
(1978) 05 AHC CK 0082
In the Allahabad High Court
Case No : Civil Misc. Writ No. 5556 of 1971

Shyam Glass Works

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1979 All 19 : (1978) 37 FLR 261

Hon'ble Judges : R.C. Srivastava, J;K.N. Singh, J

Bench : Division Bench

Advocate : G.P. Bhargava and A.N. Bhargava, for the Appellant; Standing Counsel and V.K. Burman, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—This petition is directed against the proceedings taken by the Regional Provident Funds Commissioner for levy of damages and other charges as well as recovery of the same u/s 14-B of the Employees Provident Funds Act, 1952.

2. The petitioner company committed default in making its contribution towards provident fund dues of its employees during the period April 1962 to Sept. 1967. The petitioner company had deposited the provident fund dues but the deposit was made after the expiry of the prescribed date. On 18th Sept. 1968 the Accounts Officer acting on behalf of the Regional Provident Funds Commissioner U. P. Kanpur, issued a notice to the petitioner in respect of levy of damages u/s 14-B of the Employees' Provident Funds Act, 1952, The notice stated that as the petitioner had deposited the provident fund dues after the expiry of the prescribed date it was liable to pay a sum of Rs. 14,856.85 paise as damages u/s 14-B of the Act and Rs. 361-94 as administrative charges. The petitioner was directed to show cause within ten days of the receipt of the notice as to why the State Government should not be requested to impose damages up to 25 per cent

on the belated payments made by the petitioner. The notice was accompanied by a statement giving details of the damages proposed to be imposed. Under some misconception of law the petitioner made a representation to the Central Government on 12-10-1968 against the proposed imposition of damages. The Central Government by its letter dated 30th Nov. 1968 directed the petitioner to approach the State Government. The petitioner thereupon made a representation to the State Government setting out the details of the circumstances under which it could not remit the provident fund dues in time, but prior to that the State Government by its order dated 12th Feb. 1969, sanctioned the levy of damages and administrative charges as proposed by "the Regional Provident Funds Commissioner. The petitioner's representation was rejected by the State Government on 17th Dec. 1970. Intimation of the same was not given to the petitioner, instead the State Government informed the Regional Provident Funds Commissioner about the rejection of the petitioner's representation. The Regional Provident Funds Commissioner by his letter dated 18-1-1971 informed the petitioner that his representation had been rejected by the State Government. The petitioner was directed to deposit the damages as imposed against it within fifteen days. The petitioner failed to deposit the damages. Thereupon the Regional Provident Funds Commissioner issued a certificate to the Collector, Aligarh, on 14th June, 1971, for the recovery of the amount of damages as arrears of land revenue from the petitioner. The petitioner thereupon filed this petition challenging the validity of the levy and assessment of damages and the recovery proceedings.

3. Sri G. P. Bhargava, learned counsel for the petitioner, challenged the validity of the levy and assessment of the damages and its recovery on the following grounds;

(1) Since the damages were levied after six years and not immediately after the defaults were committed, the State Government and the Regional Provident Funds Commissioner were not entitled to recover the same from the petitioner.

(2) The petitioner was not given any opportunity by the State Govt., the competent authority to assess and levy the damages before the proposal of the Regional Provident Funds Commissioner was approved by it.

(3) The Regional Provident Funds Commissioner had no authority u/s 14-B of the Act to levy or assess the damages as the State Government could not validly delegate its functions to him.

(4) The State Government's order approving the assessment and the levy of damages was made mechanically without application of mind.

(5) The order of the State Government is vitiated as it does not contain any reasons.

4. Section 14-B of the Act confers power on the appropriate Government to levy and recover damages for committing default in making the deposit of provident

fund dues. The Act does not prescribe any period of limitation for the levy or recovery of damages from the defaulter. The petitioner placed reliance on *Amin Chand & Sons v. State of Punjab* AIR 1965 P&H 441 where a learned single Judge of the Punjab High Court held that the damages should be levied immediately after the default and if the levy is delayed the employer may legitimately come to the conclusion that the Government had decided not to exercise its discretion to levy damages. To choose a date for levy of damages was held arbitrary. This view was however not accepted by our court in the *Regional Provident Fund Commr. v. Allahabad Canning Co.* (Special Appeal No. 21 of 1976), decided on Jan. 4, 1978: 1978 Lab IC 998 A Division Bench of this Court disapproved the view of the Punjab High Court as taken in *Amin Chand & Sons* case. The Division Bench held that Section 14-B of the Act does not provide any limitation for taking action against the erring employees for not depositing the provident fund dues. In the absence of bar of limitation there was no principle of law which debarred the Provident Funds Commissioner or the State Government from exercising their statutory powers u/s 14-B of the Act. We find no reason to take a different view.

5. In regard to the second ground, we are satisfied that the petitioner was not given any notice of hearing by the State Government before it approved the proposal of the Regional Provident Funds Commissioner for the levy and assessment of the damages against the petitioner. Section 14-B lays down that if an employer makes default in making its contribution to the fund or in the transfer of accumulations required to be transferred by him or in the payment of any charges payable under the Act the appropriate Government may recover from the employers such damages not exceeding 25% of the amount of arrears as it may think fit to impose. The section provides for statutory damages against the employers for breach of its duty to deposit the amount within the prescribed period. The purpose is to punish erring employers for their willful default. The appropriate Government has however been conferred a discretion in assessing or recovery of damages from the erring employers. The levy of the damages cannot however exceed 25% of the amount of arrears. The section contemplates that the State Government may after considering the relevant facts and circumstances" take a decision not to levy any damages or recover the same from a particular employer. This is clear from the expression occurring in the section "as it may think fit to impose". Since the nature of levy is punitive and as the State Government is required to consider the facts of each case while exercising its discretion under the Act, it would require an enquiry in consonance with the principles of natural justice. The State is under a duty to follow the principles of natural justice in exercising the power of imposing damages. Even if Section 14-B does not expressly provide for giving an opportunity of hearing to the employer the State Government is bound to do so having regard to the purpose and nature of the functions it is required to perform. In *Reliable Water Supply Service v. Regional Provident Funds Commr.* 1973 All LJ 415 a Division Bench of this Court held that as Section 14-B involves imposition of penalty

which has the effect of depriving the employer of his property in the shape of money it involves serious civil consequences. Consequently a duty to follow the principles of natural justice is implicit in the section itself. It is not necessary to decide the question as to whether the State Government is required to act in a quasi-judicial manner as, in our opinion, even if the State Government is performing purely administrative functions u/s 14-B it is under a duty to exercise its power consistently with the principles of natural justice which require that the party affected must be given an opportunity of hearing in the absence of any opportunity of hearing being given to the employer the imposition of damages would be rendered null and void.

6. In the instant case there is no dispute that the State Government did not give any notice or opportunity of hearing to the petitioner before it approved the proposal of the Regional Provident Funds Commissioner for the imposition of damages. I learned counsel for the respondents, however, contended that since the Regional Provident Funds Commissioner had given a notice dated 18-9-1968 (Annexure I to the petition) to the petitioner to show cause against the proposed levy of damages there was no contravention of the principles of natural justice. We find no merit in the contention. The notice dated 18-9-1968 was issued under the signature of the Accounts Officer on behalf of the Regional Provident Funds Commissioner, U. P. Kanpur, directing the petitioner to show cause why the proposal be not forwarded to the Government for levy of damages. The Accounts Officer or the Regional Provident Funds Commissioner had no authority to impose any damages. It is conceded that the State Government was only competent authority to impose the damages and exercise discretion u/s 14-B of the Act. Opportunity of showing cause before the authority which had no power to exercise jurisdiction was wholly futile. Since the ultimate power and discretion vested in the State Government it was its bounden duty to have given opportunity to the petitioner before imposing damages. Failure to give such an opportunity rendered the orders of the State Government imposing damages against the petitioner null and void,

7. The petitioner's contention that the Regional Provident Funds Commissioner had no authority to impose damages and the State Government could not delegate its functions u/s 14-B to the Regional Provident Funds Commissioner is not sound. On 5th June, 1963, the State Government delegated its power to the Regional Provident Funds Commissioner to impose damages against the defaulting employers. Later on the order of delegation was modified but that order was followed by another Government order dated Oct. 15, 1976, whereby the State Government partially cancelled its previous order and directed the Regional Provident Funds Commissioner that in future when damages were proposed to be levied, a recommendation may be made to the State Government in all cases. Thus the State Government retained its power to assess or recover damages and the Provident Funds Commissioner was not empowered to impose the damages. In the instant case, the Regional Provident Funds Commissioner did not impose damages against the petitioner, instead he merely sent his

recommendation to the State Government which was accepted under the order of the State Government dated 12th Feb. 1969. No exception can be taken to the Commissioner's making recommendation to the State Government as the final authority was retained by the State Government,

8. The petitioner's contention that the order of the State Government was vitiated on account of absence of reasons and that it did not apply its mind to the facts and circumstances need not be considered or decided, as we have already taken the view that the order of the State Government in imposing the damages was illegal on the ground that the order was passed in contravention of the principles of natural justice.

9. We therefore hold that the order of the State Government imposing damages against the petitioner u/s 14-B of the Act was illegal. Consequently the subsequent proceedings taken by the Regional Provident Funds Commissioner for the recovery of the amount of damages was also vitiated.

10. In the result the petition succeeds and is accordingly allowed. The order of the State Government dated 18-1-1971 and the order of the Regional Provident Funds Commissioner dated 18-9-1968 are quashed. The petitioner is entitled to his costs.