

(1999) 05 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 22765 of 1988

Unitech Engineers (P.) Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner, Merrut and another

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1999) 4 AWC 2896 : (1999) AWC 2896 : (2000) 1 LLJ 620

Hon'ble Judges : P.K. Jain, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Vijai Ratan Agrawal, for the Appellant; Rakesh Tewari, for the Respondent

Judgement

P.K. Jain, J.—Following prayers have been made in this writ petition :

(i) To issue a writ, order or direction in the nature of certiorari calling for the records from respondent No. 1 and quashing its order and demand dated 11.10.88 (Annexure-1) ;

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents not to enforce the order dated 11.10.88 against the petitioner or to recover the amount of Rs. 73.890.65 P. from the petitioner under the impugned notice of demand ; and,

(iii) To issue any other writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstances of the case.

2. Petitioner, M/s. Unitech Engineers Private Limited is company registered under the Companies Act. In the year 1976, it came under the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the Act) and liability to pay employers and employees contributions under the Act started from September, 1976 as per order of the Regional Provident Fund Commissioner, Kanpur. Petitioner committed defaults in payment of

employees and employers contributions under the Act for different periods during the periods September, 1976 to June 1979. A notice u/s 14B of the Act was Issued to the petitioner to show cause why damages be not imposed upon it u/s 14B of the Act. Petitioner filed reply to the show cause as contained in Annexure-3 to the writ petition and supplementary show cause was also filed as contained In Annexure-4 to the writ petition, Respondent No. 1, Regional Provident Fund Commissioner, Meerut, after consideration of the submissions, made on behalf of the petitioner and also replies to the show cause, passed order dated 11.10.88 as contained in Annexure-1 to the writ petition. By the said order, amount totalling Rs. 73.890.65P. was imposed as damages and demand notice was also served upon the petitioner.

3. Impugned order as contained in Annexure-1 Is being challenged on the ground that all the dues were paid by the petitioner about nine years back and the petitioner was under an Impression that by not levying damages earlier the authorities impliedly waived levy of damages : that the financial strains and other industrial problems which the petitioner was facing during that period had not been considered and lastly that the power u/s 14B has been exercised arbitrarily and unreasonably without following principles of natural justice and considering the mitigating circumstances including the delay for each payment.

4. Respondents have filed counter-affidavit of Sri S. R. Srivastava, Enforcement Officer and supplementary affidavit of Sri P. N. Lal Srivastava. Assistant Provident Fund Commissioner in the office of Regional Provident Fund Commissioner. Meerut, respondent No. 1. It is stated that vide order, dated 10.1.1977 the petitioner was directed to pay the amount of contribution from September, 1976 to December, 1976 within 15 days. The petitioner did not comply with the notice, neither he submitted return nor deposited the contribution, hence the petitioner became liable for payment of damages on expiry of 15 days from the close of each month, i.e., September. October, November and December, 1976. Thereafter the petitioner again committed defaults. For the months of September, 1976 to December, 1976 default was of 109 days, 78 days, 48 days and 17 days respectively. On these defaults minimum 10% damages on the amount due were levied. For the subsequent periods damages were levied at the rate of 10% to 100% according to the period of default and number of defaults as prescribed by the guidelines of Government of India as contained in Annexure-2 to the supplementary affidavit. It is stated that the damages were levied after giving full opportunity of being heard to the petitioner and were not arbitrary or unreasonable. The same were imposed in accordance with the guidelines in the Government Circular.

5. We have heard Sri V. R. Agrawal, learned counsel for the petitioner, Sri J. N. Tewari, learned counsel appearing for respondent No. 1 and learned standing counsel appearing for the Union of India.

6. Sri V. R. Agrawal has challenged the impugned order on three grounds, viz., (i) the amount which was required to be deposited by the petitioner had already

been deposited around 9-10 years back from the date of initiation of the proceedings u/s 14B of the Act. Question of levy of the damages at such a belated stage did not arise and the petitioner was under the bona fide belief that the competent authority had condoned the omission on the part of the petitioner, (ii) that the petitioner has categorically stated that it was under financial constraints and was facing labour disorder. It has thus given sufficient reasons for the delay in depositing the contributions which have not been considered by the respondent No. 1 while levying the amount of damages ; and (iii) the third and last submission is that the damages have been levied arbitrarily and unreasonably without considering the period of delay. It is submitted that the damages ought to have been ascertained by applying some principle.

7. Sri J. N. Tewari, learned counsel appearing for respondent No. 1, submits that Section 14B of the Act does not provide any limitation for levying damages ; that financial constraints or industrial unrest are also no grounds for minimizing the damages. It is lastly submitted that under the Act rules have been framed and scheme has been framed for assessment of damages according to the number of defaults and period of default. Copy of the scheme is appended as Annexure-S. A. 1 to the supplementary affidavit.

8. In our view, all the submissions made by the learned counsel have no force and deserve to be rejected.

9. Section 14B of the Act does not provide any limitation for initiating the proceedings for levy of damages. This view stands concluded by decision of the Hon"ble Supreme Court in M/s. Hindustan Times Limited Vs. Union of India and Others, . In para 19 of the judgment their Lordships held as follows :

"Now the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The moneys payable into the Fund are for the ultimate benefit of the employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested In the Regional Provident Fund Commissioner or other officer as provided in Section 14B. "

Again in para 20 of the Judgment, the Hon"ble Supreme Court observed :

"In spite of all these amendments, over a period of more than thirty years, the Legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not by suit, the provisions of the Indian Limitation Act. 1963, are not attracted. In Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, , it has been held that the Limitation Act, 1963, has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the authority concerned u/s 14B. Further in Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, , it has been held that in respect of an application u/

s 33(c)(2) of the Industrial Disputes Act, 1947. there is no period of limitation.We may also point out in this connection that several High Courts have rightly taken the view that there is no period of limitation for exercise of the power u/s 14B of the Act."

Again distinguishing the decision In The State of Gujarat Vs. Patil Raghav Natha and Others, , the Hon"ble Supreme Court has observed as follows in paras 21 and 22 :

"It is true that a principle has been laid down in State of Gujarat V. Patil Raghav Natha, while dealing with suo motu revisional jurisdiction that though there is no period of limitation prescribed for exercise of that power, still such a power must be exercised within reasonable time. The said judgment has been applied in matters relating to Section 6 of the Land Acquisition Act in a large number of cases, which were all referred to recently in Ram Chand v. Union of India. In our view this line of cases cannot ordinarily apply to monies withheld by a defaulter, who holds them in trust.

The reason is that while in the above cases decided by this Court the exercise of powers by the authority at a very belated stage was likely to result in the deprivation of property which rightly and lawfully belonged to the person concerned, the position u/s 14B of the Act of an employer is totally different. The employer who has defaulted in making over the contributions to the Trust Fund had, on the other hand, the use of monies which did not belong to him at all. Such a situation cannot be compared to the above line of cases which involve prolonged suspense in regard to deprivation of property. In fact, in cases u/s 14B if the Regional Provident Fund Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for his own purposes or for his business. In our opinion, it does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers u/s 14B, he has suffered loss. On the other hand, the defaulter has obviously had the benefit of the "boon of delay" which "Is so dear to debtors", as pointed out by the Privy Council in Nagendranatti De v. Sureshchandra De. In that case, it was observed that equitable considerations were out of place in matters of limitation and the strict grammatical construction alone was the guide."

10. Question whether delay on the part of the Department could be treated to amounting to waiver was considered in Divisional Engineer, M.R.T. Division. City Circle, A.P.S.E. Board v. Regional Provident Fund Commissioner, 1979 Lab 1C 187 (AP), Inter-State Transport Agency v. R.P.F. Commissioner 1983 Lab 1C 940 : 1983 Pat LJR 170 and State of Punjab v. Amin Chand and Sons (1970) 37 FIR 92 (P&H). Referring to these decisions, the Hon"ble Supreme Court held that "it has also been held rightly that mere delay on the part of the Department could not be treated as amounting to waiver." As held by the Hon"ble Supreme Court in Hindustan Times Ltd. (supra), delay also cannot be a yard-stick for measurement of the delay.

11. It is true that determination of the damages is a quasi-judicial function and a judicial function as the case may be but it was held by the Delhi High Court in *M/s. Atlantic Engineering Services (P.) Ltd. N. Delhi v. Union of India* and another 1975 Lab 1C 695 that -Section 14B gives the Government discretion to impose damages as it thinks fit after considering the facts of each case and after determining the suitable quantum of damages on the facts of that case. It is not necessary for the Legislature to lay down the standards for the determination of the damages in the statute itself. The Government is not guided by Section 14B as to what damages should be fixed under what circumstances by any preconceived formula but are left to their discretion to determine the damages on the facts of each case.

12. The question whether financial problems/constraints could be a mitigating circumstance for measurement of damages, was considered by the Apex Court in the case of *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, wherein it was held that power cut financial problem dispute with the partners were not relevant explanations. This view taken in *Organo Chemical Industries* case was reiterated by the Apex Court in *Hindustan Times* case (supra). For the same reasons, we hold that industrial unrest can also not be a relevant consideration or mitigating circumstance while measuring the benefits.

13. As to the question of arbitrariness and unreasonableness in measuring and levying the damages upon the petitioner, the respondent No. 1 categorically stated in the counter-affidavit and supplementary affidavit that the damages - had been levied in accordance with the guidelines provided in the chart framed by the Central Government, copy of which is Annexure-S.A. 1 to the supplementary affidavit. It has been specifically stated in chart filed with the supplementary affidavit that considering the number of defaults and the period of default 2% damages were levied for the first default. 5% for the second default of one month. 20% for three defaults of two months, 35% in the case of 4th to 7th default and 55% in the case of 8th, 9th. 10th and 11th default, 65% in the case of 12th default and 100% in the case of exceeding 12th default. The measurement of damages in this manner has not been disputed by the petitioner by filing rejoinder-affidavit. It is true that in the impugned order, there is no mention that the damages were being assessed in this manner but the manner of measuring damages has been specifically stated in the supplementary affidavit read with Annexure S.A.3 which is not at all disputed. In *M/s. Atlantic Engineering Services IP.) Ltd. v- Union of India* (supra), a Division Bench of the Delhi High Court held that "we are of the view that framing of the table of damages by the Government is a salutary measure for the guidance of the officers of the Government who act u/s 14B. Under the table, the amount of damages is related to the delay in payment of the contribution. This method of determining damage is entirely reasonable and it shows that no officer acting u/s 14B can act arbitrarily, but must follow this reasonable guideline made by the Government."

14. We respectfully agree with the aforementioned observations of the Delhi High Court in M/s. Atlantic Engineering Services (P.) Ltd. case (supra). We may observe here that learned counsel for the petitioner has failed to point out any unreasonableness or arbitrariness in the guidelines as contained in S.A.I issued by the Government.

15. For the reasons aforementioned the writ petition is dismissed. We, however, make no order as to costs.