Before S. S. Sandhawalia C. J. and J. V. Gupta, J.

T. C. M. WOOLLEN MILLS,—*Petitioner*

versus

THE REGIONAL PROVIDENT FUND COMMISSIONER and another,—*Respondents.*

Civil Writ Petition No. 1455 *of* 1977

May 27, 1980.

Employees Provident Funds and Miscellaneous Provisions Act (XIX of 1952) as amended by Act (XL of 1973)—Section 14-B—Employer committing default in depositing contributions to the Provident Fund—Damages for such default—Nature of—Whether should co-relate to the loss of interest entailed by the delay—Damages levied much after the default—Exercise of such power—Whether arbitrary—Arrears deposited before the receipt of notice under section 14-B—Damages—Whether could be levied thereafter—Damages pertaining to the period prior to the amendment—Power to levy such damages—Whether could be exercised by the Regional Provident Fund Commissioner after the amendment.

Held, that it is plain from the reading of section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 that the damages under the Act are penal in nature and not merely co-related with the loss of interest entailed by the delayed payment of contributions to the Provident Fund. (Para 4).

Held, that negligence in the office of the Regional Provident Fund Commissioner in not imposing the demages immediately after the default was committed does not affect the power of the Commissioner under section 14-B of the Act. Even if there is delay in levying damages, the Commissioner, cannot possibly be said to have lulled the employer into a sense of security because in express words, paragraph 38 of the scheme requires payment by a certain specified date and the employer liable to do so must do it by that date. To depend upon the leniency of the authority concerned and to await that if it did not take action then that would justify the employer to commit further defaults is hardly a consideration upon which a writ petition on the side of the employer can be accepted to interfere with the order of the Commissioner under section 14-B of the Act. (Paras 5 and 6)

Held, that the arrears arose on the very date on which the employer defaulted in making payment of the contribution for the

particular month on the date specified in paragraph 38 of the Scheme. Even if the arrears having once accrued did not continue upto the date on which the Commissioner proceeded to act under section 14-B, the words of the section do not mean that in such circumstances the power given to the Commissioner has been taken away. (Paras 7 and 8).

Held, that it is plain that the Regional Provident Fund Commissioner has been substituted as the authority in place of the appropriate government in section 14-B by the amending Act 40 of 1973. It seems to be well settled that when an authority is substituted in place of another in a statute then it would stand exactly on the same footing as regards the exercise of powers as the earlier one. If before the amendment, any damages had to be imposed for default, the authority was the State Government but after the amendment such authority is the Regional Provident Fund Commissioner. Hence, if the default has come to the knowledge of the competent authority after the amendment and it relates to a period prior to that then, there is no reason why the Provident Fund Commissioner is not competent to impose the damages with regard to that period also. (Paras 10 and 11).

Writ Petition under Articles 226 and 227 of the Constitution of India praying that :—

(*i*) *a writ of* Certiorari *quashing the impugned order, annexure P-2, recovery order, annexure P-3, and the recovery proceedings started by respondent No. 2; and*

(*ii*) *writ of* Mandamus *directing the respondent No. 1 not to levy damages on the petitioner Company after the lapse of 5 years over and above the actual loss suffered by the beneficiaries of the Scheme if any ; or*

(*iii*) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case be issued ; and*

(*iv*) *the requirement of issuance of notice of motion to the respondents along with a copy of the Civil Writ Petition and its enclosures be waived ; and*

(*v*) *the operation of the impugned order, annexure P-2 and the recovery proceedings be stayed* ad-interim *without the issuance of notice of motion to the respondents along with a copy of the Civil Writ Petition and its enclosures ; and*

(*vi*) *the requirement of filing the certified copy of the documents, annexures P-1 to P-5 be waived and their true copy*

which are attached with the Civil Writ Petition be allowed to be placed on the record; and

(*vii*) *the record of the case be summoned and the Civil Writ Petition be allowed with costs.*

Baldev Kapur, Advocate, *for the Petitioner.*

C. D. Dewan, Sr. Advocate with Ramesh Puri, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the damages for delayed payments of contributions to the Fund under section 14-B of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, are penal in nature and not merely co-related with the loss of interest entailed by such delay is the common link in this chain of eight writ petitions. Learned Counsel for the parties are agreed that the issues of law and fact being clearly identical, this judgment will govern all of them.

(2) In view of the above it suffices to advert to the facts in Messrs. T.C.M. Woollen Mills Ltd. The petitioner, being a private limited company, is engaged in the business of spinning in its premises located in the industrial area, Ludhiana and is admittedly covered by the provisions of the Employees Provident Funds and Family Pension Fund Act, 1952 (hereinafter called the Act) and the scheme framed thereunder. The Regional Provident Fund Commissioner issued a notice, dated the 28th of October, 1975, under section 14-B of the Act to the petitioner-company on the ground that they had not paid the amount of contributions within the period stipulated and, therefore, it had rendered itself liable to pay damages as per the details given in the said notice. A calculation-sheet of the damages worked out by respondent No. 1 for the delayed payment was attached as annexure P. 1 to the petition. It is averred that in response to the notice, an official of the petitioner-company called on respondent No. 1, to seek a review of the damages assessed and to render some explanation for the admitted delay in the payment of the contributions beyond stipulated dates. However, it is alleged that the respondent by its detailed order, dated the 1st January, 1976, annexure P. 2 has imposed damages to the tune of

Rs. 24,396.95 P. under section 14-B of the Act and directed the petitioner to deposit the same within 30 days of the receipt thereof. In compliance therewith recovery notice, annexure P. 3 was issued and the petitioner-company then corresponded with respondent No. 1 but it is alleged that active steps to recover the amount have been now initiated through the Naib-Tahsildar, Ludhiana. Aggrieved thereby the petitioner-company has preferred this writ petition.

3. In paragraph 7 of the return filed on behalf of respondent No. 1 it has been highlighted that despite the service of the notice, annexure P. 1, no objections were filed by the petitioner-company within one month of the time afforded to it to do so. Consequently, the answering respondent was left with no option but to determine the damages on the materials before it and he did so by a detailed speaking order. Even thereafter the petitioner-company sought a personal bearing to highlight its financial difficulty and this request was acceded to and the 21st of February, 1976, was intimated as the date of hearing. Shri Chadha, a Director of the Company appeared on that date and again pleaded financial stringency and requested for the waiver of the damages or a substantial reduction therein. He was then directed to produce documentary evidence in support of the petitioner-company's stand but no such proof at all was submitted. Consequently, respondent No. 1 was left with no option but to request for the recovery of the amount of damages assessed through the Collector, Ludhiana. It is denied that the answering respondent had ever agreed or extended any assurance of reviewing the amount of damages assessed. However, a further opportunity for representing their case on 14th of March, 1977, was afforded to the petitioner but again no appearance was put in on that date on their behalf. However, much later on the 26th of April, 1977, the petitioner-company again sent a letter attempting to explain the reason for non-appearance and seeking another opportunity which charitably was acceded to for the 23rd of August, 1977. On this date again none appeared on behalf of the petitioner-company. Later on, the 26th December, 1977, the petitioner-company intimated the answering respondent that they had preferred the writ petition in Court. The firm stand on behalf of the respondent is that in fact the petitioner-company had no financial difficulty and instead the company had been deducting the Provident Fund Contribution amount from the wages of the employees and had been withholding the deposit for a long time.

4. As has been indicated at the very outset, the issue that lay at the core of all these writ petitions is whether the damages imposed by the Commissioner were merely co-related with the loss of interest entailed by the delayed payments and, therefore, in quantum could not exceed a fair rate of interest on the amounts due. Undoubtedly, on this point there earlier existed a controversy and a wide ranging conflict of judicial opinion. Fortunately, the matter has now been completely set at rest by the unequivocal observations of the final Court in *Organo Chemical Industries and another* v. *Union of India and others* (1). Krishna Iyer, J., in his concurrent judgment noticed the aforesaid contention in the following terms:—

> "The further submission is that damages being compensatory in character could not exceed the interest the amount defaulted would have carried during the period of delay. The respondent has gone beyond the mere quantum of interest and has rounded it off to a sum equal to the defaulted contribution. Is this excess an illegal extravagance or a legal levy? This turns on what is 'damages' in the setting of the Act."

and provided a categoric answer as :—

> "I am clearly of the view that, as imposed by section 14-B, includes a punitive sum quantified according to the circumstances of the case. In exemplary damages this aggravating element is prominent. Constitutionally speaking, such a penal levy included in damages is perfectly within the area of implied powers and the legislature may, while enforcing collections, legitimately and reasonably provide for recovery of additional sums in the shape of penalty so as to see that avoidance is obviated. Such a penal levy, can take the form of damages because the reparation for the injury suffered by the default is more than the narrow computation of interest on the contribution."

Sen, J., after adverting to the conflict of opinion between the High Courts observed that those taking the view that damages were

(1) AIR 1979 S.C. 1803.

to be limited to the loss of interest had obviously fallen into an error and laid down the law as under:—

> "The expression 'damages' occurring in section 14-B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty under section 14-B is not merely to provide compensation for the employees. We are clearly of the opinion that the imposition of damages under section 14-B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of section 6, 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. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme."

Now it is plain from the afore-quoted observations that the damages under section 14-B of the Act are penal in nature and not merely co-related with the loss of interest entailed by the delayed payments of contributions to the Fund. Indeed in this view of the situation, all the learned counsel for the petitioners very fairly conceded their inability to raise this issue which admittedly stood concluded against them.

5. Abandoning the aforesaid argument, Mr. Baldev Kapur, learned counsel for some of the writ petitioners had then attempted to raise the untenable argument that the respondents had not levied damages immediately after the defaults but much later and thus allowed some accumulation thereof and consequently the writ-petitioners should legitimately presume that damages have either been condoned or waived. It is plain that the aforesaid argument stems from and is indeed inspired by the observations of Shamsher Bahadur, J., in *M/s. Amir Chand and Sons* v. *State of Punjab and others* (2). Therein a view was taken that the delay in the imposition of damages may lull the employer into a sense of security and if immediate action had been taken it may not have made any

(2) AIR 1965 Pb. 441.

further default in the later months. Further that the damages having been levied after nearly six years of the earlier default the power exercised by the State Government levying those damages under section 14-B could be arbitrary.

6. It is unnecessary to repel the aforesaid view on principle and it suffices to recall that *State of Punjab* v. *M/s. Amin Chand* (3) directed against the judgment of Shamsher Bahadur, J., was allowed and the aforesaid view was reversed. No criticism or challenge to the Letters Patent Bench's view was offered before us and the same plainly concludes this aspect of the case. It only deserves recalling that the Letters Patent Bench's judgment having not been reported, considerable confusion seems to have been caused by reliance on the reported but reversed judgment of Shamsher Bahadur, J.

7. Counsel then fell back ingeniously on the submission that arrears had in fact been deposited before the notice was served on the petitioners and there being no dues in arrears on the date of the issue of notice no damages could have been levied in law. It was further contended that the fact that the arrears were paid beyond the date prescribed by law was not relevant in this context.

8. Though on principle itself, there is very little to command the aforesaid argument, it is unnecessary to launch on a dissertation thereon because within this Court the matter appears to be equally concluded against the petitioners. A Division Bench of this Court in *M/s. International Electricals, Faridkot* v. *The Regional Provident Fund Commissioner, Punjab, Haryana etc. and another* (4) had occasion to consider the identical contention and after adverting to precedent conclusively repelled the same. In doing so the learned Judges relied on the Letters Patent Bench's Judgment in the *State of Punjab* v. *M/s. Amin Chand* (supra). No meaningful criticism to the ratio of the aforesaid two judgments was offered. Following the same we reject the contention.

9. Mr. Bhagirath Das in C.W.P. 3458 of 1978 *M/s. Continental Travel Service* v. *Regional Provident Fund Commissioner and another*, had

(3) L.P.A. 296 of 1964 decided on 11th February, 1969.
(4) 1980 Revenue Law Reporter 145.

then raised the contention that section 14-B of the Act prior to its amendment by Act 40 of 1973 vested the jurisdiction to levy damages in the appropriate Government whilst thereafter the Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government on its behalf, has been substituted in its place. Counsel contended that in this case some part of the damages pertained to defaults prior to the 1st of November, 1973, when the amendment came into force. Therefore, the Regional Provident Fund Commissioner had no jurisdiction to levy the damages.

10. There is not much substance in the aforesaid contention both on principle as also on precedent. It is plain that the Regional Provident Fund Commissioner has been substituted as the authority in place of the appropriate Government in section 14-B by the amendment. It seems to be well-settled that when an authority is substituted in place of another in a statute then it would stand exactly on the same footing as regards the exercise of powers as the earlier one.

11. In support of his contention, Mr. Bhagirath Dass could cite no precedent whilst on the other hand the matter is concluded against him by the two Division Bench judgments. *In M/s. Hindustan Malleables and Forgings Ltd.* v. *The Regional Provident Fund Commissioner and others* (5) the Patna High Court repelled such an argument in the following terms:—

> "There is no question of the amendment being retrospective. By the amendment of 1973, the competent authority instead of the State Government is the Regional Provident Fund Commissioner. Therefore, by the amendment, the competent authority has been changed. If before November, 1973 any damages had to be imposed for default the authority was the State Government. After November, 1973 such authority is the Regional Provident Fund Commissioner. Hence if the default has come to the knowledge of the competent authority, i.e., the Regional Provident Fund Commissioner after 1st November, 1973 and it relates to a period before November, 1973, then I see no reason why he is not competent to impose the damages with regard to that period also."

Reliance for the aforesaid view was also placed on a decision of the

(5) 1978 Lab. Industrial Cases 980.

Delhi High Court in C.W.P. No. 193/1976 decided on 6th August, 1976. Inevitably the contention of Mr Bhagirath Dass must, therefore, be rejected.

12. Repelled on the legal issues, Mr. Baldev Kapur in *M/s. T.C.M. Woollen Mills (P) Ltd.* v. *The Regional Provident Fund Commissioner* had attempted to contend that the order of the Regional Provident Fund Commissioner was not a speaking order and should be struck down on that score. Counsel contended that the authorities had not expressly adverted to the number or the frequency of the defaults as also to the period of delay and the amounts involved in greater detail.

13. The contention has only to be noticed and rejected. A reference to annexure P. 2 would indicate a positive application of the mind by the Regional Provident Fund Commissioner. What, however, calls for pointed attention is the fact that against the notice issued to the petitioners no reply was filed by them. As has already been noticed in the resume of facts despite a repeated number of opportunities given to the petitioners of personal hearing they chose not to avail most of them. Apparently it is plain that in such a situation unless the objections and the factual matters are pressed before the Commissioner he cannot imagine the same and pretend to adjusticate therein. Reference in this connection may be made to the Division Bench judgment of the Allahabad High Court reported as *The Regional Provident Fund Commissioner U.P.* v. *M/s. Allahabad Canning Co., Bamrauli* (6). Therein it has been rightly held and virtually in identical circumstances that the reasons expected to be recorded in a speaking order must inevitably depend on the nature of the contention raised to the reply to the show cause notice. Obviously where the objections raised are themselves vague and devoid of necessary particulars even a finding that the plea is untenable is a sufficient compliance of the requirements of a reasoned order.

14. All the contentions raised on behalf of the petitioners having been repelled the writ petitions are plainly without merit and are hereby dismissed. However, there will be no order as to costs.

J. V. Gupta,—I agree.

N.K.S.

(6) 1978 Lab. Industrial Cases 198.