

(1977) 10 MAD CK 0016
In the Madras High Court

South India Flour Mills (P) Ltd.

APPELLANT

Vs

Regional P.F. Commissioner

RESPONDENT

Date of Decision : 21-10-1977

Acts Referred:

Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 10
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 15,
17, 6, 8

Citation : (1978) 1 LLJ 101

Hon'ble Judges : Mohan, J

Bench : Single Bench

Judgement

Mohan, J.—In this case what falls for my determination is the scope of Section 14B of the Employees' Provident Fund Act and Family

Pension Fund Act, 1952 (hereinafter referred to as the Act) and the manner of exercise of the power by the concerned authority. The short facts

leading to the writ petition are as follows: There was a closure of the petitioner-mills between 8-3-1972 and 10-7-1972 owing to strike. On 7-8-

1972, the Management paid the salary for the month of March, 1972, and a portion for the month of July, 1972. On 12-8-1972, the Provident

Fund contribution for the month of February, 1972 was remitted. Normally speaking, that remittance should have been made on or before 15-3-

1972. Thereupon, it was called by a notice dated 26-10-1974 to show-cause why damages should not be levied u/s 14B of the Act. A reply was

sent on 31-10-1974 stating that the remittance could not be made in view of the strike that had taken place between 8-3-1972 and 10-7-1972

and the reasons for the belated payment were bona fide and there was no intention to circumvent the provisions of the Act. On 15-11-1974, a

personal hearing was afforded to the petitioner. It reiterated its contentions. On 26-11-1974, the Regional Provident Fund Commissioner passed

the impugned order withdrawing the damages on the dues for the months of March to June, 1972. However, he held that the reasons advanced in

the representation for the belated remittance for the period February, 1972 do not warrant any reduction in the leviable damages and dues for

February, 1972 could have been remitted at least on ad hoc basis within the due date. Hence the appeal for waiver of damages for February,

1972 is rejected. Consequent to this, he directed the employer to remit the dues within 30 days from the date of issue of the letter, failing which

action would be taken u/s 8 of the Act to recover the amount as an arrear of land revenue without further notice. It is to quash this order dated 26-

11-1974 the writ for certiorari has been preferred.

2. Mr. A.L. Somayaji, learned Counsel for the petitioner submits that the authority has not understood properly the scope of Section 14B of the

Act, in that he has proceeded to reject the request for a waiver of damages for the month of February, 1972 as if he was levying penalty.

Secondly, the damages cannot be levied as a matter of course. The authority is required to apply its mind to the situation and assess the quantum of

damages and as to how the beneficiaries of the contributions had been damnified by reason of the belated payment of the provident fund dues. In

support of his contention, he relies upon *Fernandes (R.) Vs. State of Mysore and Others*, ; *Mysore Bangle Works v. State of Mysore* (1973) 26

F.L.R. 87; *Murarka Paint and Varnish Work Ltd. and Another Vs. Union of India and Others*, ; and *Bharat Plywood and Timber Products (P)*

Ltd. Vs. Employees" Provident Fund Commissioner and Others, and submits on the strength of these authorities that in exercising the power under

this section, the authority is bound to examine the cases and levy damages on merits and not in a rigid way as was done. In furtherance of this, he

submits that there must be an examination of the facts to see whether the imposition of damages is warranted under the circumstances. In fact, the

Supreme Court, in dealing with a similar enactment, held in *The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla*

and Sons, , that such an exercise is necessary. In the instant case, apart from saying that the reasons advanced do not warrant any reduction in the

leviable damages, the order does not indicate any application of mind which is highly necessary on the part of a quasi-judicial authority who administers the Act and imposes a liability on the employer. Therefore, according to the learned Counsel, the order must be held to be illegal and be set aside.

3. Mr. S.M. Ali Mohamed, learned Counsel for the respondent, in meeting these submissions states that it has to be remembered in this case that the liability on the employer has been imposed by a statute. The employer has been constituted under the Scheme a trustee and he is entrusted with the funds of the employees. Therefore, if deterrent action is not taken, there is every possibility of the moneys legitimately belonging to the employees ""being used"" by the employer and thereby have the benefit of the said money which legally does not belong to the employer. If delayed payment is to be viewed lightly, that would only encourage such activities. This being a benevolent piece of legislation with the avowed object of securing the well-being of the employees, the power to levy damages has been provided which power has been properly exercised in this case. As such, nearly about 22 crores of dues from the various employers remain to be collected.

4. The power u/s 14B of the Act is a discretionary power. No doubt, it has to be exercised in a quasi-judicial fashion. But, nevertheless, where the authority has found that there was no reason to waive the damages, this Court cannot interfere having regard to the gravity of the findings and the circumstances stated therein. In support of his arguments, he cites *F.N. Roy Vs. Collector of Customs, Calcutta*, .

5. Section 14B of the Act reads:

Where an employer makes default in the payment of any contribution to the Fund the Family Pension Fund of 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 under any of the conditions specified u/s 17 of the Central Provident Fund Commissioner or such other officer as may be authorised by Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears, 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.

The scope of this power is undoubtedly, as the section itself will clearly disclose, to levy damages. Damages, it is well-known, is totally different

from penalty. Where a statute enjoins a person to do a particular thing and when he fails to do so he becomes liable to be penalised; in other

words, the imposition of penalty arises in such cases. The Parliament, in its wisdom, u/s 14B has clothed the authority to levy damages. Therefore,

it is incumbent upon the authority to find how the beneficiaries of this Provident Fund contribution have been damnified by the belated payment of

the contributions. No doubt, the liability to contribute may be statutory, but nevertheless, merely because there is a delay or merely because there

is a belated payment, it does not follow automatically that the liability for damages gets attracted. That would be a wooden or rigid way of

construing the section. This aspect has come up for consideration in *Fernandes (R.) Vs. State of Mysore and Others*, wherein it was held:

Section 14B of the Employees' Provident Funds Act, 1952, does not compel-recovery of damages in each case in which there is a default, nor

does it specify the amount of damages to be recovered. It confers on the appropriate Government the power not only to decide whether in the

circumstances of the case any damages should be recovered from the employer and to further decide how much should be recovered from him.

When it reaches the conclusion that the case is one in which damages should be recovered, the quantification of the damages should be made on

the materials before it and having regard to all relevant circumstances and facts of the case.

The distinction between the "imposition of penalty" as against the "levy of damages" has been clearly brought out in *Murarka Paint and Varnish*

Work Ltd. and Another Vs. Union of India and Others, . It was held:

Section 14B deals with the power to recover damages. It is not the power to impose penalties. Though the maximum amount of damages that can

be recovered has been indicated in the section, damages must have some correlation with the loss suffered as a result of delayed payments. The

authority imposing the penalty must apply its mind to this aspect of the matter. The impugned order is not a speaking order in the sense that it does

not indicate why the amount of penalty was imposed. It does not indicate that the amount imposed had any correlation with the loss suffered. From

this aspect of the matter, in my opinion, the order is unreasonable. In this connection reliance may be placed on the observations of the Supreme

Court in the case of The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, ; where it dealt with Section

10(f) of the Coal Mines Provident Fund & Bonus Schemes Act, 1948 which used the expression "such damages not exceeding 25% of the

amount of arrears as it may think fit to impose". The Supreme Court observed that two important features were first, the damages not exceeding

25% ; these words showed that the determination of damages was not an inflexible application of rigid formula. Second, the words "as it may think

fit to impose" showed that the authorities were required to apply their mind to the facts and circumstances of the case. As the order does not

indicate any reason in this respect, it is not manifest whether the authority had applied its mind to this aspect of the matter. Therefore, in any

opinion, the order is liable to be quashed and I accordingly quash the order dated 30th September, 1975 and direct the Regional Provident Fund

Commissioner to proceed afresh in accordance with law after bearing :in mind that the purpose of Section 14B to recover damages and not to

impose penalty and the maximum amount of penalty that could be imposed was as indicated in the section itself.

The same view was taken in Bharat Plywood and Timber Products (P) Ltd. Vs. Employees' Provident Fund Commissioner and Others, , it was

held.

Section 14B clearly indicates than an employer is liable to pay damages if he has made default in payment of the contribution. Merely because the

amount had been paid earlier to the order u/s 14B, it cannot be contended that there was no default in payment on the due date if the amount was

paid only subsequent to the due date. Any delay in paying the amount u/s 6 causes loss to the beneficiaries of the Scheme; such as loss of interest

and the like. This is the loss that is sought to be recovered from the defaulter for the purpose of indemnifying the beneficiaries of the Scheme-

namely, the employees-to the extent of the loss suffered. The defaulter u/s 14B is, therefore, liable to pay damages which represent the loss ; but

not anything more, as such recovery would amount to penalty, and that is not permitted under the section.

A reading of these authorities will clearly show that it is not a mere arithmetical computation or a rigid application of law by which damages could

be recovered. There must be an exercise of the mind and there must be an examination of the merits of each case. But, the order, to say the least,

is far from satisfactory when examined in this light.

6. Learned Counsel for the respondent, however, would urge that deterrent action is called for whenever there is a belated payment since there is

every possibility of the moneys belonging to the employees which have been entrusted to the employer might be utilised by the employer. No doubt,

one should welcome the anxiety of the authority to enforce the provisions of the Act and thereby enrich the coffers of the State, but the anxiety

does not mean, ride the rough shod over the provisions of the Act. Nor does it mean a discretion untrammelled. It is a discretion of the mind. It is

the mere over-anxiety or over-zealousness on the part of the officers which has led to this unwholesome orders. Neither has the Authority

understood the scope of the provisions, nor has he applied his mind to the case. Along with this writ petition I have heard arguments concerning

few other cases also. In not one case I could hold that the authority had exercised his mind in the manner he is required to under the section. I was

even some what surprised when my attention was drawn to the show-cause notice issued, which was nothing more than a printed form stating that

the damages at a certain percentage for one month, two months, three months, etc., would be levied. How wooden has that exercise been is what

requires to be noted. From any point of view, I am unable to hold that the impugned order could be sustained. Accordingly it is quashed. The writ

petition will stand allowed with costs and the matter will be remitted to the respondent for fresh determination in the light of the observations made

above Counsel's fee, Rs. 150.