

(1981) 08 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 4879 of 1978

Sri Rajendra Mills Limited

APPELLANT

Vs

The Regional Commissioner, Employees Provident Funds,
Tamil Nadu and Pondicherry, Madras

RESPONDENT

Date of Decision : 24-08-1981

Acts Referred:

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

Citation : (1982) 1 LLJ 352

Hon'ble Judges : Sathia Dev, J

Bench : Single Bench

Judgement

Sathia Dev, J.—Though in the petition, petitioner had taken more than one point covering the periods of default, the petitioner would stress

on the failure of the respondent to consider about the plea of power cut which prevented prompt remittance of the amounts under the provisions of

Central Act 19 of 1952. Mr. E. S. Govindan, counsel for the petitioner, would contend that the order is a non-speaking order and none of the two

reasons given has been considered, and it has proceeded more in a mechanical manner rather than endeavour to appreciate the hardship faced by

the petitioner in prompt remittance, for which it has been reputed since 1952. It is claimed that right from 1952 onwards, till 1975 petitioner has

been regularly remitting Provident Fund contributions without default, and it is only since March 1975, it experienced financial difficulties, which

cropped up due to crisis in the textile industry with the added factor of power cut. In its representations dated 7-4-1977, it has furnished the

periods during which there was power-cut and the steep percentage of power-cut imposed on the industry. In April, 1975, it was cent per cent.

Therefore, what he contends is apart from other factors pleaded, the power-cut during a portion of the period of the default, was a significant

factor which had immobilised the industry from functioning, and which cannot and should not be overlooked, while assessing damages.

2. The impugned order refers to the plea of financial difficulties pleaded by the petitioner and proceeds to hold that it cannot be a valid ground

when under S. 14-B of the Act, the competent authority has the right to demand damages as he may think fit to impose. Ultimately, the order

resulted in damages being fixed ranging from 1% to 10%.

3. When the petitioner has furnished particulars regarding power-cut, which had immobilised the industry for a considerable period, it is not only a

pertinent, but a relevant factor that should be taken into account before every damages are assessed. It is no answer to State that only 1% is

imposed when the industry is disabled by the action of the State from functioning. If factors which are not within the control of the industry are

responsible for non functioning of the factory, like total strike in all industries; flood; power-cut which is imposed every year; directions by law and

order authorities to close down factories during public unrest, etc., they would be relevant circumstances for sympathetically considering the claims

of such industries in non-payment of contributions and other remittances under the provisions of the Act. In this case, petitioner states that there are

four periods of defaults involved, they being from April to July, 1975, September, 1975 to February, 1976, June to December, 1976 and January

and February, 1977.

4. As for the first period, it has come forward to plead very severe power-cut and if it be true, if only the respondent had considered this factor, it

would have certainly extend a sympathetic consideration, which it was inclined to take, even for other periods, as is evident from the impugned

order. Therefore, only in respect of the period from April, 1975 to July, 1975, when power-cut is pleaded, and such a factor having not been

considered in the impugned order, it is set aside to this limited extent, and the matter is remitted for consideration. The petitioner is to be granted

every reasonable opportunity to substantiate its claims. To this extent Writ petition is allowed. There will be no order as to costs.