

(1986) 08 BOM CK 0044

Bombay High Court

Case No: Writ Petition No. 1940 of 1982

Cosmos India Rubber Works (P)
Ltd.

APPELLANT

Vs

R.P.F. Commissioner

RESPONDENT

Date of Decision: Aug. 4, 1986

Acts Referred:

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

Citation: (1994) 3 LLJ 1157

Hon'ble Judges: Pendse, J

Bench: Single Bench

Advocate: Nishita Mhatre, for the Appellant; V.N. Lokur and M.I. Sethna, for the Respondent

Final Decision: Dismissed

Judgement

Pendse, J.

The petitioners are an establishment covered under the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. The petitioners are required to pay the Provident Fund Contributions, the Family Pension Fund Contribution, Employees' Deposit Linked Insurance Scheme Contribution under the provisions of the Act. The petitioners failed to pay the Provident Fund Contribution, the Family Pension Fund Contribution and the Employees' Insurance Scheme Contribution for the period commencing from March 1979 to February 1981. The Regional Provident Fund Commissioner thereupon served show cause notice dated August 26, 1981 on the petitioners to explain why damages as envisaged u/s 14B of the Act be not levied and recovered from the petitioners. The show cause notice was issued in respect of period commencing from January 1974 to February 1981, but the period was restricted only from March 1979 to February 1981 as separate proceedings were already instituted for the earlier period.

2. The petitioners appeared before the Regional Provident Fund Commissioner and claimed that the petitioners are running two units, one at Bombay and other at Nasik. In Nasik Unit which was set up for manufacture of cycle tyres, tubes and hose pipes in the backward area of Satpur suffered losses. It was claimed that the facilities assured by the Government at M.I.D.C. Industrial area, Nasik, were not available. It was also claimed that the market for cycle tubes and tyres was not good at the relevant time and, therefore, full production could not be undertaken. The petitioners also claimed that the Government introduced severe credit squeeze and the Company incurred losses in the year 1976-77.

3. The Regional Provident Fund Commissioner after giving hearing to the petitioners came to the conclusion that the contention of the petitioners that there was financial hardship because of the loss of production due to power cut, etc. could not be accepted. The claim that Nasik Unit suffered losses was not also accepted. The Regional Provident Fund Commissioner pointed out that the petitioners have two units and though separate accounts are maintained at the end of the year, they are compiled, audited and profit and loss account is prepared jointly in respect of both the Units, The Regional Provident Fund Commissioner felt that the petitioners are chronic defaulters and, therefore, it is necessary to levy 100 damages in accordance with the decision of the Supreme Court in the case of M/s. Organe Chemicals. The petitioners made a fresh representation after passing of the impugned order, dated February 27, 1982, but the Regional Provident Fund Commissioner rejected the same and that has given rise to the filing of the present petition.

4. Mrs. Mhatre, learned counsel appearing on behalf of the petitioners, strenuously urged that the impugned order is incorrect as the Regional Provident Fund Commissioner has overlooked that the petitioners have suffered financial losses at the relevant time. It is not possible to accept the submission of the learned counsel. As mentioned hereinabove, the period in respect of which damages were levied is from March 1979 to February 1981. The petitioners produced the balance sheet for the year 1979 and that reflects that gross profit was Rs. 5.89 Lakhs and the net profit after depreciation and investment allowance was Rs. 2.59 Lakhs. The paid up capital of the petitioners was Rs. 17.61 Lakhs and the reserve was Rs. 10.90 Lakhs. The Directors of the petitioners have drawn remuneration in the year 1979 of the amount of Rs. 1.27 Lakhs. The mere perusal of this balance-sheet of the year 1979 indicates that the petitioners were in sound financial condition in the year 1979. The petitioners did not bother to produce the balance-sheet for the subsequent periods and, therefore, it is not possible to ascertain how much profits, the petitioners made in the years 1980 and 1981. In this state of affairs, it is impossible to accept the submission that the petitioners have suffered financial losses during the relevant period. The Provident Fund Commissioner also rightly points out that the establishment had paid the wages of the workmen on the dates and has also deducted the Provident fund contributed of the employees' share, but in spite of that, the contribution was not deposited and the amount was used for the purpose

of business. It is, therefore, obvious that the Directors of the petitioners drew their remuneration, the workers were paid, but the contribution of both the employees and employer was not deposited. In my judgment, there is no infirmity whatsoever in the finding recorded by Commissioner that the claim of the petitioners that the establishment suffered financial losses was false.

5. Mrs. Mhatre then urged that the show cause notice was served on the establishment after a considerable period and, therefore, the proceedings should be quashed on that count. It is not possible to accept the sub-mission for more than one reason. In the first instance the Act does not prescribe for period of limitation for service of notice and commencement of proceedings. It must be borne in mind, that the Commissioner is required to undertake large number of proceedings and it is not possible to commence, all these proceedings within short duration. In any event, even if the proceedings commence after considerable time that does not cause any hardship to the establishment. Secondly, in the present case, the period in respect of which damages are levied is from March 1979 to February 1981 and the show cause notice was issued on August 26, 1981 and, in my judgment, it is impossible to suggest that the show cause notice was issued after a considerable delay. The petition, in my judgment, is without any merit and deserves to be dismissed.

6. Accordingly, rule is discharged with costs. It is open for the respondents to enforce the Bank guarantee.