(1966) 09 BOM CK 0001

Bombay High Court

Case No: Miscellaneous Application No. 390 of 1964

Bharat Barrel and Drum Manufacturing Company (Private), Ltd.		APPELLANT
	Vs	
Raval (B.N.) and Another		RESPONDENT

Date of Decision: Sept. 8, 1966

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 5A, 6

Citation: (1967) 14 FLR 190 : (1966) 2 LLJ 804

Hon'ble Judges: K.K. Desai, J

Bench: Single Bench

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner-company (hereinafter referred to as the company) seeks an order of injunction to restrain the respondents from recovering from the company the aggregate sum of Rs. 11,237.97 demanded as damages by letters, dated 10 and 17 September, 1964, annexed as Ex. D to the petition. Towards the larger sum demanded for damages, the company had paid Rs. 14,157.58. By prayer (b) of the petition, the company has demanded refund of that amount as having been illegally recovered from the company by the respondents as damages.

2. The short facts leading to the institution of the petition may be summarized as follows :

The company carries on business of manufacturing steel drums and barrels at its factory situate in Greater Bombay. Respondent 1 and 2 are in charge of the administration of the Employees Provident Funds Scheme (in the State of Maharashtra) enacted under the Employees Provident Funds Act, 1952. The above

Act is admittedly applicable to the company and its factory. Under S. 6 of the Act and Para. 29 of the Employees Provident Funds Scheme made under the Act, at all relevant times, the company was liable to contribute to the provident fund 8 per cent of the basic wages and dearness allowance payable to each employee of the company to whom the scheme applied. Each of the employees of the company to whom the scheme applied was equally liable to contribute to the provident fund 8 per cent of his basic wages and dearness allowance. Under Para. 38(1) of the scheme, the company was under an obligation to deduct the employee''s contribution along with its own contribution and a certain amount towards an administrative charge fixed under the scheme within fifteen days of the of every month by separate bank drafts or cheques. Under Sub-para. (2) of Para. 38, the company was bound to forward to the Commissioner within fifteen days of the close of the month a monthly consolidated statement in the prescribed form showing recoveries made from the wages of each employee and the amount contributed by the company in respect of each such employee. Paragraph 30(1) of the scheme provided that the employer

"shall, in the first instance, pay both the contribution payable by himself ... and also on behalf of the member employed by him, the contribution payable by such member ....."

3. Sub-paragraph (3) of Para. 32 of the scheme provided that

"any sum deducted by an employer .... from the wage of an employee under this scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted."

4. Above is the short summary of the statutory obligations which arose against the company to make contributions every month towards the provident funds scheme as envisaged by the above Act. Section 14B of the Act provided that

"Where an employer makes default in the payment of any contribution to the fund ... or in the payment of any charges payable under any other provision of this Act or of any scheme ... the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears, as it may think fit to impose."

5. This section was brought on the statute book by Act 37 of 1953. Prior to January, 1963, damages at the rate of 6 per cent were charged against employers making defaults in payment of contributions to the fund. It has been stated at the bar, though not mentioned in the pleadings, that the employers found it more profitable to make defaults and then make payment along with 6 per cent interest of the amounts of contributions to the fund. After January, 1963, the rate of damages was altered by the State Governments in the following manner : The Central Board of Trustees hereinafter referred to as the board constituted under S. 5A of the Act by a resolution passed at its meeting held on 24 September, 1962, considered the

question of damages. The question came to be considered because till then there was no uniformity in the procedure regarding the levy of damages on the defaulting factories or other establishments. The board recommended that the State Governments should recover damages as far as possible as per the scales fixed by the resolution passed at the above meeting. By his letter dated 22 November, 1962, the Central Provident Fund Commissioner wrote to all the State Governments about the above resolution of the board and the scales recommended by that resolution for imposition of damages. By Para. 4 of that letter, he stated :

"You are requested to adopt the above procedure for recovering damages from the defaulting employers under the Employees'' Provident Funds Act. The Regional Provident Fund Commissioner concerned may be authorized to levy damages at the rates specified ... On receipt of the directions from the State Government ..... the Regional Commissioner will inform all the defaulting employers and will inform all damages at the rates suggested ... The cases of defaults committed before issue of the directions by the State Government .... will not be reopened and damages thereon will be levied according to the existing rates."

6. Upon receipt of the above letter, the State Government considered the subject of imposition of damages under S. 14B. The Under Secretary to the Government of Maharashtra Industries and Labour Department, by his letter dated 26 December, 1962, addressed to the Regional Provident Fund Commissioner, Bombay, inter alia, stated that

"the Government of Maharashtra has decided to adopt the following procedure with effect from 1 January, 1963 regarding the levy of damages on the defaulting factories/establishments in respect of which the Central Government is the appropriate Government."

7. The scale mentioned in the letter is the same as recommended by the board by its resolution dated 24 September, 1962. I will have to refer to that scale whilst dealing with the arguments of the parties in this petition.

8. In this very connexion, the Under Secretary wrote another letter dated 2 February, 1963, to the Regional Provident Fund Commissioner. In this letter, he stated that

"in exercise of the powers of the Central Government under S. 14B of the Employees'' Provident Fund Act, 1952 delegated to the State Government, by the Government of India, Ministry of Labour and Employment, Notification No. PF. II/43(77)/57, dated 10 April, 1957, the Government of Maharashtra has decided that the procedure regarding levy of damages on the defaulting factories/establishments laid down under this department letter, dated 26 December, 1962, ... should be followed ..."

9. It appears that at its meeting held on 13 January, 1964, the board passed a further resolution regarding granting certain days of grace. By his letter dated 19 March,

1964, the Central Provident Fund Commissioner wrote to all the State Governments about that decision of the board and requested that the Governments might adopt the procedure for levy of damages in accordance with the further decision taken by the board at the meeting held on 13 January, 1964. He also informed the Governments that their decision in that connexion should be conveyed to the Regional Provident Fund Commissioner. In accordance with that request, the Government of Maharashtra made a further decision adopting the recommendation made by the resolution passed by the board on 13 January, 1964. This decision of the Government of Maharashtra was conveyed to the Regional Provident Fund Commissioner by the letter of the Under Secretary dated 10 June, 1964. It requires to be noticed that under S. 5A of the Act, the board is constituted of a chairman and five persons appointed by the Central Government and 15 persons representing the State Government, 6 persons representing the employers and 6 persons representing the employees. Thus the scale of damages to be levied under S. 14B and days of grace were decided by the board which consisted inter alia of representatives of employers and employees. It is also not in dispute that the decisions were duly communicated by the Regional Provident Fund Commissioner to each of the employers in the State of Maharashtra to whose factory and/or establishment the scheme under the Act was applicable. Each employee including the petitioner-company was thus aware at all relevant times about the rate and/or scale of damages decided to be imposed by the State Government in respect of defaults made by employers for making payments in accordance with the provisions in the Act and the scheme.

10. In the first instance, the Accounts Officer of the Employees'' Provident Fund by his letter dated 3 April, 1964, demanded from the company damages for defaults made in payments for the period March, 1963 to January, 1964, amounting to two respective sums of Rs. 31,175.70, Rs. 736.75. Along with his letter, he furnished to the company a statement showing particulars of the damages claimed. By his letter dated 4 April, 1964, he again forwarded a similar statement in respect of the demand for damages. By reply dated 13 April, 1964, the company made certain submissions which may be summarized as follows :

(1) Delay in payment was for reasons beyond the control of the company and the claim for damages should be waived.

(2) The rate at which damages were claimed up to March, 1963 was 10 per cent, but from April, 1963 to January, 1964 the rate was 25 per cent. The jump was sudden and exorbitant and the matter should be reconsidered.

(3) The dates of payments made by the company as shown in the statement furnished were not correct. In that connexion, the company gave particulars about the dates when the company had made payments along with challans. The company''s case was that the dates of challans would show that payments were made only with slight delay.

(4) If the decision as regards the days of grace was considered in relation to the payments made by the company, the payments were made within the days of grace.

11. In reply, the Assistant Commissioner, by his letter dated 21 May, 1964, informed the company that in the statement damages were calculated on the footing of the dates when payments were received and by the State Bank of India. If payments along with the challans were made on the days shown by the company in its above letter dated 13 April, 1965, the company should obtain a certificate from the State Bank of India to whom the challans were submitted and furnish a certificate in original and further action would be taken in the matter. The company did not give any reply to the above letter dated 21 May, 1964, but forwarded to the State Government a copy of the company''s above letter dated 13 April, 1964. The company requested the State Government to write to the Regional Provident Fund Commissioner to revise damages payable by the company by allowing days of grace as had been decided earlier. By its letter dated 1 June, 1964, the company intimated to the Commissioner about it having addressed communication to the State Government in connexion with the days of grace. The result of this action of the company was that the State Government addressed its letter dated 1 June, 1964, to the Regional Provident Fund Commissioner regarding allowance of days of grace. In the result, the estimate of damages was revised. By his letter dated 7 August, 1964, the Accounts Officer made certain demands for damages. That letter was cancelled by further letter dated 10 September, 1964, whereby the Accounts Officer demanded from the company damages fir the period January, 1963 to January, 1964 amounting to Rs. 24,804.55 in account No. 1 and Rs. 589 in account No. 2. The Accounts Officer stated that the company had towards the above claim of damages paid Rs. 13,828.95 in account No. 1 and Rs. 328.63 in account No. 2. He demanded from the company the balance amounts of Rs. 10,977.60 in account No. 1 and Rs. 260.37 in account No. 2. Along with his letter, he furnished to the company a statement showing how the damages as demanded has been ascertained. The company filed to make payments and the Assistant Commissioner by a reminder dated 17 September, 1965, called upon the company to pay the above damages within seven days from receipt of the letter and threatened that in default proceedings would be adopted under S. 8 of the Act for recovering damages. By its letter dated 10 September, 1964, the company made certain contentions and denied liability to pay the damages claimed. The company contended that it was entitled to refund of the amount already paid. The company thereafter, on 7 October, 1964, filed this petition and obtained rule on 13 October, 1964.

12. At the hearing of this petition, on behalf of the company, the following contentions were made : Under S. 14B of the Act, damages that can be imposed must be compensatory. Nothing more than compensation can be recovered by way of damages under the section. Under the section, the authority to impose damages is vested in the State Government. In this case, damages have been imposed, ascertained and demanded by the Accounts Officer and not by the State

Government. The demand is, therefore, unauthorized and illegal. The matter of damages and the scale at which the damages should be imposed and the matter of days of grace in that the connexion had all been decided previously by the board. The State Government had simply followed the directions given by the board. The State Government had independently not applied its mind to the matter of the scale of damages and/or the days of grace and/or even the ascertainment of the amount of damages payable by the company. For this reason also, the amounts claimed had not been ascertained in accordance with the scheme of S. 14B and are not payable. The damages claimed are excessive and have no relation whatsoever to the injury suffered and/or compensation payable by reason of the defaults in payment. There is no authority under S. 14B to make demand for such excessive damages. The further contention was that the prescription of uniform scale of damages can never be permissible in law. The question of damages must correlate to facts and contumacious conduct of the offending party. A uniform scale, therefore, cannot be prescribed in connexion with ascertainment of damages payable by an offending party. The last contention was that a claim for damages is a civil claim for payment of money and of necessity liable to be investigated by observance of principle of natural justice. The question must relate to facts involved and contumacious conduct of the offending party. This question cannot be fairly investigated unless the offending party is given an opportunity to show cause and/or a fair hearing. In this case, the damages had been assessed and ascertained without giving any opportunity to the company to show cause and accordingly involved violation of principles of natural justice. For this reason also the company should be held not to be liable to pay the amount claimed.

13. The substance of the defence raised in connexion with these contentions on behalf of the respondents may be summarized as follows : The scheme and the language of S. 14B clearly envisage imposition of exemplary damages. The Act and the scheme are a piece of social welfare legislation. Both have been enacted for the benefit of employees all over India. The contributions to be made by the employers and employees go to form one single provident fund for the benefit of employees, Section 14, therefore, provides for penalties. Section 14A provides for offences by companies. Paragraph 76 of the scheme provides for punishment for failure to pay contributions and even provides for punishment by imprisonment for period of six months. The main reason for enacting S. 14B is that employers may be deterred and thwarted from making defaults in carrying out statutory obligations to make payments to the provident fund. The further contention is that in fact there could be no excuse for employers making defaults in carrying out their statutory obligation for making payments to the fund. The offence of default would be similar in respect of all the employers. It was, therefore, permissible to prescribe damages payable under S. 14B by deciding to impose uniform scale of damages. Defaults being similar as regards the length of time, the scale of damages could be uniformly prescribed in respect of the same length of delay by each of the employers. The

decision regarding the scale of damages and the days of grace was in fact made by the State Governments and not by any other authority. It was permissible for the State Government to arrive at those decisions by reason of the recommendations made by the board. The advice of the board was extremely relevant, inasmuch as the board consisted, inter alia, of representatives both of employers and employees. The further contention was that having regard to the uniform scale fixed, mathematical calculations made by the Accounts Officer could not be held to be imposition of damages by the Accounts Officer. The calculations were made by the Account Officer in accordance with the uniform scale prescribed by the state of Maharashtra. The damages should, therefore, be held to have been imposed only by the State Government. As regards the question of hearing, the contention was that all the employers in the whole of the State of Maharashtra were intimated about the scale fixed by the Government for imposition of damages for defaults made. Prior to January, 1963, being aware that 6 per cent was charged towards towards damages, the employers by themselves made returns and in respect of delayed payments paid 6 1/2 per cent by way of damages. The employers were aware after January 1963 by reason of circulars issued to each of them about the scale of damages fixed by the Government. They were aware about their liability in that connexion. As the nature of the default would be similar in respect of each employer, separate hearing was not necessary to be afforded. There could be no violation of principles of natural justice when damages were ascertained at uniform scale previously fixed and intimated to all the employers. In fact, each employer knew (and he made defaults) as to how the damages would be ascertained against him and the quantum of damages that would be payable by him. In this connexion, reference was made to the statement made in Para. 19 of the affidavit-in-reply of B. N. Raval, dated 22 June, 1965, where he stated as follows :

"I say that in appropriate cases the levy of damages is condoned or moderated or equitably dealt with."

14. This statement was developed and it was contended that in all cases damages in the first instance were ascertained by the Accounts Officer in accordance with the uniform scale prescribed and/or imposed by the State Government. That, however, in no manner prevented an employer from approaching the State Government for condonation or moderation or for other equitable relief in respect of damages. The Government was always willing to hear representations of employers in connexion with the question and quantum of damages. This procedure, according to Sri Joshi for the respondents, completely satisfies the principles of fairplay and/or natural justice.

15. In connexion with these arguments, it is first necessary to refer to the scale of damages fixed by the State Government and applied to the facts of the petitioner-company. The scale fixed can be found in the following tabular from quoted from the letter dated 26 December, 1962, from the Under Secretary to the

Government of Maharashtra, Industries and Labour Department, to the Regional Provident Fund Commissioner :-

	PERIOD OF DEFAULT					
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Per cent of arrears	Per cent of arrears	Per cent of arrears	Per cent of arrears	Per cent of arrears	Per cent of arrears
First default ..	2	5	10	15	20	25
Second default ..	5	10	15	20	25	25
Third default ..	10	15	20	25		
Fourth default ..	15	20	25			
Fifth default ..	20	25				
Sixth default ..	25					

16. The days of grace were fixed as follows :-

"(1) Five days of grace may be allowed to the employers for payment of provident fund contribution during which no damages may be levied.

(2) For delays up to fifteen days, including five days of grace, damages at half the rates laid down ... may be levied."

17. The result of the above uniform scale was that damages were not claimed if payment was delayed by five days. Under Para. 38 of the scheme, the employer was bound to pay the whole of the amount of his own contribution and employee''s contribution along with the fixed administrative charge within fifteen days of the close of every month. The result of the above five days of grace was that the employer could retain the whole of the amount payable to the fund for the first twenty days without payment of any damages in that connexion. For the first default of one month, i.e., 1 1/2 months from the date of closure of the month, damages payable are fixed at 2 per cent of arrears. This would work out in terms of interest at the rate of 24 per cent per annum. This may not, however, be a very large amount, as the employer can avoid liability by wiping of default at his own choice. If there is a second default, under the scale, damages are fixed at 5 per cent or arrears for the first month and much larger percentage amounting to 25 per cent of arrears if the arrears are prolonged up to 5 months. In terms of interest rate, therefore, the liability would be extremely heavy and excessive. In the company''s case the aggregate damages for one year come to Rs. 24,806.55 in account No. 1 (contributor''s fees), in account No. 2 (administration charges fee) as appears from the statement annexed to the letter of demand dated 10 September, 1964, The damages are claimed for the month of January at 2 per cent of arrears, for the months of February and March at 10 per cent of arrears and for the months of April

to September at 25 per cent of arrears and for December and January at 12 1/2 per cent arrears. The period of default in January and February is one month, in March 21 days and in December, 1963 and January, 1964, 8 days and 9 days respectively. In September, 1963, the default is of 16 days, but the damages are assessed at 25 per cent. The period of default is larger in the months of April to August, 1963. In April, 1963, in respect of liability to contribute two respective amounts of Rs. 17,828 and Rs. 399, the damages claimed amount to Rs. 4,457.25 and Rs. 99.75 respectively. The rate of 25 per cent that is charged for the months of April to September is the highest permissible rate as fixed under S. 14B. It is not in dispute that the Accounts Officer himself has ascertained the above amount of damages. It is not in dispute that the demand has been made also by the Accounts Officer. It is not in dispute that in connexion with the prior correspondence and the question of days of grace, the Under Secretary to the Government, in his letter dated 20 July, 1964, informed the company that

"it may be noted that requests for reduction in damages over and above that admissible according to the abovementioned revised rates of damages will not be entertained by this Government."

18. Apparently, therefore, there is no direct evidence to prove that in the matter of imposing damages in the sum of Rs. 24,806.55 and Rs. 589 on the company, the State Government did anything other than issuance of the circular letters dated 26 December, 1962 and 20 July, 1964, whereby the State Government had fixed the rate and/or scale of damages and the days of grace. The question is as to whether these damages have been imposed by the State Government. The question arises because the language of S. 14B runs as follows :

"Where an employer makes default in the payment of any contribution to the fund .... or in the payment of any charges payable under any other provision of this Act ... the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent of the amount of arrears, as it may think fit to impose."

19. It is not disputed that under the section the power to impose damages is vested only in the appropriate Government. The contention is that the only default that is specified in the section is in respect of payment of contributions and administration charges payable under the Act. The default would be for different periods, but the nature of default would always be the same. The object and purpose of the section is to authorize the Government to impose exemplary and/or punitive damages and thereby to prevent employers from making defaults. For different periods of default, under the above circumstances, a standard and/or tabular rate and/or scale for ascertaining damages can justifiably be fixed. It is pointed out that there would be several thousand employers in each state to whom the provisions of the Act and scheme made thereunder would be applicable. It is not the intent and purpose of the section that in connexion with assessment of damages payable by each

employer should be made and hearings given. Under these circumstances, the contention is that the rates, scales of damages and days of grace fixed by the Government were sufficient exercise of the power to impose damages. For these reasons, the contention is that the matter of mathematical calculation of damages was permissible to be left to the administrative officer like Accounts Officer. It appears to me that these are contentions of convenience. It is true that attractively it would be extremely difficult for the Government whilst imposing damages under S. 14B to give hearings to defaulting employers. Numerous employers may be making defaults in payments to the funds in accordance with the Act and the scheme. In spite of the difficulties which the Government must be faced with in connexion with imposition of damages against defaulting employers, it is clear that it cannot be possible and permissible to ascertain and/or assess compensatory and/or exemplary and/or punitive damages without considering relevant facts and circumstances culminating into contumacious conduct of making defaults. It is quite apparent that every defaulting employer should be entitled to point out to the Government, as the concerned authority, facts and circumstances entitling him to complete condonation in respect of one or more defaults and/or in any event to claim that having regard to the diverse circumstances and/or equities in his favour, a moderate amount of damages be fixed. The Accounts Officer and/or other officials of the fund cannot determines damages nor can give relief upon a hearing given to a defaulting employer. Possibly to was permissible for the State Government to announce a uniform rate and/or scale of damages which was liable to be imposed against the employers. That however, would not be sufficient for final assessment of damages payable by a particular defaulting employer. On the basis of such scale, a claim for damages may be made on behalf of the fund against defaulting employer. Such claim, however, would have to be finally assessed and ascertained by the Government as the authority prescribed to impose damages. The defaulting employer may be a willful defaulter. He may also be an innocent defaulter who by reason of unavoidable circumstances, may not find it possible to make payments to discharge his statutory obligations. It is possible that an employer''s bankers may altogether fail so that he may not presently have funds to discharge outstanding claims. Circumstances like general strikes, lockouts, political disturbances and/or such other circumstances may unavoidably prevent an honest employer from making payment in accordance with his statutory obligations. It is quite apparent that in each and every vase where a claim to damages arises the defaulter should have an opportunity to prove circumstance so that damages may not be imposed or smaller damages may be imposed, The above discussion goes to show that an absolute standard and/or scale for assessment of damages could be fixed under the scheme of the section. It is also clear that the claim for damages much be for the benefit of the fund and the claimants should, therefore, in all cases, be the authorities of the fund. The authority which has to assess damages and fix liability is the Government. The defendant would be the defaulting employer. These circumstances go to show that the principles of fairplay require that before

damages payable under the section are finally ascertained and/or fixed the defaulting employer must have a hearing and damages cannot be finally fixed and/or ascertained by the Accounts Officer and/or any other officer of the fund.

20. The statement in Para. 19 of the affidavit-in reply that

"in appropriate case the levy of damages is condoned or moderated or equitably dealt with."

is made because the above position is correct. Under the above circumstances, in spite of extremely large administrative difficulties which must arise, I am constrained to hold that it was not permissible for the Government to impose damages against all defaulting employers by the absolute standard and scale fixed by its letter dated 26 December, 1962, and it was not permissible for the Account Officer to finally fix the damages payable by the company as he did by his letter of demand dated 10 September, 1964. In my view, the damages payable by the company under the section should have been assessed, ascertained and fixed by the State Government after giving an opportunity to the company to show cause and/or after giving a hearing.

21. It requires to be stated that in developing his arguments in this connexion, Sri Parpia for the company referred to the decisions of the Supreme Court in the cases of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, and Rai Ramkrishna and Others Vs. The State of Bihar, . These cases did not relate to assessment of damages and arose under taxing statutes. In the first case, the Supreme Court observed :

"The Act, being silent as to the machinery and procedure to be followed in making the assessment, leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character ... The Act thus proposes to impose a liability ... to pay a tax which is not to be levied on a judicial basis, because

(1) the procedure to be adopted does not require a notice to be given to the proposed assessee.

(2) ....

(3) .... and

(4) no duty is cast upon the assessing authority to act judicially in the matter of assessment proceedings."

22. Now, it appears to me that the principles of fairplay as discussed in the above authorities in connexion with assessment of tax payable by an assessee are in all respects applicable to the question of assessment of damages payable by a

defaulting employer under S. 14B.

23. Sri Parpia has argued that under the section damages payable by the defaulting employer must correspond with the injuries suffered and exemplary and/or punitive damages cannot be demanded under the section. In that connexion, he referred to the provisions in Ss. 8, 14 and 11 of the Act. Under S. 8, in connexion with all the payments directed to be made by an employer, it is provided that the amounts in arrears may be recovered in the same manner as an arrear of land revenue. Sri Parpia''s contention was that having regard to the coercive machinery available to the authorities of the fund to get the amount payable recovered as an arrear of land revenue, it was clear that damages payable under the section were not intended to be punitive and/or exemplary. Section 14 provides penalties of imprisonment in respect of false statements or false representations made and also that the scheme framed under the Act may provide that default in complying with the provisions of the scheme be punishable with imprisonment and fine. In fact, under Para. 76 of the scheme, punishment of imprisonment for a period of six months and fine is provided, inter alia, in respect of offence of being quality of contravention of or non-compliance with any of the requirements of the scheme. Under S. 11 in respect of liability of an insolvent or a company under winding up to make payments under the Act and the scheme, priority over other debts is fixed. According to Sri Parpia, these provisions go to show that damages to be imposed u/s were not intended to be punitive and/or exemplary. There is no substance in this contention because it is quite clear that the section, inter alia authorizes the Government to recover from the defaulting employer damages "not exceeding 25 percent" of the amount of arrears.

24. Ordinarily, defaults made in payments of moneys are held to compensated by charging usual and/or market rate of interest. The default mentioned in the section is default in payment of money. Even so, the Government is authorized to recover damages "not exceeding 25 per cent," which, prima facie, would for exceed any rate of interest that could ordinary be charged. It is also clear having regard to the scheme of the Act and the other provisions in the Act when read with the section that the reason for enactment of the section was to provide the Government with authority to make it difficult for the employers to make defaults in payments to be made under the Act and the scheme. The intention was to enable the Government to impose such damages as an employer may not find it profitable to make defaults in payment. This contention, therefor, must fail.

25. Sri Parpia had in this connexion relied upon certain observations in Mayne''s book on Damages and also in Vol. 15 of the book entitle "American Jurisprudence." Sri Joshi for the respondents also relied upon several propositions contained in the above books, having regard to the clear provisions in the section. I find it unnecessary to include in this judgment diverse observations from the two books, on which reliance was placed on behalf of the parties.

26. There is no substance in the contention of Sri Parpia that the section does not provide as to whom the damages recovered under the section must be payable. It is quite clear that the Government is not to own these damages. The recovery to be made must be for the benefit of the fund. In this connexion, it is relevant to notice that in S. 8 as regards moneys admittedly payable to the fund the phrase "may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue" is used. The Government, in recovering damages under S. 14B, only acts as a recovering agent for the fund.

27. Under the circumstances, the petitioner-company is entitled to an order restraining the respondents from recovering from the company the sum of Rs. 11,237.97 as demanded by letters dated 10 September, 1964 and 17 September, 1964. Rule will be made absolute to the above extent.

28. As regards the sum of Rs. 14,157.58, the same was paid even before rule was granted in this petition and not without prejudice to the rights and contentions of the petitioner. The same must be deemed to have been paid on the footing that the petitioner had admitted its liability to pay that amount of damages in any event. The petitioner company is, therefore, not entitled to any relief in respect of that amount.

29. The respondents will pay costs of the petitioner-company.