

(1994) 09 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 492 of 1992

Vegetable Vitamins Foods Co. Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner, Mah. and Goa and
Others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

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

Citation : (1995) 70 FLR 1012 : (1995) 1 LLJ 1145

Hon'ble Judges : V.P. Tipnis, J

Bench : Single Bench

Judgement

V.P. Tipnis, J.—The Vegetables Vitamins Foods Co. Ltd., has challenged the legality and correctness of the order dated 5/2/1992 passed by the Regional provident Fund Commissioner, Maharashtra and Goa, levying damages for the delayed payments of the Provident Fund contributions; Family Pension Fund Contributions; Administrative charges etc. u/s 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. By notice dated 22/10/1991 issued by the regional provident Fund Commissioner, the Petitioner-company was told that it has defaulted to pay the Employees' Provident Fund Contributions/Family Pension Fund Contributions/ Insurance Fund Contributions and Administrative charges/inspection charges in the respective funds on or before the due dates for the months of March 1984 to January 1985, as indicated in the statement enclosed along with the aforesaid letter. The petitioner-company was called upon to show case why damages at such rates deemed fit, should not be imposed. The statement accompanying the notice shows that the contributions for the month of May 1984 were made on 18/2/1985. The statement shows that the contributions from the month of May 1984 to January 1985 were made on 18/2/1985. Thus, there has been delay from three days to seven months and seventeen days.

3. The petitioner-company replied by its letter dated 11/11/1991. It brought to

the notice of the authority that they have three units in Bombay, two at Sion and one at Sewree. Workmen of all the three units had joined the Maharashtra General Kamgar Union led by Dr. Datta Samant during April 1984. It was alleged that the workers started intimidation, go slow, insubordination etc. and the management attempted to pursue the workmen to desist from such illegal activities. During the first week of June 1984 the workmen resorted to a sit down strike inside the factory and the work in the establishment came to standstill. They also damaged the plant and machineries. Since the situation went beyond the control of the Management, the management decided to suspend the work and accordingly the work was suspended in all departments on and from 7th June, 1984. Subsequently a lock out was declared from 24/6/1984. However the same was lifted on 18/10/1984. Despite this the workmen did not resume duty and continued to an illegal strike which continued upto 12/1/1986. It is specifically asserted in the reply that in the meanwhile a few loyal workmen reported for work during the month of January 1985 and the Management prepared the wages sheets and the payment made to all workmen including the workmen who were on strike. The management further asserted that the information regarding the lock out has been intimated to the office of the Regional Provident Fund Commissioner by letter dated 15/6/1984. They have also paid the administrative charges at rate of Rs. 5/- per month for six months on 9/11/1984. The management also forwarded a certificate from the Commissioner of Labour to the effect that there was a strike and lock out prevailing in the establishment from 7/6/1984 to 12/1/1986.

4. The Regional Provident Fund commissioner, after having referred to all the facts, observed that the labour difficulties, illegal strike, lock-out, union activities etc. cannot be considered as a valid reason for committing defaults of the statutory payments. These are the business hazards which employer is required to face at one time or the other. According to the Regional Provident Fund Commissioner, if the establishment could disburse the salaries and make deductions from the employees wages on account of Provident Fund and Family Pension Fund, he saw no reason why these should not be deposited within the stipulated date. Having regard to all the circumstances, ultimately by the impugned order, he levied penalty and damages for the period from May 1984 to January 1985 at 25 percent per annum. The total amount comes to Rs. 3205.80.

5. Shri Kochar, learned Counsel appearing for the petitioner, submitted that there is no basis for the assumption made by the Provident Fund Commissioner that the establishment had disbursed the salaries and made deductions from the employees wages on account of the Provident Fund and Family Pension Fund. Shri Kochar asserted on the basis of the averments in the petition as well as on the basis of the statement made in the reply to the original notice that the management was not in a position to prepare a statement and make the contributions, as no staff was available. He pointed out that as soon as the staff was available, the Management had promptly made all payments on 18/2/1985. Shri Kochar, therefore, submitted that these factors had to be taken into

consideration and not having taken the same, the order passed by the authority is improper and unjust.

6. Shri Pradhan, learned Counsel appearing for the Respondents - Provident Fund Commissioner - on the other hand contended that it is immaterial for what reason the default was committed. Once the employer commits a default, he exposes himself to the liability of payment of damages u/s 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Shri Pradhan submitted that this being the position, the order of levy of damages cannot be faulted with and in any case the High Court should not interfere with the order under Article 227 of the Constitution of India.

7. Shri Pradhan also brought to my notice the judgment of the division bench of Kerala High Court reported in 1982 LIC 1422 Calicut Modern Spg. & Wvg. Mills Ltd. v. R. P. F. Commissioner. In the aforesaid judgment, the division bench of the Kerala High Court has observed that the authority under the Act has discretion to mitigate damages depending upon the circumstances of the case but never a discretion to condone the delay; damages in rare cases can be nil percentage but failure to pay will always attract Section 14-B. The expression "makes default" in Section 14-B is synonymous with failure to pay. The division bench further observed that combined reading of paras 30 and 32 of the scheme shows that in cases where due payment of wages is made impracticable for certain reasons, the obligation of the employer to pay both the contributions payable by himself and on behalf of the member continues. The bench further observed that it cannot but be held that even in cases of a lockout, strike etc., failure to make the contribution resulting in default will have to be visited by damages u/s 14-B. The only question that can be considered by the authority is mitigation of damages having regard to the attendant circumstances that had result in the delay. Shri Kochar relied upon the judgment of the Madras High Court reported in Sri Rajendra Mills Limited Vs. The Regional Commissioner, Employees Provident Funds, Tamil Nadu and Pondicherry, Madras, . In the aforesaid judgment, the learned Judges considered the position where the management was disabled from making payment on due dates due to power-cut and observed that such factors have got to be considered before levying penalty u/s 14-B.

8. In my opinion, the position appears to be quite clear viz, that the moment there is a default, in other words, failure to pay contributions, provisions of Section 14-B of the Act are attracted. However, it is relevant to notice that section 14-B itself invests the authority with a discretion by using words "may recover". Secondly under para 32-A of the Employees Provident Funds Scheme, 1952, table is given providing for different rates of damages depending upon the period of default. If the period of default is less than two months, the damages would be seventeen percentage. For two months and above but less than four months, the damages would be twenty-two percentage; for four months and above but less than six months, the damages would be twenty-seven percent and for six months and above, the damages would be thirty-seven percent.

9. As stated earlier, I find that the period of default in respect of each month varies. As stated above, so far as for the month May 1984 is considered, the period is seven months and seventeen days. Thereafter, each subsequent month, i.e. June, July, August, Sept., Oct., Nov., it is one month less than the previous month. For December 1984 it is merely 17 days and for January 1985 it is only 3 days. The authority does not seem to have adverted to these aspects and the provisions of para 32-A of the scheme at all. It has levied damages for the entire period at a flat rate of 25 percent. This is clearly contrary to the provisions of para 32-A of the Scheme. Secondly, the assumption made that the management had disbursed the salaries and made deductions from the employees, also appears to be without any basis. On the contrary, assertion in the petition and in reply to the initial show cause notice, indicates that in fact the Management had no hands to prepare the statement and make necessary contributions and as soon as some people started attending, the Management promptly made all contributions on 18/2/1985. It is also relevant to notice that for the default of the year 1984, notice for the first time has been issued as late as on 22/10/1991. I am not suggesting even remotely that the notice would be bad because of the delay, however, in the facts and circumstances of the case and on the basis of the material on record, it is clear that the Management was almost disabled for circumstances beyond its control to make contributions and as soon as it was practicable and possible, the Management had paid the contributions on 18/2/1985. Under the circumstances, the ratio of the division bench ruling of the Kerala High Court that the damages can be mitigated and they can even be mitigated to nil damages, becomes applicable to the facts and circumstances of this case.

10. Under the circumstances, the Regional Provident Fund Commissioner, having not adverted to the relevant circumstances germane for the decision u/s 14-B, having not followed the provisions of para 32-A of the scheme and having made assumptions which do not appear to be supported by material on record, the impugned order is required to be quashed and set aside.

11. In the result, the petition succeeds. The impugned order dated 5/2/1992 passed by the Regional Provident Fund Commissioner, is set aside. Rule made absolute in the aforesaid terms.

There shall be no order as to costs. Certified copy expedited.