(2007) 05 AHC CK 0039

In the Allahabad High Court

Case No : C.M.W.P. No''s. 8714 of 1989, 534 of 1990 and 3420 of 1995

Sir Shadi Lal Sugar and General Mills APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

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

Citation : (2008) 5 AWC 4774

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Anil Sharma and S.C. Budhwar, for the Appellant; Dhananjay Awasthi, for the Respondent

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. These writ petitions are directed against the orders of the Regional Provident Fund Commissioner, Meerut, imposing damages u/s 14B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 for delayed payment of contributions towards Provident Fund account, Family pension contribution account and Administrative Charges Act by the Petitioner.

3. The damages imposed through order dated 7.4.1989 of Regional Provident Fund Commissioner, Meerut which is challenged in Writ Petition No. 8714 of 1989 are Rs. 4,80,932.80. The Petitioner admitted that the payments were late. However, it stated that its financial condition was not good hence delay occurred in making the contribution in the aforesaid accounts. In the impugned order it is mentioned that bad financial condition is no ground to justify delay in making the contribution.

4. In Writ Petition No. 534 of 1990, the Regional Provident Fund Commissioner, Meerut through order dated 3.1.1990 imposed the damages of Rs. 6,91,098.15 for delayed payment of contributions from March, 1976 to February, 1977 u/s 14B of the Act. The case of the Petitioner in this writ petition is akin to the case

taken in Writ Petition No. 8714 of 1989 viz., financial difficulties.

5. Writ Petition No. 3420 of 1995 is directed against the order dated 28.12.1994 passed by the Regional Provident Fund Commissioner, Meerut imposing damages to the tune of Rs. 2,58,581 u/s 14B of the Act. In this case no defence was taken by the employer before the Regional Provident Fund Commissioner and no evidence was adduced. Hence, Regional Provident Fund Commissioner imposed the damages of Rs. 2,58,581 for delayed deposit of contributions u/s 14B of the Act.

6. The three orders were passed for three different periods.

7. Section 14B of the Act is quoted below:

14B. Power to recover damages.-Where an employer makes default in the payment of any contribution to the Fund (the family pension 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 provision 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 authorized by the Central Government, by notification in the Official Gazette, in this behalf) may recover (from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme).

(Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.) (Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.)

8. The Supreme Court in M/s. Hindustan Times Ltd. v. Union of India, AIR 1998 SC 688, has held that bad financial condition is no defence for delayed deposit. In the said case it has also been held that delay in initiating the proceedings is not fatal.

9. However, in the impugned orders it has not been mentioned that at what rate damages have been determined. u/s 14B of the Act 100% damages may be imposed. It appears that through the impugned orders 100% damages have been imposed. Delay in making the payment for different months'' contribution was of different period varying from one month to several months.

10. In Para 22 of the counter-affidavit filed in first writ petition it has been stated that:

The rate of damages, period of default and the number of default have been stated in the statement enclosed alongwith order dated 7.4.1989. The Petitioner has deliberately concealed these facts and has not filed Appendix ''D'' alongwith order dated 7.4.1989.

11. Copy of order dated 7.4.1989 is Annexure-8 to the first writ petition. It contains the heading Appendix ''D''. In any case if copy of complete order had not been annexed alongwith writ petition then it should have been annexed alongwith counter-affidavit which was not done.

12. Learned Counsel for the Petitioner-employer has cited an authority of the Supreme Court in M/s. K. Streetlite Electric Corporation Vs. Regional Provident Fund Commissioner, Haryana, . In the said authority it was observed that the Commissioner imposed divergent rates of damages for divergent defaults and in fixation of the rate no rationale was discernible. The Supreme Court in the said authority reduced the damages to 25%.

13. In the instant case the position is worse. The Commissioner has not even mentioned the rate of damages in the order.

14. As stated earlier it appears that 100% damages have been fixed.

15. Accordingly, following the aforesaid authority of the Supreme Court of K. S. Electric Corporation (supra) damages fixed by the impugned orders are reduced by 80% and it is directed that in each case Petitioner shall pay 20% of the imposed damages.

16. All the writ petitions are accordingly disposed of.