

(1980) 08 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 7325 of 1976

S.H. Salvekadam and Co.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 21-08-1980

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14, 14 (1), 14 (1A), 14 (1B), 14 B

Citation : (1985) ILR (Kar) 4244

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : S.G. Sundarsawamy, Shivaram for K. Srinivasan, N.P. Moganna, K.R. Rajagopal, B.C. Prabhakar, B.V. Acharya, S.N. Murthy and K. Ramasubbaiah, for the Appellant; S.A. Hakeem and U.L. Narayana Rao, Senior Central Govt. Standing Counsel and N. Dorirajalu Naidu, HCGP for R-2 in W.P. No. 13906 of 1978, for the Respondent

Judgement

Bopanna, J.—These Writ Petitions raise a common question of law on the interpretation of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, "the Act") which empowers the authority under that Section to levy damages on the erring employers of the establishments covered by the Act for their default in making their contributions or payment of other amounts due under the Act, and hence they are disposed of by this common order though the facts in these petitions vary from case to case.

2. Section 14-B of the Act was incorporated in the Act by Act No. 37 of 1953 and it has undergone a number of changes since then. That section as it reads now is as follows:-

"14-B. Power to recover damages - Where an employer makes default in payment of any contribution to the Fund, the Family Fund or the Insurance 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 insurance 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 arrear, 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."

Its constitutional validity was upheld by the Supreme Court in *Organo Chemical Industries - v. - Union of India* AIR 1979 SC 1803. The Supreme Court also resolved the conflict of views among the High Courts as to the meaning of the word "damages" in that section by holding that that word is an amalgam of compensation and penalty and therefore damages leviable under that section could exceed the interest the amount defaulted would have carried during the period of delay. Hence, these two points do not arise for consideration in these petitions. But all the same, the Learned Counsel for the petitioners have maintained that in construing this Section, the following legal and factual concepts must be borne in mind :

(a) This section does not impose an absolute liability for damages on the defaulting employers ;

(b) Wilful default is an essential ingredient for holding that the employer is liable for damages under that section.

(c) Despite the absence of any period of limitation for recovering damages, the authority under that section has the discretion to waive damages for the period long anterior to the proposition notice for levying damages;

(d) If the authority admits long delay in exercising its rights, its power to levy damages stands extinguished;

(e) Since after the amendment of the section in 1973 damages up to 100% of the arrears could be leviable by the authority in its discretion, has the discretion been properly exercised in each of these cases ?

3. Before I proceed to deal with the contentions of the Learned Counsel, a brief reference to the collocation of Sections 14 or, 14-B of the Act will have to be made to appreciate the contentions of the parties. Section 14 is preceded by Section 13 which provides for the appointment of Inspectors armed with the powers of inspection and seizure to enforce the application of the Act and the Scheme to establishments covered by the Act and due compliance by the employers of the provisions of the Act. Additionally, due compliance with some of the important provisions of the Act is sought to be achieved, by imposing penalties on the employer u/s 14 of the Act. Section 14 provides for penalties for four types of offences with a provision to be made in the Scheme to punish any person who contravenes or makes default in complying with any of the provisions

thereof. The relevant portions of Section 14 of the Act read as follows :

"14. Penalties - (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable ?

(1-A) An employer who contravenes, or makes default in complying with, the provisions of Section 6 or Clause (a) of sub-section (3) of Section 17 shall be punishable -

(1-B) An employer who contravenes, or makes default in complying with, the provisions of Section 6-C.... shall be punishable

"(2) Subject to the provisions of this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme, may provide that any person who contravenes or makes default in complying with any of the provisions thereof shall be punishable with.....

(2-A) Whoever contravenes or makes default in complying with any provisions of this Act or of any condition subject to which exemption was granted u/s 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with"

(Underlining is mine)

4. On the plain language of Section 14(1) of the Act, it is seen that there is an element of mensrea and therefore the burden is on the authority prosecuting the person to prove the offence. u/s 14(1A) of the Act, only the employer who contravenes or makes default in complying with the provisions of the Actor the Scheme framed thereunder is punishable. u/s 14(1B) of the Act, only the employer who contravenes or makes default in complying with certain provisions of the Act is punishable. u/s 14(2-A), any person, i.e., including the employer, who contravenes or defaults in complying with any provisions of the Act or of any condition subject to which exemption was granted u/s 17, shall, if no other penalty is elsewhere provided by or under the Act is punishable. Thus it is seen that for the first offence, mensrea is an essential ingredient but for other offences, mere contravention or default with the relevant provisions of the Act or the Scheme is sufficient to punish the person or the employer as the case may be. That is to say, the offences u/s 14(1-A), (1-B) and (2-A) of the Act attract the principle of strict liability under law and these offences are committed as soon as the contravention occurs or default is made (Hill - v. - Baxter (1958) 1 All E.R. 193). Similarly, Section 14-B which provides for damages on default of the provisions contained therein attracts strict liability under law and the employer becomes liable for damages the moment he makes a default but the explanation or excuse for such default, good or bad, will be relevant for the purpose of recovery and assessment of damages varying from 100% to nil. Any

doubt as to the meaning of the word "default" is cleared by the Supreme Court in para 47 of its Judgment in Organo Chemical's case. The default occurs where the employer fails to perform the relevant obligations or fails to act in compliance with the relevant obligations stipulated in that section.

5. I shall now consider the contentions of the Learned Counsel for the parties. The leading arguments were advanced by Shri S. G. Sundaraswamy, Learned Counsel for the petitioner in W.P. 7325 of 1976, and the other Learned Counsel have supplemented his arguments to meet the facts appearing against them. Mr. Sundaraswamy maintained that:

(1) the words "as it may think fit" in Section 14-B of the Act give a discretion to the authority therein not only to quantify the damages but also to determine the liability for such damages and thus understood, (ii) while determining the liability of the employer, the authority must interpret the word "default" in that section taking into consideration;

(a) the knowledge of the implementing authorities under the Act of such default and their inaction in setting the law in motion ;

(b) the bona fide of the employer in making the default;

(c) the causes, if any, beyond the control of the employer that led to the default;

(d) the time that has elapsed from the date of default up to the date of levy notice and bearing in view that that section must be used for the purpose for which it is enacted in the light of the decision of the Supreme Court in ORGANO CHEMICAL'S case, and not for harassing the employer.

6. I am unable to agree fully with Mr. Sundaraswamy on the first point. The words "as it may think fit" which are preceded by the words "such damages, not exceeding the amount of arrear" and succeeded by the words "to impose" are referable to the power of the authority to assess damages but not to determine the liability for damages. The liability for damages is strict liability and is determined by statute when the employer makes the default as indicated in Section 14-B of the Act. But I am in agreement with Mr. Sundaraswamy that the authority while assessing the damages must consider the relevant factors in mitigation of damages though the word "damages" has to be understood as an amalgam of penalty and compensation as interpreted in ORGANO CHEMICAL'S case. The words "as it may think fit" have given the authority a very wide discretion in the assessment of damages. Such discretion is not governed by the concept of damages in the law of torts or contract, but by the object of Section 14-B of the Act and the purpose, both social and beneficial, of the Act. Wider the discretion, greater the care and circumspection the authority should exercise while invoking that power. It, therefore, follows the second contention of Mr. Sundaraswamy must be accepted insofar as it relates to the relevant factors which should inform the mind of the authority while assessing the quantum of damages but not for determining the liability for damages. That liability is strict

liability but whether the authority should recover damages and if so to what extent, is dependent on the facts and circumstances of each case and such determination is left to the discretion of the authority empowered. Such power is also not arbitrary as held by the Supreme Court in ORGANO CHEMICAL'S case.

7. On this premise, Mr. Sundaraswamy invited my attention to the following facts which are not in dispute in Writ Petition No. 7325 of 1976.

On 19-1-1976, the petitioner was served with a proposition notice by the respondent u/s 14-B of the Act calling upon him to pay a sum of Rs. 31, 827/- as damages for the period from May 1962 to October 1973, as per Exhibit-A produced with the Writ Petition. The petitioner submitted a detailed representation to the respondent on 7-6-1976 as per Exhibit-B produced with the Writ Petition. Therein, it was stated, inter alia, that the petitioner-establishment was covered for the first time under the provisions of the Act by letter dated 14-6-1965 ; retrospectively from 1962 since it had offices, manufacturing branches and depots in different places far away from one another, the delay in collecting necessary information and making the contribution under the Act was inevitable ; till 1965, it was paying wages to its employees on annual commercial basis and this mode of payment rendered calculations of contribution under the Act extremely difficult since the wages of all employees had to be recast and converted into monthly basis which necessarily involved considerable delay as well as labour; there was no delay or default for the period May 1962 to June 1965 ; overcoming the initial difficulties and hurdles as mentioned above, the firm had paid contributions for the retrospective periods and for the subsequent period on the dates and by chalangas as shown in the accompanying Schedule-2; the delay in the respondent's letter dated 19-1-1976 was not wilful there was a change in the rate of contribution from 6 1/4% to 8% and this change was not informed in time by the authorities and hence there was delay in preparing revised returns from July 1967 to 1968 ; one of the partners of the firm, Smt. Kashibai Haribhau Salve, expired on 3-7-1968, and, therefore, there was a change in the constitution of the firm, which caused delay in preparing the returns; there was no wilful default on the petitioner's part for imposing damages ; as the scheme was newly introduced, the delay was inevitable; from the month of November 1973 onwards the petitioner was regularly making the contribution without any delay. It was further contended by the petitioner that the authorities under the Act were themselves responsible for its delay in making the contributions and the recovery of damages after the lapse of nearly 14 years would be wholly unjust and inequitable and the authorities could have taken action at the appropriate time immediately after the discovery from the petitioner's accounts that there was delay in making the monthly contributions ; in the notice dated 19-1-1976 the quantum of damages has been assessed on a "rigid formula"; it was not shown as to how inconvenience or actual damage was caused, and if caused, to what extent, due to the delay ; the heavy amount of damages of Rs. 31,827/- proposed to be recovered was based on illogical consideration and on a rigid formula ; if that amount was tried to be recovered,

the firm would be completely ruined ; the words "twenty five per cent" have been omitted by an amendment made in 1973 to the Act but the quantum of damages, therefore, should be assessed on the basis of fair and equitable principles; even though notices of prosecution u/s 14 of the Act were sent to the firm as early as in August 1965 and on 2-4-1969 for failure to submit returns, no notice for recovery of penal damages was sent u/s 14-B of the Act till 19-1-1976, i.e., about 14 years from the date of the first alleged delay ; by not sending notices in right time u/s 14-B of the Act, the authorities had waived their right to recover damages ; the contributions had been made, though somewhat late for the reasons already explained and there was no "objection" or notice of recovery of penal damages till October 1973 or immediately thereafter ; the further payments of contributions from November 1973 were being regularly made ; therefore, when there was no delay or default after November 1973 it was unjust to propose to recover heavy damages after more than two years" silence from the date of regular payments of contributions ; prior to the amendment to the Act in 1973, the Commissioner had no jurisdiction to recover damages under unamended Section 14-B ; therefore, for the alleged delay prior to 1973, he had no jurisdiction to recover damages; the provisions in Section 14-B were to ensure regular payment of contributions from employers and to see that there was no "misuse" or "wilful delay" in remitting the amounts ; none of these reasons was alleged against the petitioner and hence recovery of penal damages would be improper.

On the above representation, the petitioner was heard on 15-6-1976 by the respondent and by order dated 28-7-1976 (Exhibit-C) which is impugned in this Writ Petition, the respondent levied a sum of Rs. 18,747-40 P. as damages u/s 14-B of the Act for the period from May 1962 to October 1973.

The respondent found that the jurisdictional Provident Fund Inspector had utterly failed in discharging his duties properly and had the petitioner been warned at least once to correct itself, it would have avoided the penal provisions, and that the omission to take action against the petitioner as and when the default arose, was a serious omission on the part of the concerned Inspector. He also noted the contention of the petitioner that there was no deliberate or wilful delay but due to lack of timely instructions and guidance it was not in a position to comply with the provisions of the Scheme He further found that there was undue delay in covering the establishment itself as it was covered in June 1965 retrospectively with effect from May 1962 ; the very fact that the petitioner was exempted from paying the employees" share of contribution shows that no delay was committed by it but it was due to the delay on the part of the Regional Office in allotting code number at the right time ; it should be noted, that the exemption from paying employees" share of contribution was not automatic; perhaps, so many other factors were taken into consideration while waiving the payment of employees" share for the discovery period ; regarding intimation of enhanced rate of contribution from 6 1/4% to 8% the petitioner"s attention had been drawn to the circular instructions sent at the time of coverage along with the

coverage letter explaining the salient features of the Act and the Scheme for its guidance ; there was an Inspectorate at Belgaum, from which the employer could have always ascertained his duties and liabilities; in fact, the employer was required to intimate to the Regional Office as soon as the employment strength of the establishment reached the required number for coverage ; on either grounds he found no reason why special consideration should be shown to the petitioner as it accepted that clear instructions were received in the matter, but he stated that it was not given any warning in time which could have alerted it to be prompt. But the important contention of the petitioner that after the lapse of fourteen years the respondent would not be justified in invoking the penal provisions of Section 14-B of the Act, was disposed of by the respondent by stating that it would not prevent any government authority from collecting the amount due under law. He concluded the order with the following observations :-

"Having regard to the foregoing and having special consideration regarding delays that have occurred in covering the establishment, and in issuing timely instructions/warning to the employer and above all the delay in levying damages (after a lapse of about 14 years), I order that damages from May 1962 to August 1963 at 6 1/4% per annum be confirmed and to reduce to 10% wherever it exceeds from September 1963 to June 1965, The employer has not become regular and prompt even after, the issue of clear instructions from July 1965 onwards and has given his own reasons for not doing so. However, he has become regular and prompt since March 1973 onwards and has promised to be so and I therefore order that damages be reduced to 12 1/2% wherever it exceeds from July . 1965 to October 1973."

Accordingly, he reduced the amount of damages payable by the petitioner from Rs. 31,827/- to Rs. 18,747-40 P.

8. Mr. S.G. Sundaraswamy maintained that the respondent having found that the delay in making the contribution under the Act was due to the remissness on the part of the Department itself, this was not a fit case where the respondent should have exercised his jurisdiction u/s 14B of the Act. In support of that contention, he relied on the decision of a Learned Single Judge of the Punjab High Court in *Amin Chand and Sons - v. - State of Punjab and others* AIR 1965 P&H 441 wherein it was observed :

"It is certainly not in consonance with the purpose and object of the Act to choose a date six years after the default to exercise the power to levy damages in respect of all payments made after the scheduled time. The purpose of Section 14-B is as much reformatory and punitive. A defaulting employer, in my opinion, is given a chance to amend himself when a penalty up to 25 per cent becomes leviable. The exercise of discretion in the present case, in my opinion, is certainly arbitrary and has resulted in the operation of law very harshly"

In the view he took on the facts of that case, the Learned Single Judge quashed the order of the State Government, which was the proper authority at the

relevant time to make an order u/s 14-B of the Act. This decision was followed by a Learned Single Judge of the Allahabad High Court in *Allahabad Canning Company- v. -Regional Provident Fund Commissioner, U.P. (1976) 49 FJR 395 (All)*. In that case, the arrears of contributions related to the years 1964 to 1970, but the impugned order was passed as late as in January 1975, The arrears had been actually paid up before the impugned order was made; On those facts, the Learned Single Judge of the Allahabad High Court took the view that the petitioner therein was well within his right to presume that the Government had condoned the delay and had decided not to demand any damages from him (the Petitioner). The Learned Judge also referred to the representation of the petitioner in that case stating that the payment of the contributions and the administrative charges under the Act were delayed due to certain unavoidable circumstances and owing to financial difficulties. Relying on the decision of the Punjab High Court in *Amin Chand's case*, the Learned Judge allowed the petition and quashed the order made by the Provident Fund Commissioner u/s 14B of the Act. He further found that since the Provident Fund Commissioner did not take into consideration the reasons given by the petitioner therein in his representation against the proposition notice u/s 14-B of the Act, the impugned order was not a speaking order and was liable to be quashed.

9. Mr. Sundaraswamy also relied on the decision of a Division Bench of this Court reported in *M/s. Mysore Bangle Works - v. - State of Mysore and Another (1973) 26 FLR 87 (Mys.HC)*. Venkataramiah, J., as he then was, speaking for the Bench, observed:

"We find from the schedules appended to the impugned notices in these two petitions, the computation of damages payable by the petitioner appears to have been done in a mechanical way contrary to the letter and spirit of Section 14B of the Act and the observations of this Court in the decision referred to above. We are of the opinion that while assessing the damages u/s 14B of the Act, the Government is bound to take into account the explanation given by the employer regarding the delay in payment of the provident fund contribution, etc. The default on the part of the employer may not be wilful but innocent. Sometimes the reasons for the default may be beyond the control of the employer, such as strikes, lockouts, political disturbances. It is not possible to enumerate exhaustively all such relevant matters which may have to be taken into account in determination of damages. The Government has to make an adjudication in a reasonable way. The large number of cases in which such adjudication has to be made itself is not a ground to adopt a mechanical process."

Fernandes Bros. Cashew Factory - v. - State of Mysore - 1968 (2)Mys L.J 537.

He also relied on the Division Bench ruling of this Court in *Fernandes - v. - State of Mysore AIR 1969 Mys 196*. Somnath Iyer, J.p as he then was, speaking for the Bench, observed:

"The power created by Section 14B is to determine the amount of those damages

as Government may think fit to impose. The words "may recover" occurring in the concluding part of that section demonstrate that in a given case Government have no power, if the circumstances justify the conclusion, to decide against the recovery of any damages, and it is that power of which the State Government stood denuded by the prescription of a rigid formula which in its opinion should settle all cases arising under that section.

That formula also resulted in the abdication of the duty to consider the facts of each case even with respect of the measures of damages. The words "as it may think fit to impose" clearly display the legislative intent that in each case there should be an application of the mind of the appropriate Government to its relevant features which should guide the conclusion both on the question whether any damages should be demanded and of their quantum. The formation of the opinion that the case is a fit one for the demand for payment of damages and of a particular sum of money as damages, is what Section 14-B clearly insists upon, and it is plain that that opinion has to be formed independently in the case of each default to which Section 14-B refers.

This decision was followed by the Madras High Court in *South India Flour Mills (P) Ltd. Vs. Regional P.F. Commissioner*, Though the above observations were made on the interpretation of the words "may recover" and "as it may think fit to impose" occurring in Section 14-B of the Act, Mr. Sundaraswamy maintained that the delay of 14 years in issuing the proposition notice u/s 14-B of the Act, lends support to his contention that the petitioner was entitled to presume that its earlier defaults in paying the contributions and administrative charges under the Act had been condoned and that the Respondent had waived his right to levy damages but he had arbitrarily and mechanically applied the provisions of that Section for holding that he had not lost the power to impose damages. He further maintained that the decision, of the Supreme Court in *Organo Chemical's* case might negative the additional grounds raised by him but the manner of exercising the discretion to recover and assess damages u/s 14-B of the Act is covered by the decisions of this Court referred to above and the other High Courts and had the discretion been properly exercised by the Respondent, he would have found that there was no case for recovery of damages and even otherwise, such damages would have been minimal.

10. Mr. S. A. Hakeem, Learned Additional Central Government Standing Counsel appearing for the Respondent, submitted that the Respondent had considered the question of delay in taking action against the petitioner and only after noticing that the concerned Provident Fund Inspector was responsible for the accumulation of the arrears over a period of nearly fifteen years that he (Respondent) took a lenient view of the matter and instead of imposing the maximum damages of 25% of the arrears, he reduced it by more than one third of the proposed levy and hence his order was not liable to be interfered with in these proceedings. In support of this contention, Mr. Hakeem relied on a decision of this Court (unreported) in *Napoli Restaurant - v. - The Regional Provident Fund*

Commissioner, W.P. No. 3801 of 1975. In that case, Justice Malimath, after taking into consideration the representation of the petitioner therein and the order of the Provident Fund Commissioner on that representation, declined to interfere with the order since the Commissioner had taken a lenient view of the matter and reduced the damages from 25% to 10%. The delay in that case was over a period of seven years.

Mr. Hakeem also relied on the decision of the Supreme Court in *Organo Chemical's* case and maintained that as the word "damages" has to be understood as an amalgam of penalty for default and compensation or reparation for the loss sustained by the beneficiaries, the question of delay has lost its significance and Section 14-B of the Act having not provided for any period of limitation, delay in levying damages, if any, was relevant for the purpose of computation of damages but not for exonerating the employer from the penal consequences under that section. He also brought to my notice that the decisions of the Punjab and Allahabad High Courts cited by Mr. Sundaraswamy are no longer good law since they stand reversed by the Appellate Bench of the respective High Courts in Letters Patent Appeal No. 296 of 1964 decided on 11-2-1969 and *R. P. F. Commissioner vs. Allahabad Canning Co.* 1978 L.I.C. 1 998

11. I will first deal with the case of delay in initiating proceedings u/s 14-B of the Act. Section 14-B prescribes no period of limitation for the authority to initiate action for damages against erring employers. It confers a statutory right without the prescription of limitation and the plea of waiver or acquiescence cannot operate against the rule that there could be no estoppel against statute. The Supreme Court, while considering the delay in making an application u/s 33C(2) of the Industrial Disputes Act, 1947, observed in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, as follows :-

"In dealing with this question, it is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting Section 33C(2). The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation u/s 33C(2). It may have been thought that the employees who are entitled to take the benefit of Section 33C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claim which they may have to make under the said provision. Besides, even if the analogy of execution proceedings is treated as relevant, it is well known that a decree passed under the CPC is capable of execution within 12 years, provided, of course, it is kept alive by taking steps, in aid of execution from time to time as required by Article 182 of the Limitation Act ; so that the test of one year or six months" limitation prescribed by the Payment of Wages Act cannot be treated as a uniform and universal test in respect of all kinds of execution claims. It seems

to us that where the legislature has made no provision for limitation, it would not be open to the Courts to introduce any such limitation on grounds of fairness or justice. The words of Section 33C(2) are plain and unambiguous and it would be the duty of the Labour Court to give effect to the said provision without any considerations of limitations. Mr. Kolah no doubt emphasised the fact that such belated claims made on a large scale may cause considerable inconvenience to the employer, but that is a consideration which the legislature may take into account, and if the legislature feels that fair play and justice require that some limitation should be prescribed, it may proceed to do so. In the absence of any provision, however, the Labour Court cannot import any such consideration in dealing with the applications made u/s 33C(2)."

Further, as observed in *Organo Chemical's* case:-

"The expression "damages" occurring in Section 14-B, is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty under Section 14-B is not merely "to provide compensation for the employees". We are clearly of the opinion that the imposition of damages u/s 14-B 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. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e., to recompense the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme. The word "damages" in Section 14-B is related to the word "default". The words used in Section 14-B are "default in the payment of contribution" and, therefore, the word "default" must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word "default" in Section 14-B must mean "failure in performance" or "failure to act". At the same time, the imposition of damages u/s 14-B is to provide reparation for the amount of loss suffered by the employees."

In the light of the enunciation of law by the Supreme Court in these two cases, it has to be held that delay in issuing the notice for levying damages, would not confer any right on the defaulting employer to claim that he should not be proceeded against for recovery of damages u/s 14-B of the Act. Further, both the decisions on which Mr. Sundaraswamy relied, have since been reversed.. [See L.P. Appeal No. 296 of 1964 disposed of on 11-2-1969 and *The Regional Provident Fund Commissioner, U.P. - v. - Allahabad Canning Co.* It may be noticed at this stage that the decision of the Learned Single Judge of the Punjab High Court in *Amin Chand's Case* has been dissented from both by the Calcutta High Court in *The Murarka Paint & Varnish Works Ltd. and Anr. - v. - Union of India And others* 1976 L.I.C. 1453 and by the Delhi High Court in *Lajpat Potteries - v. - R. P. F. Commr., C.W.P. No. 1930 of 1976*. Even then, it is open to this Court

to examine the persuasive value of the reversed decisions. Since in those two reversed decisions there was no discussion about the effect of the absence of a provision prescribing a period of limitation for initiating action u/s 14-B of the Act, I am unable to derive any assistance from them to accept the plea of Mr. Sundaraswamy that inordinate delay, even in the absence of a provision regarding the period of limitation, would be a ground for exonerating the erring employer. But such delay is a relevant consideration for deciding whether damages should be recovered from the employer and if so to what extent. Further, in the decision of the Appellate Bench of the Punjab High Court in Amin Chand's Case the Learned Judges found that there was no delay on the part of the Government (which was at the relevant time empowered to take action) to initiate action for the recovery of damages since the Government was not aware of the defaults committed by the employer till that default was brought to its notice by the Provident Fund Commissioner and the audit report for the relevant years. It would have been a different matter in this case if the Provident Fund Inspector had been conferred with the jurisdiction to levy damages. It is not the case of the Learned Counsel that the Provident Fund Commissioner was aware of the defaults from 1962 to 1973. As is evident from the impugned order, it was the jurisdictional Provident Fund Inspector who was supposed to have failed in discharging his duties properly. Such failure would not absolve the employer from the consequences of strict liability on account of the default committed by him u/s 14-B of the Act. In these circumstances, Mr. Sundaraswamy's contention that the respondent exceeded his jurisdiction in levying damages notwithstanding the admitted fact that there was delay for a period of 10 years, is liable to be rejected. There is no doubt that as the Section stands now, the defaulting employer would be put to considerable inconvenience and harassment by delayed action on the part of the authorities. But on the language of Section 14-B, such delay could be a mitigating factor in the recovery and assessment of damages and not to claim immunity from action for damages on the ground of waiver or acquiescence which may be relevant for a cause of action founded on tort or contract. For these reasons, I am unable to accept the contention of Mr. Sundaraswamy. Further, the respondent in his order had bestowed his attention to the inordinate delay and had that aspect in his mind while levying damages at 6 1/4% for the period 1962-63 and 10% from 1963 to 6-6-1965 and 12 1/2% from July 1965 to October 1973, instead of levying 25% maximum damages. He had also noticed the other considerations to which I have made a brief reference in para 7 above. Hence, it cannot be said that the order of the respondent is vitiated by arbitrary exercise of power conferred on him or non-application of mind to the relevant factors. The recent decision of the Calcutta High Court in Hooghly Docking and Engineering Co. Ltd. and others- v. -Inspector, Employees' Provident Fund, W. B. and others (1980) 56 FJR 456, also does not advance the case of Mr. Sundaraswamy since there the Department had agreed to grant installments for payment of arrears due but all the same initiated proceedings for prosecution for the original defaults.

12. The Supreme Court in *Organo Chemical Industries*" case observed as follows on the scope of Section 14-B of the Act :

"The power of the Regional Provident Fund Commissioner to impose damages u/s 14-B is a quasi judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable u/s 14-B and the consequences that ensue therefrom, an order u/s 14-B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which in Section 14-B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz,, the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word "damages" in Section 14-B lays down sufficient guidelines for him to levy damages."

In the light of the above observations, I can discern no error which would vitiate the impugned order on the ground of delay. The respondent has taken this aspect into consideration and has made a speaking order after conforming to the Rules of natural justice. For these reasons, the main attack of Mr. Sundaraswamy against the impugned order on the ground of delay in taking action, must fail.

13. Mr. Sundaraswamy also relied on the decision of the Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa*, . In that case, the appellant-company had failed to register itself as a dealer under the Orissa Sales Tax Act, 1947. The authorities under that Act levied penalty for such default and that order was unsuccessfully challenged in the Orissa High Court. In appeal by the Hindustan Steel Ltd., the Supreme Court observed :

"Under the Act (Orissa Sales Tax Act) penalty may be imposed for failure to register as a dealer : Section 9(1) read with Section 25(I)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register

the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

The Supreme Court in that case was dealing with the provisions of the Orissa Sales Tax Act which were fiscal in nature and we are dealing in this case with a piece of social legislation and how Section 14-B of the Act has to be interpreted has been laid down by the Supreme Court in *Organo Chemical Industries*" case. Here we are not dealing with technical violation of a statute or innocent default. There were innumerable defaults in making contributions, by a few days to a few months from 1962 to 1973. These defaults may not be wilful but all the same they are defaults. The liability being strict liability, as soon as the employer defaults in complying with the provisions of Section 14-B of the Act, as noticed earlier, the right to impose damages accrues to the authorities under that Section. The interpretation put on a penal provision in a taxing statute stands on a different footing from the interpretation of a penal provision in a piece of social legislation. All taxing statutes act; harshly upon the taxpayers and hence mere technical breach or a breach which flows from a bona fide belief would absolve the taxpayer from the rigours of its penal provisions. Under the Act, the default lies in not remitting the contribution of the employers" and employees" shares and since the employees have no right of action under the Act, though they have suffered an injury by the delayed contributions, the concepts of strict liability and strict interpretation are attracted by Section 14-B of the Act. Adoption of the views of the Supreme Court with regard to a taxing statute, to labour legislation would prejudicially operate against the interests of labour. As observed by Chagla, C.J. in *Mahadeo Dhandu Jadhav - v. - Labour Appellate Tribunal* (1956) 1 LLJ 252 @ 254:

" - We are always most reluctant to put any interpretation upon labour legislation which is likely to prejudice the rights or welfare of labour. We are fully conscious of the fact that our legislature has put labour legislation on the statute book primarily for the purpose of redressing the balance between employers and employees and that we should not unless we are compelled to do so by the clear language used by the legislature put any construction upon any provision of labour legislation which will in any way prejudicially affect their rights."

Hence, I am unable to get any assistance from the decision of the Supreme Court in *Hindustan Steel Ltd's* case. This disposes of similar contention of Mr. K.Srinivasan, Learned Counsel for the petitioner in Writ Petitions Nos. 7800 and 7807 of 1976.

14. Mr. Sundaraswamy's next contention was that even the assessment of damages was made on an arbitrary basis. He firstly relied on the decision of this Court in *R. Fernandes and others - v. - State of Mysore and others*. Section 14-B, as it stood then, had empowered the State Government to take action and there was no proviso to that section at that time providing for the employer to be given a reasonable opportunity of being heard. In that case, the State Government,

which was empowered to levy damages, on the basis of a rigid and inflexible formula for the computation of damages, had authorised the Regional Provident Fund Commissioner to recover damages from the employer. The facts of that case and Section 14-B as it stood then are different from the facts of the instant case and the section on which the claim for damages is based. Even otherwise, Mr. Sundaraswamy has not been able to establish in what way the respondent's assessment of damages could be said to be arbitrary. For the pre discovery period, only 6 1/4% damages were levied. Act 40 of 1973 which amended Section 14-B only changed the forum for levying damages as held by this Court in Writ Petition No. 3801 of 1975 disposed of on 5-11-1979. Hence, retrospective effect could be given to the provisions of Section 14-B. Further, the respondent cannot be said to have acted arbitrarily in levying damages varying from 6 1/4% to 12%, in view of his finding that the petitioner had accepted that clear instructions had been received by him in the matter of complying with the provisions of the statute regarding the enhanced rate of contribution from 6 1/4% to 8% and he had not been regular and prompt even after the issue of clear instructions from July 1965 onwards but became regular and prompt only since 1973. In the circumstances, the power exercised by the respondent could not be said to be arbitrary so as to call for interference in proceedings under Article 226 of the Constitution.

15. Now, the decisions of this Court cited by Mr. Sundaraswamy may be considered. I have already referred to the observations, made by this Court in *R. FERNANDES*" case in para 9 supra. It could be seen that those observations were made in the context of a notification prescribing a rigid tabulated formula for computation of damages. Further, this Court relied on the decision of the Madras High Court in *Regional Provident Fund Commissioner, Madras Vs. K.R. Subbaier Tape Factory, Tiruchirapalli*, and the decision of the Bombay High Court in *Bharat Barrel and Drum Manufacturing Company (Private), Ltd. Vs. Raval (B.N.) and Another*, but the decisions of those High Courts were rendered on a different point arising u/s 14-B of the Act and they did not turn on the interpretation of the word "may recover in Section 14-B. Further, those decisions must be understood in the light of the meaning of the word "damages" as interpreted before the decision in *Organo Chemical Industries* case. The words "may recover" cannot be equated with the word "liability". As noticed earlier, liability for damages accrues as soon as the default occurs. Recovery of such damages and quantification are left to the discretion of the authority. Suppose a part of the establishment covered by the Act is destroyed by an act of God or enemy action and there were defaults thereafter. Though the liability to pay damages is there, the authority may not recover any damages at all and thus the question of quantification of damages does not arise. The other decisions of this Court following the decision in *Fernandes*" case, related to the quantification of damages and where there was no application of mind by the Provident Fund Commissioner or the Government to the various circumstances for a proper quantification of damages, the demand notices were quashed. Further, these

decisions and the decisions of the other High Courts were rendered prior to the law laid down by the Supreme Court in Organo Chemical Industries" case and thus the quantification of damages rests now on a totally different concept of the word "damages". There is nothing in the decision of the Supreme Court to indicate that there should be assessment of penalty and compensation separately while quantifying the damages. In that background, the computation made by the Respondent may be examined. (See Chart annexed to Exhibit-C in W.P. 7325 of 1976)."

Month

Period of Delay Y-M-D

No of default

Amount of arrears/ Amount paid belatedly

Percentage of penal damages

Amount of penal damages

Total amount of penal damages

A/c Nos.

P.F. Contribution

Adnm. F.P.F charges

A/c. Nos.

A/c. Nos.

I

II

X

I

II X

I

II X

1

2

3

4

5

6

7

8

9

10

11 12 13

14

15

May" 62

Ranging

to Aug. "63.

from 2-1-4

5150-00

309-00

6 1/4%

6 1/4%

772-70

49-25

to 3-1-18

Sept. 63

More than

to June 65

six months

8970-25

515-10

10%

10%

897-05

51-50

July 65

Ranging

to Jan. 71

from 6 days

108936-62

2668-70

12 1/2%

12 1/2%

13617-10

333-60

to more than

6 months

Nov.71

27

VI

VI

I

2264-00

61-20

384- 50

12 1/2%

12 1/2%

2%

283-00

7-65

7-70

Dec. 71

7

"

"

II

2204-50

60-80

373-00

?

?

2 1/2%

275-55

7-60

9-35

Jan. 72

8

"

"

III

2202-00

59-50

375-00

"

"

5%

275-25

7-45

18-75

Mar. 72

14

"

"

IV

2207-00

59-95

386-00

"

?

7 1/2%

275-90

7-50

28-95

Apr. 72

14

"

"

V

2238-50

60-85

390-50

?

"

10%

279-80

7-60

39-05

May 72

Ranging

?

"

12 1/2%

1248-15

33-50

213-45

to Oct. 73

from 6 to 1-5

"

"

VI

9985-00

267-90

1707-50

144157-87

4063-00

3616-50

17924-50

505-65

317-25 18,747-40

From this chart, it is seen that the Respondent did not exercise his power to levy 25% damages. For the pre discovery period, he levied damages varying from 6 1/4% to 10%. As a matter of fact, he took a lenient view of the delay during the first one year. For the period, July 1965 to January 1971, where the delay was more than six months, he levied damages at a uniform rate of 12 1/2%. There was no default for the period, February to October 1971. For the defaults from November 1971 to October 1973, he levied damages at the rate of 12 1/2% on contributions and administrative charges but on dues to Family Pension Fund, he levied damages at rates paying from 2% to 12 1/2%. At first sight, a particular rate for a particular period irrespective of the length of delay, may look arbitrary. But the Supreme Court having upheld the maximum rate of 100% damages for the delays for the period, March to October 1975 and again for the period, December 1975 to November 1976, in Organo Chemical's case, I am unable to discover or discern any element of arbitrariness in the uniform rate levied for a particular period irrespective of the length of delay, when the levy is an amalgam of both penalty and reparation. Further, regard being had to the object of Section 14-B of the Act, a readily workable method without being unconscionable is inevitable in the very nature of things, when damages have to be computed for a number of years, on the basis of default in every month which may extend from one day to one year or more. If the facts in Organo Chemical Industries' case warranted 100% damages, the facts in this case, regard being had to the mitigating factors, warranted a levy varying from 6 1/4% to 12 1/2% which cannot be characterised as arbitrary. The considerations that prevail in the quantification of damages in an action in tort or contract can not be imported into proceedings u/s 14-B of the Act in determining the question of arbitrariness.

Such considerations will bring into play a high degree of arithmetical wizardry or casuistry to work out the permutations and combinations of various mitigating and aggravating factors for arriving at an exact figure which would be an exercise in futility to achieve the object of Section 14-B of the Act. Therefore, this contention of Mr. Sundaraswamy fails.

16. In Writ Petition No. 7800 of 1976, the Learned Counsel for the petitioner has adopted the arguments of Mr. Sundaraswamy. He has further contended that since the petitioner was not in arrears when the proposition notice was issued, it was not liable for damages. The liability to pay damages having accrued when the defaults occurred, this contention is untenable. His further contention that there should have been an enquiry u/s 7-A of the Act, is no longer tenable after the amendment of Section 14-B of the Act by Act No. 40 of 1973 by incorporating the proviso. Further, the employer was also personally heard before the impugned order was passed. The respondent has levied only 7 1/2% damages for the defaults from April 1971 to February 1975 amounting to Rs. 3692-35 P., as against the proposed levy of Rs. 12,466-75 P. This only indicates that all the mitigating factors have been taken into consideration by the respondent and, therefore, the assessment of damages made by him, is not arbitrary.

17. Writ Petition No. 7807 of 1976:- The petitioner in this Petition is the petitioner in Writ Petition No.7800 of 1976 and has adopted the same contentions as in that Petition, which I have negatived. The period in question in this case is from March 1972 to February 1975. From the impugned order, it is seen that the petitioner was a defaulter from December 1966 to February 1972 and the damages levied for that period had not been remitted. Damages at the rate of 7 1/2% in the impugned order, therefore, is not arbitrary since all the mitigating factors have been taken into consideration and the order is also a speaking order.

18. W.P; No. 10233 of 1976:- All the contentions of the Learned Counsel for the petitioner herein are considered and rejected in W.P. No. 7325 of 1976. Further, the assessment of damages cannot be said to be arbitrary. The petitioner had been penalised in the past and that is why for some defaults, damages were levied at 50%. Hence, the impugned order does not call for interference.

19. W.P. No. 12740 of 1977: - The petitioner's contention that the respondent had no jurisdiction to levy damages for the period prior to 1-11-1973 is negatived by the order of this Court in Writ Petition No. 3801 of 1975 referred to by me in my order in Writ Petition No. 7325 of 1976. The other contentions of the petitioner are negatived in Writ Petition No. 7325 of 1976. Further, the facts in this case are similar to those in *Organo Chemical Industries*" case and hence the impugned order levying 100 % damages does not call for interference. Further, the mitigating factors,, if any, are neutralised by the finding of the respondent that the petitioner had misappropriated the employees' contributions, which remains unchallenged in this Petition. Hence, this Petition is

liable to be dismissed.

20. W.P. No. 3256 of 1978 :- The contentions raised in this Petition are rejected by me in Writ Petition No. 7325 of 1976. Further, the plea that Article 14 of the Constitution is offended, stands negated by the decision of the Supreme Court in *Organo Chemical Industries*" case. Hence, I find no good ground to interfere with the impugned order.

21. W.P. No. 11319 of 1978 :- The contentions of the petitioner are similar to those in Writ Petition No. 7325 of 1976, which I have rejected. Against the proposed levy of Ps. 2,60,211-25 the respondent has levied Rs. 46,924-70 P(sic), which shows he has taken all the mitigating factors into consideration. Therefore, I see no good ground to interfere with the impugned order.

22. W.P. No. 13906 of 1978:- The contentions of the petitioner are similar to those in Writ Petition No. 7325 of 1976 which I have rejected. The petitioner being a chronic defaulter, his case is covered by the decision in *Organo Chemical Industries*" case and the imposition of maximum damages for most of the defaults was fully justified and hence I do not find any reason to interfere with the impugned order.

23. W.P. No. 4622 of 1979 :- The petitioner's establishment was covered with effect from 1-4-1967, For the period 1-4-1967 to 31-12-1972, payment of the employees' contribution was exempted by the respondent since it related to the pre-discovery period. The petitioner's contention is that damages could not be levied for that period since the employer's contribution was determined after an enquiry in 1975 u/s 7-A of the Act and soon thereafter it made the remittance. This contention has no force. The conflicting views of the various High Courts on this question, were referred to by a Division Bench of the Madras High Court in *Regional P. F, Commissioner - v. - K. R.Sufobaier*. Reversing the decisions of two Learned Single Judges of the same High Court, the Division Bench observed :

"If there is a rule which casts automatically upon the employer, as the Act does, the obligation to make the contribution, there is no logic in fixing the date of the notice by the Provident Fund Commissioner as the starting point, for making a valid claim. On the other hand, the Provident Fund Commissioner might have had more than one reason for the delay in the issue of notice. He might not have an adequate staff to make a speedy investigation in respect of every factory in his jurisdiction, or the investigation might have taken a long time. In such circumstances, an indifferent or recalcitrant employer who deliberately ignores the provisions of the Act, cannot urge, that he was awaiting the issue of a notice from the Provident Fund Commissioner, for the purpose of implementing the Act, and the Scheme in his establishment, and should therefore be given relief for the period prior to the issue of the notice."

"There is a considerable volume of authority in support of the view which we have just now stated. Srinivasan, J., in W.P. 205 of 1962 held that the Act takes effect at once and the provisions of the Act become enforceable against the

employer of a factory or an establishment with effect from the date on which the relevant clause of the Scheme comes into force, and that it does not depend upon the discovery made by the authorities of the department and the issue of the notice calling upon the employer to make the contribution according to the Act. A Division Bench of the Punjab High Court in ILR (1965) P&H 321, a Division Bench of the Andhra Pradesh High Court in Nazeena Traders (P) Ltd. and Others Vs. Regional Provident Fund Commissioner, Hyderabad and Others, (Chandra Reddy C.J. and Chandrasekhara Sastry, J.) a Full Bench of the Kerala High Court in Kokkalai Rice and Oil Mills Foundry, etc. Vs. Regional Provident Fund Commissioner, (where on facts the Provident Fund Commissioner had given a notice even before 1-11-1952) and the Allahabad High Court in N.K. Industries (Private) Ltd., Kanpur Vs. Regional Provident Fund Commissioner, U.P., (followed in the above Kerala High Court Full Bench decision) have all held the view which we adopt in this case for the reasons stated above."

I am inclined to fall in line with these views of the majority of the High Courts and hold the point against the Petitioner. This finding also answers Mr. Sundaraswamy's contention in Writ Petition No. 7325 of 1976, though he did not seriously press this point.

The Petitioner's next contention that the respondent had no power to levy damages for the period prior to 1-11-1973, is negated by this Court in W.P.No. 3801 of 1975 referred to above. This view is supported by a Division Bench of the Patna High Court in M/s. Hindustan Mall cables and Forgings Ltd. vs. The R. P. F. Commissioner 1978 LIC 930. But Mr. Rajagopalan, Learned Counsel for the Petitioner, maintained that the quantum of damages must be determined by issuing notice for each default and then aggregated. The language of Section 14-B does not lend itself to such construction. The words "default in payment of any contribution" would take in either a single default or multitude of defaults. The other contentions of the petitioner are similar to those in W.P. 7325 of 1976, which I have rejected. Hence, this Petition is liable to be dismissed.

24. W.P. No. 7710 of 1977:- In this Petition, the damages levied are for the period 1970 to 1975. Proposition notice was issued in the year 1976. The Learned Counsel for the Petitioner urged the following contentions :

(1) The establishment was covered voluntarily by the Petitioner and the contributions for the period in question up to the date of closure on 1-11-1976 had been paid though there was some delay which had been satisfactorily explained.

(2) Act No. 40 of 1973 has no retrospective effect and therefore the respondent had no power to levy damages for the period prior to 1-11-1973.

(3) The action is barred by limitation as Article 137 of the Limitation Act, 1961, applies to these proceedings.

(4) The levy was violative of principles of natural justice.

(5) The delay was due to misappropriation of funds by the Petitioner's employee and hence not deliberate.

(6) The words "makes default" in Section 14B of the Act bring out the intention of the legislature that if the delayed contributions are accepted without protest, there is no power to levy damages under that Section : alternatively such delays have been condoned.

(7) There should be separate action for every default.

(8) In any event, the amount of damages levied is excessive and arbitrary and the impugned order is not a speaking order.

Contention (1) :- The fact that the establishment was covered voluntarily does not make any difference to the power exercised by the respondent. No provision in the Act or the Scheme has been brought to my notice by the Learned Counsel in support of this contention. Admittedly, there was delay in making the contribution and the reasons for the delay are only relevant for the purpose of imposing and quantification of damages.

Contention (2) :- That Section 14-B of the Act has no retrospective effect is untenable as held by this Court in Writ Petition No. 3801 of 1975.

Contention (3) :- The plea of limitation fails in view of what I have observed in Writ Petition No. 7325 of 1976.

Contention (4) :- Admittedly, the Petitioner has been heard before the impugned demand was made and principles of natural justice have been observed by the respondent while making the demand.

Contention (5) :- -The fact of misappropriation of the contribution amount would be relevant only for the purpose of assessment of damages and not for claiming total exemption.

Contention (6) :-This contention is based on the use of the words "makes default" in the present tense. The Counsel maintained that since the delayed contributions had been accepted, there were no defaults at all. This contention merits no consideration since the right to levy damages accrues to the respondent the moment the employer makes default in making the contributions or other payments indicated in Section 14-B of the Act.

Contention (7) :- This contention overlooks the words "any contribution" in Section 14-B of the Act and I have rejected the similar contention in Writ Petition No. 4622 of 1979.

Contention (8) :- As explained by me in my order in Writ Petition No. 7325 of 1976, there is no arbitrariness in the calculation of damages. The facts in favour of the petitioner for mitigation of damages are neutralised by the finding of the Respondent that the petitioner had been sufficiently warned by the Provident Fund Inspector regarding the consequences of belated remittances. Mr. K. R.

Rajagopalan, Learned Counsel for the petitioner, relied on a decision of the Kerala High Court in The Regional Provident Fund Commissioner - v. - Bharat Plywood and Timber Products (Pvt.) Ltd., 1980 (41) FLR 103 (Ker). In view of the decision of the Supreme Court in Organo Chemical Industries" case, I am not able to get any assistance from this decision. The other decisions of various High Courts cited by Mr. Rajagopalan are not helpful after the decision of the Supreme Court in Organo Chemical Industries" case.

25. W.P. No. 11715 of 1978:- The contentions in this Petition are all covered in my order in Writ Petition No. 7325 of 1976. The Learned Counsel for the petitioner in Writ Petition No. 11319 of 1978 had raised similar contentions which have been negatived by me. As against the proposed levy of Rs. 79,518-45 P., the Respondent, after considering the mitigating factors, has made a demand for Rs. 24,992 00 and I see no good reason to interfere with the impugned order.

26. W.P. No. 4530 of 1979 :- The contentions of the petitioner herein are similar to those raised in Writ Petitions Nos. 7325 of 1976 and 7710 of 1977. I have negatived those contentions in my order in those two Writ Petitions. The Respondent has also found that the petitioner had deducted the employees' contributions in their wages but had not remitted the same within the prescribed date which amounted to criminal breach of trust and misappropriation of funds.

In the circumstances, the order confirming the proposed levy, does not call for interference.

27. For these reasons, all these petitions are dismissed but the petitioner in each of these cases is permitted to pay the damages levied in four equal quarterly installments without a single default. The first installment shall be paid on or before the 10th of October 1980 and the subsequent installments on or before 10th of February, June and September 1981.