

(1992) 07 GUJ CK 0021
In the Gujarat High Court

Case No : Spl. Civil Application No. 3884 of 1992

Star of Gujarat Textile Mills Ltd.

APPELLANT

Vs

Regional P.F. Commissioner and Another

RESPONDENT

Date of Decision : 14-07-1992

Acts Referred:

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

Citation : (1992) 2 GLR 1630 : (1993) 1 LLJ 1023

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : Buch, for the Appellant; J.D. Ajmera, for the Respondent

Judgement

Sundaram, C.J.—Rule Mr. J. D. Ajmera, learned Counsel, appears for the respondent and waives service of rule.

2. Considering the limited scope of the controversy, which we are called upon to resolve in this Special Civil Application, especially when we take note of the norms set down on the question in issue by the rulings of the Apex Court, we propose to dispose of the Special Civil Application today itself, on merits. Learned Counsel on both the sides made their submissions, on merits.

3. The proceedings, subject-matter of challenge in the Special Civil Application, is one u/s 14B of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). By the proceedings impugned, the 1st respondent has chosen to impose 25% damages on the contributions, which were delayed for varying periods. The point that is being taken by Mr. Buch, learned Counsel for the petitioner, is that the adjudication of the question of imposition of damages by the 1st respondent runs counter to the ratio decidendi set down in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, in that the 1st respondent has not considered the various factors that should be normally taken note of on this question, such as the number of defaults, the period of delay, the frequency of defaults and the amounts involved.

Further, learned Counsel for the petitioner would submit that the petitioner has been declared a "sick unit" and it is practically facing a financial crisis on account of huge losses and this also is a factor, which should be relevantly taken note of on the question of imposition of damages and the 1st respondent was not in order, in totally brushing aside this aspects as irrelevant, and giving an untenable reason for so brushing aside.

4. As against this Mr. J. D. Ajmera, learned Counsel for the respondents, would submit that the complaint that there has been no consideration of the relevant factors at the hands of the 1st respondent is a futile one and he draws our attention to the summing up paragraph in the impugned proceedings, in particular, to the following set of expressions :

"XXX having regard to the circumstances, persistency and length of each default and on over all consideration of the representation made by the establishment XXXX."

to say that this would suffice the purpose and the proceedings impugned need not be frowned upon on the ground of lack of consideration of the relevant Factors.

5. The fact remains that, apart from the sweeping statement in the summing up paragraph of the impugned proceedings, factors which have been set down as relevant to be considered while assessing the question of imposition of damages, have not been discussed at all by the 1st respondent. In the pronouncement in *Organo Chemical Industries & Anr. v. Union of India & Ors.*, (supra) the Supreme Court observed (p. 427) :

"xxx Having regard to the punitive nature of the power exercisable u/s 14B and the consequences that ensue therefrom, an order u/s 14B must be a "speaking" order containing the reasons in support of it. The guidelines are provided in the act and its various provisions, particularly in the word "damages" the liability for which in Section 14B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into considerations as he has done here, various factors, viz., the number of defaults, the period of delay, the frequency of defaults and the amounts involved. xxxxx"

Here, we find that, it is not a case of total omission to make the contributions. There had been only delayed contributions. The periods are different and the days of delay are also different. A glance at the statement of damages, annexed to the impugned proceedings, shows that the day of delay range from a minimum of 7 days to a maximum of 47 days, but, a flat rate of 25% has been adopted by the 1st respondent; and certainly, we cannot commend the impugned proceedings on the ground that the application of the norms, as set down by the pronouncement of the Supreme Court, referred to above, has been done. This only exposes lack of application of mind on the part of the 1st respondent. As to how the functionary u/s 14B of the Act should discharge the obligations has been expatiated by S. Natarajan, J., as he then was, of the High Court of Madras in *K.*

A. Subramaniam v. The Commissioner, the Regional Provident Fund, Tamil Nadu & Pondicherry States & Anr., 1979 Labour and Industrial Cases 981, in the following terms :

"xxx The authority empowered to impose damages has to, first of all, decide whether the facts of a case warrant the imposition of damages. If his assessment of the situation results in a finding that imposition of damages is called for then he has to determine the quantum of damages with reference to relevant factors such as the loss suffered by the affected party, the hardship caused to the beneficiaries, the efforts taken by the enforcement machinery to collect the defaulted payments etc. There is, therefore, a clear line of distinction between imposition of penalty which is penal in nature and imposition of damages which is compensatory in nature.

We, cannot straightway say that what has been done by the 1st respondent by the impugned proceedings does respondent by the impugned proceedings does conform to what has been recapitulated by the learned single Judge in the above pronouncement. The petitioner has been declared as sick unit and the 1st respondent declines to take note of it for any consideration on a peculiar reasoning that the concerned authority BIFR has not specifically recommended for partial or total waiver of penal damages under the Act. When we take note of these features, we have no other alternative but to interfere in writ powers. Accordingly, this Special Civil Application is allowed and the matter stands remitted back to the file of the 1st respondent for him to reconsider the whole question, taking note of the norms set down therefore by the pronouncements, referred to above, as well as other pronouncements throwing light on the subject.

6. It is needless to state that the petitioner will co-operate in the process to be freshly prosecuted by the 1st respondent.

7. Rule is made absolute to the aforesaid extent, with no order as to costs.