

CASE NO.:
Appeal (civil) 6498 of 1998

PETITIONER:
M/S K. STREETLITE ELECTRIC CORPORATION

Vs.

RESPONDENT:
REGIONAL PROVIDENT FUND COMMISSIONER, HARYANA

DATE OF JUDGMENT: 09/04/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :
L...I...T.....T.....T.....T.....T.....T.....T...J

A notice dated December 30, 1986 was served upon the appellant to show cause why damages under Section 14-B of the Employees Provident Funds & Misc. Provisions Act, 1952 [hereinafter referred to as the Act] for period from July 1976 to June 1980 be imposed upon the appellant. On March 13, 1987 an order was made by the respondent imposing damages to the extent of Rs. 88,731.25 on account of belated deposit of the amount towards the provident fund. The appellant claimed that delay in depositing the amount in certain cases is only for a few days; that even so the respondent had assessed the damages in most of the cases at 100% and that the actual loss suffered by the respondent is only to the extent of Rs. 664/-. Challenging the order dated March 13, 1987 the appellant filed a writ petition in the High Court contending that the order is not in accordance with the instructions issued on November 3, 1982; that the order has been passed at a very belated stage inasmuch as for the period ending in July 1976 the notice has been issued in the year 1987; that para 32(A) was inserted into the scheme after the amendment of the Act as under:

Period of Default
Rate of Damages
[%age of arrears
per annum]

(a) Less than two months

17

(b) Two months and above but less than
four months

22

(c) Four months and above but less than six
months

27

(d) Six months and above

37

The writ petition was resisted by the respondent by taking the stand that the damages have been levied in accordance with law. The Division Bench of the High Court dismissed the writ petition filed by the appellant. Hence this appeal by special leave.

In this appeal, it is contended that :

(i) the action has been initiated very late inasmuch as the proceedings had been initiated from 10 to 6 years later than the default stated to have been committed by the appellant; and

(ii) the Central Government had instructed under Section 20 of the Act that the damages at the rate of 25% per annum can be levied.

These two contentions stood rejected by the High Court. Firstly, that delay in initiating proceedings under Section 14-B of the Act will not be a ground for setting aside an order imposing damages unless specific plea of prejudice is raised before the Provident Fund Commissioner and established and further that the instructions given by the Central Government do not have any binding force. The High Court adverted to the decision of this Court in *Hindustan Times Ltd. vs. Union of India & Ors.*, 1998(2) SCC 242, to reach this conclusion. In that case, this Court examined the scheme of the provisions of the Act in relation to delay in passing of the order. It was stated that the mere fact that the proceedings are initiated or demand for damages is made after several years cannot, by itself, be a ground for drawing an inference of waiver of that the employer was lulled into a belief that no proceedings under Section 14-B would be taken and mere delay in initiating such action cannot amount to prejudice inasmuch as such delay would result in allowing the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest on such amount. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B he has altered his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an irretrievable nature, and such prejudice can also be established by stating reason of non-availability of records of the personnel by which evidence it could be established that there was some basis for delay in making the payments. Therefore, this Court was of the opinion that such delay, by itself, would not result in any prejudice. In the present case, the High Court found that no such prejudice was either pleaded or proved. Hence the first contention stands rejected.

The second contention need not be examined in the view we propose to take in the matter. Even if we hold that the Central Government instructions issued under Section 20 of the Act are not binding on the respondent, still in assessing the damages it will be necessary for us to take note of the manner in which the amounts of damages have been levied and appropriately consider as to what would be the correct rate of damages to be imposed under Section 14-B of the Act. The statement of calculation prepared by the respondent regarding delay in payments discloses that the respondent has imposed damages at different rates, for example, for the month of July 1976 the rate of damages is

50% whereas the period of default is over month, while in case of December 1976 the damages imposed upon the appellant are at the rate of 20% though the period of delay is over two months, in the case of delay for April 1988 damages imposed are at the rate of 30% though the period of delay is only one month. In certain cases, even for a delay of below 15 days, like October 1977, damages at the rate of 85% have been imposed, while for another period though the delay is for six months 65% damages have been levied. Therefore, it is not possible to discern the rationale adopted by the respondent in the matter of imposition of penalty. In the circumstances, therefore, it would have been appropriate for us to set aside the order and remit the matter to the respondent, but we do not think that such an exercise is necessary after such a long period. In this case, the amount due towards provident fund has already been deposited and this Court, by order dated December 18, 1998, granted an interim relief to the extent of 75% of the amount of damages sought to be recovered, while out of the disputed amount of damages (that is, Rs. 88,731.25), 25% had already been directed to be deposited. In that view of the matter, we think, it is appropriate to confine the damages leviable in this case on an over all consideration to the extent of 25% of the total damages imposed.

The appeal is, therefore, partly allowed and the order made by the Provident Fund Commissioner is modified accordingly. No costs.