
(1987) 08 KL CK 0019

In the High Court Of Kerala

Case No : Writ Petition No. 1800 of 1984

Sivaramakrishna Iyer

APPELLANT

Vs

Regional P.F. Commr.

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

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

Citation : (1995) 3 LLJ 701

Hon'ble Judges : Fathima Beevi, J

Bench : Single Bench

Advocate : P.C. Chaco and Roychaco, for the Appellant; P.V. Madhavan Nambiar, for the Respondent

Final Decision : Allowed

Judgement

Fathima Beevi, J.—The Regional Provident Fund Commissioner by Ext.P1 proceedings imposed a penalty of Rs. 6,960/-under Section 14B of the Employees. Provident Funds and Miscellaneous Provisions Act for the delay in payment of the dues for the period from 4/79 to 3/80. The legality of the order is challenged by the petitioner. It is contended that the respondent without proper application of the mind has arbitrarily levied the penalty and the circumstances of the case did not warrant the imposition of damages at hundred per cent of the dues. On behalf of the respondent it has been contended that Ext.P1 is a speaking order and the Commissioner having noticed that the petitioner is a chronic defaulter who do not pay even after the imposition of penalty for the earlier periods exercised the power properly and the order calls for no interference.

2. The Regional Provident Fund Commissioner is empowered u/s 14B to impose damages extending to 100 per cent of the duties in appropriate cases. The Commissioner has to exercise the discretion in imposing the penalty or reasonable basis and having regard to all the facts and circumstances of the case. It has been pointed out on behalf of the petitioner that the liability of the

petitioner to make the contributions had been finally determined only by the order dated 6.6.1980. There has been no default thereafter and the adoption of 100 per cent for the delay of one month as well as for the delay of about 10 months prior to the date of the order is not supported by any reason and can only to be characterised as arbitrary and unreasonable. The learned counsel for the petitioner placing reliance on the decision of the Bombay High Court in Josts Engineering Limited, Bombay Vs. Union of India and another, , urged that the Commissioner as a quasi judicial authority is obliged to decide on proper application of mind considering the fact that damages contemplated u/s 14B covered compensation for actual loss and the punitive element must state what the allocation between two heads is and that Ext. P1 is not in consonance with these requirements.

3. A perusal of the statement annexed to Ext.P1 reveals that there had been delay varying from one month to 10 months in making the payments during the period in question. For the earlier period mere had been a similar order imposing penalty ranging from 2 to 20 per cent and extending up to 60 per cent. The petitioner did not succeed in challenging that levy. The fact that there had been imposition of penalty for the earlier period would be a relevant consideration in determining the quantum of damages for a subsequent period. As has been pointed out by the Supreme Court the guarantee against arbitrariness in imposing the damages contemplated u/s 14B is that the assessing authority is obliged to write a speaking order of his assessment setting out the reasons of it so that it was readily exposed to the scrutiny of a court exercising writ jurisdiction. When the damages contemplated u/s 14B covered (a) compensation for actual loss and (b) the punitive element, it cannot be said that the respondent in adopting flat rate of 100 per cent for the entire period of default had proper application of the mind in making such allocation or fixing the liability. The decision in such circumstances has to be considered as arbitrary and it is necessary to direct the respondent to reconsider the matter in the light of the guidelines and pass fresh order.

The result is that the Original Petition is allowed, Ext.P1 order is set aside and the first respondent is directed to reconsider the question and pass fresh orders. There shall be no order as to costs.