

M/S. K. STREETLITE ELECTRIC CORPORATION
v.
REGIONAL PROVIDENT FUND COMMISSIONER, HARYANA

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APRIL 9, 2001

[S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.]

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Employees' Provident Funds & Miscellaneous Provisions Act, 1952—Sections 14-B and 20—Damages for belated deposit of contribution to Provident Fund—Delay in initiating proceedings—Calculation of damages—Held, delay not a ground for setting aside proceedings unless specific plea of prejudice raised and established—Damages confined to 25 per cent of the total damages imposed.

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Respondent-Commissioner issued show cause notice to appellant-Corporation for levying damages for belated deposit of contributions to the Fund under Section 14-B of Employees' Provident Funds & Miscellaneous Provisions Act, 1952 for the period from July 1976 to June 1980. The respondent, by an order, imposed damages of Rs. 88, 731.25. The appellant filed a Writ Petition before High Court challenging the order or the respondent, it was dismissed.

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In appeal to this Court, the appellant contended that the respondent has initiated action under the Act for levy of damages belatedly after 6 to 10 years from the period of default; and that the order of the respondent levying damages is not in accordance with the rates set out in the instructions issued by the Central Government under Section 20 of the Act.

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Partly allowing the appeal, the Court

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HELD : 1. Delay in initiating proceedings under Section 14-B of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 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 establishment. [1027-E]

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Hindustan Times Ltd. v. Union of India & Ors., [1998] 2 SCC 242, relied on.

2. From the statement of calculation of damages prepared by the re-

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A spondent for delay in payments, it is not possible to discern the rationale adopted in the matter of imposition of penalty at different rates for different periods of default. It is appropriate to confine the damages leviable on an over all consideration to the extent of 25 per cent of the total damages imposed. [1028-E-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6498 of 1998.

From the Judgment and Order dated 30.6.98 of the Punjab and Haryana High Court in C.W.P. No. 3841 of 1987.

A.P. Bhandari and S.C. Patel for the Appellant.

C Anoop George Chaudhary, Ms. B. Sunita Rao, C. Radhakrishna and Arvind Kumar Sharma for the Respondent.

The Judgment of the Court was delivered by

D **RAJENDRA BABU, 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 per cent 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:

G	Period of Default	Rate of Damages [%age of arrears per annum]
	(a) Less than two months	17
H	(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 cent 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. v. 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

A 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.

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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 per cent 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 per cent 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 per cent have been imposed, while for another period though the delay is for six months 65 per cent 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 per cent of the amount of damages sought to be recovered, while out of the disputed amount of damages (that is, Rs. 88,731.25), 25 per cent 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 per cent 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.

H B.S.

Appeal partly allowed.