granted and on consideration of all relevant aspects, penal damages have been levied at the prescribed rate.

3. Paras 32-A and 32-B of the Employees'' Provident Funds Scheme, 1952 (in short, "the Scheme") prescribe the rate of damages which can be levied for various periods of default, and the terms and conditions for reduction or waiver of damages respectively. Where the default is for more than six months or beyond it, the rate of damages (percentage of arrears per annum) is 37. The provisions read as follows :

"32-A. Recovery of damages for default in payment of any contribution - (1) Where an employer makes default in the payment of any contribution to the 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 of the Act or in the payment of any charges payable under any other provisions of the Act or scheme or under any of the condition specified u/s 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below : Period of default Rate of damages (Percentage of arrears perAnnum) (a) Less than two months Seventeen (b) Two months and above Twenty-two but less than four months (c) Four months and above Twenty-seven but less than six months (d) Six months and above Thirty-seven

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

32-B. Terms and conditions for reduction or waiver of damages. The Central Board may reduce or waive the damages levied under Sections 14B of the Act in relation to an establishment specified in the second proviso to Section 14B, subject to the following terms and conditions, namely :

(a) in case of a change of management including transfer of the undertaking to workers co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b) in cases. where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its scheme. in this behalf recommends, waiver of damages upto 100 per cent may be allowed;

(c) in other cases, depending on merits, reduction of damages upto 50 percent may be allowed."

The details of period for which defaults were committed, reveal that almost in every case the delay was beyond three years. However, Section 14B of the Act puts a higher limit of penal damages at an amount equal to amount of arrears. It is seen from the impungned order that the maximum amount leviable has been kept in view.

4. It is seen from the impugned order that the written submission filed by representative of petitioner was considered, The damages have been calculated by taking into account the periods of delay. This cannot be said to be a case where there was no material for levying, penal damages.

5. Ultimately it was |prayed by the learned counsel for petitioner that direction should be given for waiver of damages. Para 32-B of the Scheme quoted above deals with reduction or waiver of damages under pertain terms and conditions. The Central Board is authorised to direct for reduction or waiver of damages. Let the petitioner move the Central Board, if so advised within two months from today for reduction or waiver of damages. Within that period an amount of 50% of demand raised shall be deposited with the opposite party, without prejudice to the petitioner''s application for waiver and/or reduction/Application if filed shall be considered on its own merits by the Central Board.

The writ application is disposed of accordingly.

S.C. Datta, J.

I agree.

