

(1978) 09 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 1994 of 1976

The Jamshedpur General Consumers' Central Co-operative Stores Limited and Another APPELLANT

Vs

The Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 19-09-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (1979) PLJR 45

Hon'ble Judges : S.K. Jha, J;B.P. Jha, J

Bench : Division Bench

Advocate : Tarkeshwar Dayal and Ravi Nandan Sahay, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Judgement

S.K. Jha, J.—In this application under Articles 226 and 227 of the Constitution of India the petitioners, a co-operative society registered under the Bihar and Orissa Co-operative Societies Act and its Executive Officer, have challenged the legality and validity of the order dated 19th August, 1976 passed by the Regional Provident Fund Commissioner, the sole respondent, in purported exercise of his power u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952), hereinafter to be referred to as the Act, a copy of the order is Annexure 1. The State of Bihar had created and constituted a Departmental Stores at Jamshedpur which was called by the name of Apna Bazar. This society was created on the 29th of December, 1968. In all 27 persons are working in different categories in the Anna Bazar which is one of the constituents of the society (petitioner No. 1). On an average 100 persons have been employed by the petitioner society from time to time meaning different posts and services. On 31.3.76 a notice was issued by the respondent calling upon the petitioners to show cause against imposition of damages to the extent of Rs. 76,835/- in lieu of penalty for default on the part of the petitioners to deposit the provident fund of the employees within time.

2. Shorn of all details, the notice that was issued against the petitioners was in respect of the default in the payment of provident fund and administrative charges for the period between the years 1967 and 1975. With regard to the period between the years 1972 and 1975 default in the payment of family pension was also one of the subject matters of the penal provision u/s 14B of the Act. By the impugned order the respondent has directed the petitioners to credit certain amounts in the accounts stated against each of them in any branch of the State Bank of India under Code No. BR/1606 within 15 days from the date of the receipt of the order. The amounts mentioned in paragraph 6 have been bifurcated into three serial numbers. Serial No. 1 shows as an amount of Rs. 72,682.00 paise to be credited to E.P.F. A/C No. I, Rs. 2,034.20 paise to be credited to E.P.F. A/C. No. II and Rs. 2,119.00 paise to be credited to E.P.F. A/C. No. I. It has been further stated at the end of annexure 1, the impugned order, that the statement of penal damages" which was annexed in the show cause notice u/s 14B to the petitioners will form part of the order.

3. Before noticing the points canvassed at the Bar, it is worthwhile to mention here that u/s 14B of the principal Act, as it stood before the amendment of the Act by the Employees' Provident Funds and Family Pension Fund (Amendment) Act 1973, (No. 40 of 1973) the maximum amount of penal damages which could be awarded was only 25 per cent of the amount of arrears whereas by the amending Act of 1973 aforesaid the maximum amount of penal damages was fixed at 100 per cent of the amount of arrears.

4. Mr. Tarkeshwar Dayal learned counsel for the petitioners, submitted two points in support of this application. It was submitted firstly that the impugned order as contained in annexure 1 had been passed merely in a mechanical manner by the respondent who was not empowered to do so acting as a quasi judicial authority. The order according to learned counsel, must be a speaking order and must give out the reasons which have weighed with the Regional Provident Fund Commissioner to award the maximum penal damages which could be awarded under the law. As a side issue to this point, it was further submitted that from the impugned order it was not clear as to in respect of what portion which had fallen into default the penal damages had been fixed at 25 per cent and as to what portion of it had been fixed at 100 per cent. That merely went to show the mechanical nature of the order without application of a judicial mind to bear upon the facts of the case. The other point raised by Mr. Dayal was that since admittedly the entire amount of provident fund contribution legally payable had already been paid before the proceedings for recovery of penal damages had been initiated, there was no amount of arrears due and as such the power to recover damages u/s 14B of the Act could not be invoked.

5. Apropos the second point raised by learned counsel, speaking for myself, I would have felt persuaded to accept the submission that in the absence of any arrears to be cleared off towards the provident fund liability no penal damages ought to be awarded. But as things stand, there is a Bench decision of this Court

in the case of (1) M/s Hindustan Maleables and Forgings Ltd. V. The Regional Provident Fund Commissioner (C.W.J.C. 50 of 1977(R) decided on the 3rd of February, 1978. In that case the Bench has taken the view that the amount of arrears occurring in Section 14B of the Act is co-terminus with the amount in respect of which a default has been committed. And, so far as the question of default in payment of any contribution is concerned, there is a provision in the Employees' Provident Funds Scheme, 1952, which lays down that the provident fund dues in respect of the employees for any particular month must be paid by the 15th of the next succeeding month. I have my own doubts with regard to the correctness of the proposition of law that the amount of arrears can be treated as co-terminus with the default in the payment of any contribution occurring in Section 14B. On the facts and in the circumstances of the instant case, however, I do not feel persuaded to refer this case to a larger Bench for deciding the correctness of the Bench decision in the case of Messrs Hindustan Maleables and Forgings Ltd. (supra) for, Mr. Dayal's other point is bound to succeed.

6. In the case of (2) J.P. Lala & Sons V. Commissioner of Coal Mines Provident Fund (1971 BLJR 998), which was a case under the Coal Mines Provident Fund and Bonus Scheme Act, 1948, it was held that since the Parliament could not itself deal with all types of cases which might come up for consideration, it had to leave to the discretion of the Central Government to decide in the light of the special circumstances of each case what the rate of damages should be. In such cases, the Parliament merely fixes the maximum rate of damages giving sufficient guideline to the deciding authority to impose damages keeping in view the facts and circumstances of each individual cases. When this decision went up in challenge before the Supreme Court in the case of (3) The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, , the Supreme Court held in unequivocal terms that in cases like the instant one the two important features are these. First, the words of importance are "damages not exceeding 25 per cent" (under the Coal Mines Provident Fund and Bonus Scheme Act, 1948, the maximum penal damage which can be awarded was 25 per cent as provided in Section 14B of the Act before its amendment in 1973). These words, the Supreme Court has gone on to say, show that the determination of damages is not an inflexible application of a rigid - formula. Secondly, the words "as it may think fit to impose" (which are the words occurring in Section 14B of the instant Act) also show that the authorities are required to apply their mind to the facts and circumstances of the case. In proceedings u/s 14B of the Act the least that is required of the Regional Provident Fund Commissioner who is the competent authority is to have passed a speaking order only more so while deciding as to whether for the default in any particular year any penal damages were called for at all and, if so, to what extent. All these material particulars which are germane to the matter in issue are absent from the impugned order. It seems as if the respondent had already made up his mind at the time when the notice was issued to the petitioners to show cause as to why the maximum amount of penalty be not awarded against

them. Such a mechanical adjudication, if at all that can be called adjudication, is absolutely unwarranted and uncalled for in any proceeding of the nature as envisaged u/s 14B of the Act. On this, short ground alone, the impugned order of the respondent must be quashed. In the result, therefore, this application is allowed and the order of the respondent as incorporated in Annexure 1 is quashed with liberty to the respondent to initiate fresh proceeding in accordance with law and with further liberty to the petitioners, if and when such proceedings are initiated, to raise the question of law, pure and simple, as to whether in a case where there is no amount of arrear due the provision for penal damages u/s 14B of the Act is at all attracted or not. The parties shall bear their own cost.

B.P. Jha, J.

I agree with the opinion of my learned Brother that the order of the respondent is fit to be quashed the parties will bear their own cost.