

(1982) 07 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 1953 of 1981

Mrs. Mary George

APPELLANT

Vs

Regional Provident Fund
Commissioner, Trivandrum

RESPONDENT

Date of Decision: July 29, 1982

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 16, 7A

Citation: (1982) KLJ 695

Hon'ble Judges: S. K. Kader, J

Bench: Single Bench

Advocate: M. V. Joseph, N. Jayaprasad and E. M. Thomas, for the Appellant;

Final Decision: Dismissed

Judgement

S. K. Kader, J.

The petitioner said to be the owner of a small establishment, seeks to quash Ex. P2 order passed by the Regional Provident Fund Commissioner and send back the case to the respondent who passed Ext. P2, for disposal afresh according to law. The petitioner is the proprietor of M/s M. P. George & Sons, Alupuram, Alwaye. M. P. George is the husband of the petitioner. It is said that formerly this was a partnership concern consisting of MP. George, the petitioner and their sons. After the establishment became a proprietary concern, the petitioner has been contending that it was a new concern and not a continuation of the establishment M/s M. P. George & Co. and being in the infancy she is entitled to get protection under Sec. 16 of the Employees Provident Fund and Miscellaneous Provisions Act, hereinafter called the Act. The respondent contended that the establishment of the petitioner was only a continuation of the previous partnership. There was thus a dispute between the petitioner and the Provident Fund Commissioner in this respect. While so the respondent after conducting an enquiry u/s 7A of the Act,

passed an order Ext. B1 bringing the concern of the petitioner under the coverage of the Act. The petitioner committed default in the payment of contributions payable under the Act. Thereupon the respondent after notice to the petitioner passed Ext. P2 order under Sec. 14-B of the Act imposing in all an amount of Rs. 2,842.10 as damages, the percentage of damages imposed varying from 25-50%. The petitioner had given an explanation Ext. P1 for not imposing any damages on her. Attacking Ext. P2 order, the counsel for the petitioner strongly contended that the order Ext. P2 passed by the respondent is per se wrong as it was passed without considering the bona fide nature of the contentions of the petitioner in this respect and that there has been inordinate delay in taking action against the petitioner under Sec. 14-B of the Act as a result of which the petitioner bona fide believed that the respondent had dropped all the proceedings in this respect against the petitioner and that Ext. P2 order, in the circumstances amounts, to gross harassment of the petitioner and has therefore to be interfered with.

2. The main contention of the counsel for the petitioner is that the respondent by his conduct of not taking any action against the petitioner for more than 3 years made her believe that he had dropped all the proceedings and in such circumstances the passing of Ext. P2 order amounted to harassment to the petitioner. The counsel relied on a decision of the Punjab High Court reported in *M/s Amin Chand v. State of Punjab* (AIR 1965 Punjab 441) in support of his contention.

3. It is not disputed that the petitioner has been contending that her establishment is a new one and that she is not liable to be covered under the Act. It is seen from Ext. R1 that the establishment *M/s M. P. George & Co. Always* was brought under the coverage of the Act with effect from 31-5-1966; that this partnership concern was thereafter dissolved and the establishment was transferred to the petitioner, with effect from 1-4-1970 under the name and style *M/s M. P. George and Sons* and that this was only a continuation of the previous concern *M/s M.P. George & Co.* in effect and substance and for the purpose of the application of the provisions of the Act.

4. In *Organo Chemical Industries v. Union of India* (AIR 1979 S.C. 1803) while dealing with the scope and ambit of and the guidelines under Sec. 14-B of the Act the Supreme Court observed as follows:

The imposition of damages under Sec. 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 employees.

The measure was enacted for the support of a weaker sector viz, the working class during the superannuated winter of their life.

If the employer neglects to remit or diverts the money for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart

contri-butory responsibility and this wider fall-out must colour the concept of "damages" when the court seeks to define its content in the special setting of the Act.

The Supreme Court further observed in this case that the imposition of damages under S. 14-B serves a two-fold purpose, as it results in damnification and also serves as a deterrent. This section is meant to penalise the defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It also serves as a warning to employees in general not to commit a breach of a statutory requirement. There is nothing in this section to show or indicate that the damages imposed must bear relationship to the loss which is caused to the beneficiaries under the section. Ext. P2 order of the respondent shows that he has duly considered the explanations given by the petitioner and has also taken into consideration the various factors like the number of defaults, period of delay, the frequency of default and the amounts involved.

In *M/s. Amin Chandel v. State of Punjab* (AIR 1965 Punjab 441), a learned Single Judge of that Court held that the imposition of damages under Sec. 14-B on the facts of that case, amounted to harassment of the employer. That was a case where action was taken against an employer after 6 years. In the instant case it is true that the action was taken only on the expiry of three years-But a reading of Section 14-B does not expressly or impliedly state or indicate that action under this section should be taken as soon as or soon after the employer committed default in the payment of contribution or charges referred to in the said section. There is no period of limitation prescribed under the Act for taking action u/s 14-B. The counsel appearing for the respondent cited *Shyam Glass Works v. State* (AIR 1976 Ail 19) wherein a Division Bench of the Allahabad High Court refused to follow the decision of the Punjab High Court in *M/s Amin Chandel v. State of Punjab* (AIR 1965 Punjab 441). The Division Bench observed that the purpose of section 14-B is to punish erring employers and that section 14-B provides for statutory damages against the employers who have defaulted to deposit the contribution or other amounts mentioned in the section within the prescribed period. Damages in that case were imposed after six years and not immediately after the defaults were committed. The plea that this imposition of damages after the long lapse of six. years will amount to harassment was negated by the Division Bench which observed that there was no period of limitation prescribed u/s 14-B of the Act; and that there was no principle of law which debarred the Provident Fund Commissioner or the Government from exercising their statutory power u/s 14-B of the Act. I am in respectful agreement with the dictum laid down in [Shyam Glass Works Vs. State of U.P. and Others](#), . No other point was urged on behalf of the petitioner.

In the result this original petition fails and is hereby dismissed but, without costs, in the circumstances.