(1989) 05 OHC CK 0017

In the Orissa High Court

Case No : Original Jurisdiction Case No. 41 of 1982

Utkal Foundary and Engineering Co. Ltd. and Others — APPELLANT

Vs

Regional Provident Fund Commissioner and Others — RESPONDENT

Date of Decision : 11-05-1989

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

Citation : (1989) 68 CLT 488

Hon'ble Judges : H.L. Agrawal, C.J;P.C. Misra, J

Bench : Division Bench

Advocate : K.N. Jena, for the Appellant; K.C. Mahanty and Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—Petitioner No. 1 is a Company and Petitioner No. 2 is one of its shareholders. This writ application is directed against the order of the Regional Provident Fund Commissioner. Orissa under Section. 14-B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the ''Act'') imposing damages far delayed payment of the provident fund contribution, the family pension contribution and the administrative charges far a period from January,1965 to February, 1979.

2. There is no dispute that the Petitioner-Company is covered by the provisions of the aforesaid Act. The aforesaid contributions and the administrative charges are payable within 15 days of the case of every month as is requited under Clause 38 of the Employees'' Provident Fund Scheme, 1952. The order of the Regional. Provident Fund Commissioner annexed to the writ application as Annexure-5 gives the details of the extent of delay in depositing the aforesaid contribution and the administrative charges wherein the percentage of damages has been calculated far each default and added together. The total liability of the Petitioner-Company has came to Rs. 30,977.80 ps.

3. The main challenge in this writ application is that the Petitioners have not been given due opportunity of being heard in the proceeding u/s 14-B of the Act and that the calculation of damages has been made without due application of mind. It appears from the order of the Regional Provident Fund Commissioner in Annexure-5 that a notice was issued to the Company to show cause why damages as envisaged u/s 14-B of the Act be not recovered from the employer. A date of hearing was also fixed to afford an opportunity of personal hearing of the Petitioner- company. At the instance of the Company, the matter was adjourned to 25-11-1980 when a written submission was submitted before the Regional Provident Fund Commissioner. The Executive Officer of the Company represented on that day that he was unable to verify the correctness of the allegation as to the delayed payment and also the extent of delay for want of records for which the office records were made available to him for the purpose of verification. All that was submitted before the Regional Provident Fund Commissioner was that a lenient view should be taken as the Petitioner-Company is a Small Scale Industry. It is, therefore, not correct to say that reasonable opportunity was not given to the Company of being heard before levying the damages.

4. It was next contended that tile order of the Regional Provident Fund Commissioner is not a speaking order or at least does not show that the adjudicating authority has applied its mind while imposing damages for each individual default. The Petitioners in this connection has referred to the statement of penal damages appended to Annexure-4 to support their argument that the levy of damages has been by a mechanical process inasmuch as for each default the percentage at which the damages has been levied uniformly at 25% in respect of the defaults committed upto 1973 - and thereafter at different rates out of which in some case of default, the penalty has been imposed at cent percent. Section 14-B which was introduced by Act 37 of 1953 provided that the damages levied for default in payment of the provident fund dues shall not exceed 25% of the amount of arrear. By Act 40 of 1973 the said provision was amended authorising recovery of damages not exceeding the amount of are which means that the maximum extent of damages can be equal to the amount of arrear. As already stated the Provident Fund Commissioner irrespective of the period of delay imposed penalty of 25% of the dues upto July, 1973. In respect of the defaults committed in the years 1978 and 1979, the damages levied is cent percent of the due except for the months of January, February and March, 1978 in respect of which damages at the rate of 60% have been levied. Law is well settled that the Regional Provident Fund Commissioner while dealing with a proceeding u/s 14-B of the Act has not only to apply its mind to the requirement of the Section, but shall also pass a speaking order giving adequate reasons for the varying rates at which damages are to be levied. All that appears from Annexure-5 is that the Petitioner-Company was a habitual defaulter in the sense that the payments were usually delayed some times by a few days and some times for more than a year. As has been done in some decided cases, the matter can be remitted back to the Regional Provident Fund Commissioner to pass a

speaking order justifying the damages to be leveed proportionate to the nature and extent of delay. As already indicated, the damages levied in this case covers default spreading Over several years and for re-assessment of damages giving reasons with respect to each default would be a labourious exercise both on the part of the adjudicating authority as well as it would cause hardship to the Company. It was, therefore, suggested by the learned Counsel for both parties that ends of justice would be better served if the matter is finalised at this stage which may involve some amount of guess work.

5. Having heard the learned Counsel for both parties, at length, we find that no better explanation is available from the side of the Petitioner explaining the delay caused in respect of the delayed payments of the dues of each month except that the Company was in a bad financial position to make the payment on the stipulated dates and that the delay could not be avoided for that reason. The same was also the stand taken before the Provident Fund Commissioner in the proceeding u/s 14-B of the Act. Besides the above, our attention was also drawn to the application of the Company in Annexure-6 which was filed after the order in Annexure-5 was passed, praying for reconsideration of the matter. Except repeating that there was financial difficulty of the Company for which the dues could not be deposited in time nothing further has been stated. It appears from the letter of the Regional Provident Fund Commissioner (Annexure-7) which was in reply to the prayer for re-consideration of the matter in Annexure-6, that a prayer was also made for payment of the damages levied in installments. Considering all these circumstances, we would reduce the damages to Rs. 20,0000/- which, we hope, would meet the ends of justice in this particular case.

6. The writ application is accordingly allowed in part reducing the damages from. Rs. 30,977.80 Ps, to Rs. 20.000/-.

There shall be no order as to costs.

H.L. Agrawal, C.J.

7. I agree.

Application allowed in part.