The Commissioner of Coal Mines Provident Fund, Dhanbad and Others

Vs

J. P. Lalla and Sons

Civil Appeal No. 1363 of 1974

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

13.02.1976

JUDGMENT

RAY, C. J. -

1. This appeal by special leave turns on the question whether the Coal Mines Provident Fund Commissioner is to hear an employer before making an order requiring the employer to pay damages under Section 10F of the Coal Mines provident Fund and Bonus Scheme Act, 1948 (hereinafter referred to as the Act).

2. The employer being the respondent to this appeal was directed by a letter dated January 3/4, 1969 to pay provident fund contribution amounting to Rs. 5821.21 for the months of July to September, 1969 and damages at the rate of 25 percent on the above dues amounting to Rs. 1455.50. The employer was required to pay damages under the provisions of Section 10F of the Act.

3. The employer filed an objection explaining the circumstances under which there was delay in the payment of provident fund contributions. The employer prayed that damages might not be imposed at the rate of 25 per cent for the delay in payment. The employer paid the provident fund contributions. The employer was informed that damages charged on the delayed payments of provident fund contribution could not be waived.

4. The employer thereafter filed an application in the High Court for an order that the demand notice be quashed. The High Court acceded to the application of the employer. The High Court gave two reasons. First, that the computation of amount of damages should arise upon consideration of facts and circumstances and a mechanical computation of damages is not contemplated. Second, the authorities should have given opportunity to the employer to represent the case.

5. The High Court did not accept the contention of the employer that Section 10F of the Act suffered from the vice of excessive delegation.

6. The provisions contained in Section 10F of the Act are as follows :

Where an employer makes default in the payment of any contribution or bonus or any charges payable by him under any scheme framed under this Act, or where any person who is required to transfer provident fund accumulations in accordance with the provisions of Section 3D makes default in the transfer of such accumulations, the Central Government may recover from such employer or person, as the case may be, such damages, not exceeding twenty-five per cent of the amount of arrears, as it may think fit to impose.

7. The Central Government under sub-section (1) of Section 10C the Act is authorised to delegate any power exercisable by it under the Act, or any Scheme framed thereunder, to the Coal Mines Provident Fund Commissioner or any other officer.

8. The Central Government in exercise of the power conferred under Section 10C(1) of the Act by notification dated October 1, 1966 directed that powers exercisable by it under Sections 10A and 10F of the Act and specified in column (1) of the table attached to the notification shall, subject to the conditions specified in the corresponding entry in column (2) of the table attached, be exercisable by the Coal Mines Provident Fund Commissioner appointed under Section 3C(1) of the Act. There is a Schedule attached to the notification where sliding scale of damages has been fixed by the Central Government under Section 10F of the Act. The Schedule attached to the notification is as follows :

#Sliding rate of recovery of damages under Section 10F of the MinesProvident Fund and Bonus Schemes Act, 1949.-------------------------------------------------------------------S. No. of Period of dafaultdafault -------------------------------------------------------during One month Over One Over two Over three Over four Over fiveyear or less month months months months months up to up to up to up to two three four five months months months months-------------------------------------------------------------------1 2 3 4 5 6 7-------------------------------------------------------------------1st de- 20% of 5% of 10% of 15% of 20% of 25% offault arrears arrears arrears arrears arrears arrears2nd de- 5% of 10% of 15% of 20% of 25% of 25% offault arrears arrears arrears arrears arrears arrears3rd de- 10% of 15% of 20% of 25% of 25% of 25% offault arrears arrears arrears arrears arrears arrears4th de- 15% of 20% of 25% of 25% of 25% of 25% offault arrears arrears arrears arrears arrears arrears5th de- 20% of 25% of 25% of 25% of 25% of 25% offault arrears arrears arrears arrears arrears arrears6th or 25% of 25% of 25% of 25% of 25% of 25% ofsubseq- arrears arrears arrears arrears arrears arrearsuentdefault-------------------------------------------------------------------##

9. Under Section 7B of the Act the Coal Mines Provident Fund Commissioner or any other officer authorised in that be half by the Central Government may, by order, determine the amount due from any employer under any provision of this Act or any scheme framed thereunder and for this purpose may conduct such enquiry as he may deem necessary. Section 7B(3) also contemplates giving of reasonable opportunity to represent the case. The High Court held that the provisions of Section 7B are attracted in the case of an order relating to determination of damages for delay in payment of contribution under the Act.

10. The Solicitor General contended that Section 7B of the Act does not apply for two reasons. First, Section 7B of the Act would be applicable only where liability is to be determined. Neither liability to pay nor default in payment is disputed in the present case. Second, under Section 10F of the Act amount of damages is quantified and a personal hearing is not necessary because the employer has said everything in his representation and an order for payment of damages is not one of punishment.

11. The provisions contained in Section 7B of the Act indicate first that the Coal Mines Provident Fund Commissioner may determine the amount due from the employer, and, second, for this purpose he may conduct such enquiry as he may deem necessary. Therefore, an enquiry is contemplated. Section 7B(3) speaks of reasonable opportunity being given to an employer to represent his case. The provisions in Section 10F of the Act also indicate that determination of damages is not a mechanical process. The words of importance on Section 10F of the Act are "such damages not exceeding 25 percent of the amount of arrears as it may think fit to impose". Here the

two important features are these. First, the words of importance are "damages not exceeding 25 per cent". These words show that the determination of damages is not an inflexible application of a rigid formula. Second, the words "as it may think fit to impose" in Section 10F of the Act show that the authorities are required to apply their mind to the facts and circumstances of the case.

12. This Court in The India Sugars and Refineries Ltd. v. Amravati Service Co-op. Society Ltd. ((1976) 1 Scc 318), said that [p. 323, para 20]

situation in which a duty will arise to act judicially according to the natural justice cannot be exhaustively enumerated. A duty to act judicially will arise in the exercise of a power to deprive a person of legitimate interest or expectation that additional price would be paid. The facts which point to an exercise of powers judicially are the nature of the interest to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any, involved.

When a body or authority has to determine a matter involving rights judicially the principle of natural justice is implied if the decision of that body or authority affects individual rights or interests. Again, in such cases having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. (See State of Punjab v. K. R. Erry & Sobhag Rai Mehta ((1973) 2 SCR 405 : (1973) 1 SCC 120 : 1973 SCC (L & S) 63)).

13. The High Court was correct in holding that an opportunity should have been given to the damages were determined. The appeal, is, therefore, dismissed with costs.

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