
(2002) 10 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No. 184 of 1996 and W.M.P. No. 275 of 1996

Shanthi Garments Pvt. Ltd.

APPELLANT

Vs

Regional Provident Fund, Commissioner Employees Provident
Fund Organisation

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 LLJ 467

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Gupta and Ravi, for the Appellant; V. Vibhishanan, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Petitioner is a private limited company incorporated under the Companies Act, 1956 and engaged in the manufacture of

hosiery items. The petitioner furnished an investigation pro-forma dated 17.3.1989 to the Enforcement Officer of the respondent seeking coverage

under the Act. The petitioner deposited the amount of contribution in a separate account in State Bank of India and intimated the Enforcement

Officer accordingly. However, the Employer's Code Number was not furnished. Subsequently the petitioner filed W.P. No. 10178 of 1991

seeking for a writ of mandamus directing the respondent to furnish the code number. During pendency of the aforesaid writ petition, a separate

code number was furnished to the petitioner vide order dated 31.3.1993 and the petitioner was informed that the Act would be applicable to the

petitioner with effect from 31.1.1989. After allotment of code number, the

petitioner has been depositing the amount with the respondent in the furnished code. However, the respondent issued show cause notice dated 9.10.1995 calling upon the petitioner to show cause as to why damages should not be recovered u/s 14-B of the Act for the period from 1988-89 to 1994-95. The petitioner filed show cause mainly contending that the amount was being deposited in a separate account in State Bank of India as code number has not been furnished and there is no wilful default. The respondent, however, under the impugned order has directed the petitioner to pay damages totalling Rs. 1,01,058/-. The aforesaid order is challenged in this writ petition.

2. Learned counsel appearing for the petitioner has submitted that since there was no wilful default on the part of the petitioner and since code number had not been furnished in spite of repeated requests made, there should not have been any direction regarding payment of damages, particularly when the amount was being deposited by the petitioner in a separate account in State Bank of India.

3. Learned counsel appearing for the respondent has submitted that liability to pay contribution is the statutory liability and non-furnishing of code number is not an excuse and since the liability to pay contribution is absolute, any default in making the payment within the stipulated time would automatically attract the provisions of Section 14-B of the Act.

4. In the decision of the Supreme Court reported in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, while upholding the validity of Section 14-B of the Employees' Provident Funds Act, 1952 it was observed as follows :-

. . . The expression ""damages"" occurring in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object 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. 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 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 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 14B must mean ""failure

in performance"" or ""failure to act."" At the same time, the imposition of damages u/s 14B is to provide reparation for the amount of loss suffered by

the employees.

It was further observed :

. . . Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund

Commissioner to impose damages u/s 14B 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 14B and the consequences that ensure therefrom, an order u/s 14B 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 14B 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 14B lays down sufficient guidelines for him to levy damages.

5. In M/s. Hindustan Times Limited Vs. Union of India and Others, the aforesaid view was reiterated.

6. In Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, it was observed :

. . . In other words, the Act envisages the imposition of damages for delayed payments. The Act is a beneficial welfare legislation to ensure health

and other benefits to the employees. The employer under the Act is under a

statutory obligation to deduct the specified percentage of the contribution from the employee's salary and matching contribution, the entire amount is required to be deposited in the fund within 15 days after the date of the collection, every month.

Thereby the employer is under a statutory obligation to deposit the amount to the credit of the fund every month. In the event of any default committed in that behalf, Section 14-B steps in and calls upon the employer to pay damages by way of penalty, the maximum of which is the accumulated arrears. The Regional Provident Fund Commissioner is given discretion only to reduce a percentage of damages and he has no power to waive penalty altogether. . . .

7. Keeping in view the ratio of these decisions, the validity of the impugned order is to be examined. The contention of the learned counsel for the petitioner to the effect that since there was no wilful default on the part of the petitioner there should not have been a direction regarding payment of damages, cannot be accepted in view of the observations made by the Supreme Court in the last cited decision. The aforesaid decision makes it clear that the authority has no discretion to waive the damages altogether though it may reduce the amount possible.

8. Judged in the light of the above decisions, it is seen that the respondent has not examined the matter in its proper perspective. It is not disputed that the petitioner was all along willing to deposit the contribution and was asking for supply of code number and since no code number was furnished he was depositing the amount in a separate account in State Bank of India. As observed by the Supreme Court, the appropriate authority has discretion to quantify the amount of damages payable. Where the default is wanton, the quantum of damages would obviously be higher, but where there is no wilful default, the appropriate authority is to consider the question of quantum in a different spirit.

9. As observed by the Supreme Court, the direction regarding payment of damages is compensatory as well as penal in nature. Where there is no wilful violation, quantum of damages should be more or less compensatory in nature and where the default is continuous or intentional, damages payable in addition to being compensatory would be penal as well. The delay in making payments obviously should not prejudice the employees

for whose benefit the Fund is created. Where ""default"" is found, but no apparent ""fault"", the quantum of damages should be compensatory rather than penal in nature.

10. Having regard to all these facts, I think interest of justice would be served by modifying the quantum of damages payable and directing that the

extent of damages should be confined to the statutory interest payable so that the employees would not be at loss. The respondent is therefore

directed to requantify the damages payable by confining the same to the amount of interest payable. The petitioner should pay the revised amount

within a period of one month from the date of communication of such fresh order.

12. The writ petition is accordingly allowed to the extent indicated above. There would be no order as to costs. Consequently, W.M.P.No.275 of

1996 is closed.