

REGIONAL PROVIDENT FUND COMMISSIONER

v.

M/S K.T ROLLING MILLS PVT. LTD.

NOVEMBER 22, 1994

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Employees Provident Funds and Miscellaneous Provisions Act, 1952—Section 14-B— Default in depositing contribution—Delay of 12 years in initiating proceedings—Whether order levying damages merits to be struck down on ground of delay—Held, No.

The respondent has defaulted the contribution both of its own as well as of the employees in time. The default related to the period from July, 68 to October, 77, relating to which proceeding came to be initiated in 1985. The Commissioner after applying his mind to the period of delay as well as to the quantum, imposed damages. The High Court held that the delay in initiating proceedings was unreasonable and set aside the order of the Commissioner. This appeal has been filed against the judgment of the High Court.

Allowing the appeal, this Court

HELD: 1.1 When a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness. (645 G)

1.2 In the instant case, though the general period of delay of 12 years is quite long, unreasonably long, but if it is borne in mind that in view of large number of establishments in the State of Maharashtra, default at hand came to notice only in April, 1985, the killing effect of delay gets eroded. This Court does not, therefore, think if the order merits to be struck down on the ground of delay, when it is also kept in mind that the delay in default related even to the contribution of the employees which money the respondent (after deducting the same from the wages of the employees) must have used for its own purpose and that too without paying any interest, at the cost of those for whose benefit it was meant. Any different stand would encourage the employers to thwart the object of the Act, which cannot be permitted.

A However the respondent would not be called upon to pay any interest on the damages as fixed by the Commissioner, if it would pay the entire amount within two months. On the failure of the respondent to so pay, it shall have to pay interest at the rate of 18% from the date of this judgment till full realisation.

B *Christian Medical College and Anr. v. Regional Provident Fund Commissioner*, [1989] Supp 2 SCC 95, distinguished. (646 C, D, G)

Organo Chemical Industries v. Union Of India, [1980] 1 SCR 41, relied on.

C *Regional Provident Fund Commissioner v. Sri Krishna Metal Manufacturing Company*, [1962] Supp. 3 SCR 815 and *Regional Provident Fund Commissioner v. Shibu Metal Works*, [1965] 2 SCR 72, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1639 of 1994.

D From the Judgment and Order dated 12.7.93 of the Bombay High Court A.No. 384/93 in W.P.No. 3271 of 1987.

J.D. Jain, S.A. Matto, C.V.S. Rao for Anil Katiyar for the Appellant.

K.K Mohan and Pramod Dayal for the Respondents.

E The Judgment of the Court was delivered by

F **HANSARIA, J.** The Employees, Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter the 'Act', was enacted to serve beneficent purpose and it does constitute a welfare measure, as it seeks to create a fund which could be drawn upon by certain categories of employees working in factories and some establishments to meet pressing demands so also to provide pension after the employees have ceased to be in service. So the Act has to be construed in such a way, in case two views be possible, which advances the object. This has been the outlook of the court for over three decades by now, as the same was first focussed in *Regional Provident Fund Commissioner v. Sri Krishna Metal Manufacturing Company*, [1962] (Supp.) 3 SCR 815 and was reiterated in *Regional Provident Fund Commissioner v. Shibu Metal Works*, [1965] 2 SCR 72.

H 2. The purpose of the aforesaid prologue is to find out as to when power under Section 14-B of the Act should be allowed to be used and whether it would in consonance with the object sought to be achieved by

the Act if delay in invoking the power is allowed to stand in the way. As in the present case we are concerned with the order of the Regional Provident Fund Commissioner, Maharashtra, (the Commissioner) levying damages on the respondent for default in the payment of the contribution in exercise of power under Section 14-B, let it be noted what this Court had said about this Section in *Organo Chemical Industries v. Union of India*, [1980] 1 SCR 41. In that case this Court was called upon to decide the constitutionality of Section 14-B, which was challenged as violative of Article 14 having conferred unguided power. It rejected the contention. It also spelt out the purpose of imposition of damages, stating that the same was meant to penalize defaulting employer, as also to provide reparation for the amount of loss suffered by the employees. It was pointed out that it is not only a warning to employers in general not to commit a breach of the statutory requirements, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them.

3. There is no dispute in the present case that the respondent had defaulted in depositing the contributions both its own and as well as of the employees in time. The Commissioner, after applying his mind to the period of delay as well as to the quantum, imposed a sum of Rs. 52,034.80 as damages. The order of the Commissioner came to be challenged before the Bombay High Court by the respondent who has set aside the order solely on the ground that the proceeding was bad because of unreasonable delay in initiating the same. The Court pointed out that though Section 14-B has not laid down any period of limitation, the power has to be exercised within reasonable time. As the default related to the period from July 68 to October 77, relating to which proceedings came to be initiated in 1985, the High Court regarded the delay as unreasonable, and so, fatal. The Regional Provident Fund Commissioner has preferred this appeal with the aid of Article 136 of the Constitution.

4. There can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness. When this appeal was heard by us on 7.9.94 and when this aspect of the matter came to our notice, we desired an affidavit from the Commissioner to put on record regarding the point of time when he knew about the default and to explain the cause of delay. Pursuant to that order, the Commissioner filed his affidavit on 10.11.94, according to which the power of levying damages came to be delegated to

- A the Commissioner by an order dated 17.10.73. As, however, large number of establishments were in existence in the State of Maharashtra - the number of which 1985 was 22,189 - and there was only one Regional Provident Fund Commissioner having power to levy damages, delay was caused in detection of the cases of belated payment. According to the affidavit, the default at hand was located on 19.4.85 and the damages came to be levied by order dated 5.11.86.
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5. The aforesaid shows that the delay was of 12 years viewed generally and was 1-1/2 years qua the case at hand. Though the general period of delay is quite long, unreasonably long, but if it is borne in mind that in view of large number of establishments in the State of Maharashtra, default at hand come to notice only in April 1985, the killing effect of delay gets eroded. We do not, therefore, think if the order merits to be struck down on the ground of delay, when it is also kept in mind that the default related even to the contribution of the employees, which money the respondent (after deducting the same from the wages of the employees) must have used for its own purpose and that too without paying any interest, at the cost of those for whose benefit it was meant. Any different stand would encourage the employers to thwart the object of the Act, which cannot be permitted.
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6. Shri Mohan, learned counsel for the respondent, pleads that keeping in view what had been ordered by this Court in *Christian Medical College, and Brown Memorial Hospital v. Regional Provident Fund Commissioner*, [1989] Supp 2 SCC 95, we may not sustain the order of the Commissioner. In that case dues were not paid in time because of some controversy as to whether hospitals are covered by the Act. It was, therefore, contended that as the appellants would be complying with the provisions of the Act and would pay all the arrears, damages for delayed payment of the arrears may not be approved. This Court, having regard to the facts of that case, accepted the submission. The facts of the present case are entirely different.
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7. We, therefore, set aside the impugned Judgment of the High Court. But then we state that the respondent would not be called upon to pay any interest on the damages as fixed by the Commissioner, if it would pay the entire amount within two months from today. On the failure of the respondent to so pay, it shall have to pay interest at the rate of 18% from today till full realization.
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8. The appeal is allowed accordingly. No order as to costs.

A.G.

Appeal allowed.