

(1968) 03 AP CK 0006
In the Andhra Pradesh High Court

Sri Ranganadha Rico Hill and Others

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 12-03-1968

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 15, 17

Citation : (1969) 2 LLJ 612

Hon'ble Judges : Gopalrao Ekbote, J

Bench : Single Bench

Judgement

Gopalrao Ekbote, J.

1.This is an application from the issue of a writ of mandamus directing the Gapoadon to forbear from recovering the damages from the petitioners in pursuance of the provisions of S,14B of the Employees" Provident Funds Act 19 of 1952. It arises in the following circumstance.

2. The petitioners are the rice-millers. In the year 1963 the respondents Bought to enforce the provisions of the Act and the framed there under and called upon the petitioners to remit contributions and administrative charges and asked them to submit returns on the ground that the petitioners" establishments are covered by the Act. The petitioners took objection to the application of the provisions of the Act to the petitioners" concern. Their contention was that the rice mill-employees are not covered by the provisions of the Act or the scheme framed thereunder.

3. Since the matter was in doubt and the respondents were insisting upon the compliance of the provisions of the Act, the petitioners filed writ petitions la this Court In Writ Petition No. 781 of 1963 and batch, raising various contentions in regard to the vires of some of the provisions of the Act and the other alike matters. The active was obtained in these writ petitions to the effect that the prove of the Act should not be applied till the final disposal of the writ petitions, Those writ petitions were disposed of by this Court on 1 January 1964. In the

judgment the casual labourers working in the mills were excluded. The provisions of the Act were held to applied to the rice mills. The petitioners contend that after they obtained the tilled copy of this judgment, petitioners 1, 2, 3 and 5 to 8 deposited on 9 January 1965, the necessary amounts due from thorn under the provisions of the Act from January 1961 to January 1965, Petitioner 4 deposited the amount on 17 March 1965, for the period covered from January 1961 to March 1965.

4. While so, respondent 1 gave a notice dated 31 August 1965, issued on 6 September 1965, to petitioners calling upon them to pay various amounts by way of damages. It is this active gave rise to this writ petition.

5. Two contentions were raised before me by Sri Manohar. the learned Counsel for the petitioners. The first contention was that the petitioners are not defaulters In as much as during the pendency of writ petitions filed by them, this Court had granted stay. The period covered by the stay order, therefore, cannot be said to be a period in whole the petitioners held committed default. They could not, therefore, be liable for damages for that period. The second contention was that respondent 2 before he determined the amount of damages to be recovered from the petitioners was obliged to give to the petitioners. He did not give any notice, nor he provided any opportunity to the petitioners to say what they have got to say in this behalf. The order, therefore, It la argued, Is a nullity.

6. In the view which I have taken, it is not necessary to consider the first point.

Section 14B read as follows:

14B. Where an employer makes default in the payment of any contribution to the fund or la 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 under any of the conditions specified u/s 17, the appropriate Government may recover from the employer such damages, not exciding twenty-five per cent of the amount of arrears, as it may think fit to Impose.

7. A reading of this section would reveal that It is only in a oas9 where an employer commits a default in the payment of the amounts specified in the section that he can assessed to damages not exceeding 25 per cent of the amount of arrears. The appropriate Government or respondent 1 who has been delegated that power has to first decide whether the petitioners who are the employers have committed any default in making the payment. That is a condition precedent for the application of section. It is only when he decides that primary question that he gets jurisdiction to assess the damages recoverable from the petitioners.

8. u/s 7A, the Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act or

of the scheme and for this purpose may conduct such inquiry as he may deem necessary. It is Sub-section (3) which is more relevant. It is in the following terms:

(3) No order determining the amount due from any employer shall be made under Sub-section (1) unless the employer is given a reasonable opportunity of representing his case.

The Regional Provident Fund Commissioner, respondent 1, therefore, was under the statutory obligation to give notice to the petitioners before conducting any enquiry to determine the damages. It is not disputed that Section 7A covers Section 14B also. Once that is concerned, it becomes the duty of the regional Provident Fund Commissioner before he determines the amount due from the petitioners u/s 14B to give them notice and it is only after hearing them that he could determine the amount due from the petitioner under any provision of the Act. Thus, the Regional Provident Fund Commissioner had to decide not only that the petitioners are defaulters for the purpose of Section 14B, but u/s 7A(3) he has to give notice to the petitioner before he conducts any enquiry for the purpose of determining the amount of damages u/s 14B and hear the petitioners before he makes any such order.

9. The petitioners have alleged in the affidavit that no notice was given to them and that no opportunity was provided to them in representing their case to the Regional Provident Fund Commissioner. This material allegation has not been traversed in the counter affidavit by the respondents. The notice of demand does not disclose that any such notice was given to the petitioners. In fact, the notice of demand does not say that the Regional Provident Fund Commissioner has found the petitioners as defaulters by any of his orders. When the petitioners were not served with any notice nor were they given an opportunity to represent their case, in other words, when the Regional Provident Fund Commissioner has disregarded the statutory provision of Section 7A(3), the notice of demand issued by him suffers from that vice and the order imposing damages upon the petitioners cannot be sustained. The notice of demand, therefore, has to be ignored. The Regional Provident Fund Commissioner, therefore, is directed by the Issue of a writ of mandamus to give notice to the petitioner then determine whether the petitioners are defaulters within the meaning of Section 14B and if he comes to the conclusion that they are defaulters, then determine the amount of damages after giving them reasonable opportunity to represent their case. The writ petition is accordingly allowed. In the circumstances, I make no order as to.