Organo Chemical Industries and Another

Vs

Union of India and Others

Writ Petition No. 4319 of 1978

(V. R. Krishna Iyer, A. P. Sen JJ)

23.07.1979

JUDGMENT

SEN, J. –

1. This is a petition under Article 32 of the Constitution by M/s. Organo Chemical Industries, Sonepat directed against an order of the Regional Provident Fund Commissioner, Chandigarh, dated October 12, 1977, by which he imposed a penalty of Rs. 94,996.80 on the petitioners as damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for delayed remittances of the Employees' Provident Fund, Family Pension Scheme contributions of their employees, including their own contributions, and the administrative charges thereon.

2. Organo Chemical Industries, an 'establishment' within the meaning of Section 1(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') to which the Act applies, committed defaults in payments of Provident Fund and Family Pension Scheme dues for the period from March to October 1975 and again for the period from December 1975 to November 1976 to the extent of Rs. 92,687.00 and of administrative charges amounting to Rs. 2309.80 i.e. Rs. 94,996.80 in all. The Regional Provident Fund Commissioner, Chandigarh, accordingly, issued a show cause notice dated June 7, 1977 requiring the petitioners to show cause why damages should not be levied under Section 14-B of the Act. The notice was accompanied by a statement showing a break-up of the various amounts in arrears and the extent of delay in respect of each payment and the details of damages proposed to be imposed on the belated payments. The period of delay in payment of the amounts remitted varied from a few months to a year. It was proposed to levy damages at a uniform rate of hundred per cent on each of the amounts in arrears. In response to the notice, the petitioners tried to explain away the delay by alleging that it was due to difficulties beyond their control and, therefore, the payments could not be made in time viz., the facts that there were disputes between the partners of the firm as a result of which, there was a loss of Rs. 1,40,165.15, there was a power-cut of 60% by the Haryana Electricity w.e.f. May 6, 1974, which compelled the petitioner to purchase a generating set to tide over the difficulties and that the establishment had borrowed huge sums from the Haryana Financial Corporation and in payment of which it had defaulted for want of financial resources etc. It was, accordingly, contended that the default, if any, was not willful as they had no intention to commit a default. The Regional Provident Fund Commissioner after giving to the petitioners the opportunity of a hearing by his reasoned order dated August 16, 1977 considered in detail each of the grounds taken in mitigation of the defaults and came to the conclusion that none of the grounds alleged furnished a legal justification for the delay in making contributions in time. As regards the alleged dispute among the partners leading to a loss of Rs. 1,40,165.15, he observed :

> Even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time. Besides 50% of the contributions deposited late represented the employees' share which had been deducted from the employees wages and was a trust money with employer for deposit in the statutory fund. The delay in the deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration for relief.

With respect to the plea that the petitioners had been subject to a power-cut of 60% w.e.f. May 6, 1974 by the Haryana Electricity Board, he negatived the plea by observing that this restriction was not exclusive to them and further that no cause had been shown as to how this prevented them from depositing the provident fund dues in time. Even if the power-cut-had resulted in any substantial loss, it would have reduced the liability on the amount of provident fund dues also. He went on to observe that where an employer can pay wages, it is not conceivable why it cannot pay the provident fund dues. As regards the stand taken that the establishment had borrowed huge sums from the Haryana Financial Corporation and in repayment of which it had defaulted, he held that even if it were so, the fact did not absolve the establishment of its statutory obligation for deposit of provident fund dues in time. Similarly, the other reasons furnished like the purchase of a new generating plant or internal dispute among the partners and the dissolution of the partnership firm etc. did not constitute sufficient cause beyond the control of the petitioners to justify the late deposit of Provident Funds dues. He accordingly, concluded that the petitioners had failed to carry out their obligation to contribute to the Employees' Provident Fund and Family Pension Scheme within the time-limit provided therefor, and that no convincing case had been made out to justify the delay in making the deposit. He also on the material on record found, as a fact, that the petitioners, having regard to their past record, were 'habitual defaulters' and had, therefore, to be severely dealt with, and should be visited with the maximum penalty.

3. The petitioners are guilty of suppressio veri and this, by itself, was sufficient to dismiss the writ petition, but, since it involves a point of importance which was argued at length, we will have to deal with the same.

4. There can be no doubt that the petitioners have been habitual defaulters in the matter of making contributions to the Employees' Provident Fund, Family Pension Scheme and payment of administrative charges from the very inception. They have deliberately concealed the facts pertaining to the earlier defaults and the attendant levy of damages under Section 14-B of the Act. For the period between November 1970 and January 1971, again for the periods between October 1971, February 1972, March and April 1973, August to October 1973, January and February 1974, then again for the period March 1974, May to August 1974, October and December 1974, and January 1975, they made delayed payments of the Employees' Provident Fund and Family Pension Scheme Contributions and consequently the Regional Provident Fund Commissioner after notice to them under Section 14-B and after considering the objections raised and hearing the petitioners, imposed damages amounting to Rs. 223.35, Rs. 2,452.40 and Rs. 15,214.05 for the periods in question respectively, which they deposited on February 17, 1972, September 25, 1975 and December 13, 1976.

5. It would thus be manifest that the petitioners instead of making their contributions, deliberately made willful defaults on one pretext or another and have been utilising the amounts deducted from the wages of their employees, including their own contributions as well as administrative charges, in

running their business. The Regional Provident Fund Commissioner, therefore, rightly observed that the petitioners having regard to their past record must be visited with the maximum penalty.

6. Taking an overall view, the Regional Provident Commissioner, by his reasoned order dated October 12, 1977, adverted to the fact that the petitioners were habitual defaulters and, therefore, deserve to be dealt with sternly so as to bring home the deterrent effect of damages under Section 14-B of the Act and, accordingly, directed recovery of Rs. 94,996.80 at the rate of hundred per cent i.e. equivalent to the amount in arrears, for the delayed payment of contributions to the Employees' Provident Fund, the Family Pension Fund and administrative charges, as detailed below :

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1. Damages on delayed payment of provident fund and family pension fund contributions required to be deposited under Section 6 .. Rs. 92,687.00
2. Damages on delayed payment of administrative charges .. .. Rs. 2,309.80

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This was pre-eminently a fit case for imposition of punitive damages to ensure due compliance of the provisions of the Act.

7. Before stating the contentions raised by learned counsel for the petitioners, we think it convenient to set out the scheme of the Act and the relevant provisions thereof having a bearing on the question to be determined. It would be relevant to take into account some of the provisions of the Provident Funds Act which have since its inception in 1952, been subjected to various amendments. The Provident Funds Act, 1952 as originally enacted, provided for the institution of compulsory provident funds for employees in factories and other establishments. It applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and to any other establishment employing twenty or more persons or class of such establishments which the Central Government may specify in that behalf by notification in the Official Gazette. Under Section 4, the Central Government framed the Employees' Provident Funds Scheme, 1952 by S.R.O. 1509, dated September 2, 1952. Section 6 of the Act enjoins on every employer to make contribution to the Employees' Provident Fund at the rate 6 1/4 of the basic wages, dearness allowance, retaining allowance, if any, for the time being payable to each of the employees and the employees' contribution shall be equal to the contribution by the employer in respect of him. The employees at his option may, however, increase the contribution to the extent of 8 1/3 per cent.

8. The initial responsibility for making payment of the contribution of the employer as well as of the employees, lies on the employer, Para 30 of the Scheme makes it incumbent on the employer that he shall, in the first instance, pay both the contribution payable by himself and also on behalf of the member employed by him. Under para 38, the employer is authorised before paying the member employee his wages in respect of any period or part of period for which contributions are payable, to deduct the employee's contribution from his wages. It further provides that the deposit of such contribution shall be made, by the employer within fifteen days of the close of every month, i.e., a contribution for a particular month has got to be deposited by the 15th day of the month following. A breach of any of these requirements is made a penal offence. Section 14 of the Act provides of penalties. Failure to comply with the requirement which may extend to a period of six months, or with fine which may extend to one thousand to two thousand rupees, under the provisions of Section

14, depending upon the nature of the breach, viz., failure to pay the contributions, or failure to submit the necessary returns, or failure to pay administrative charges. Section 14-A provides for offences by companies and other corporate bodies. Para 76 of the scheme provides for punishment for failure to pay contributions etc., and in particular by clause (d), every employer guilty of contravention of non-compliance with the requirements of the scheme, shall be punishable with imprisonment which may extend to six months or with fine of Rs. 1000.

9. Parliament amended the Act by Act No. 16 of 1971, and it was re-entitled as the 'Employees' Provident Funds and Miscellaneous Provisions Act, 1952,. It inserted Section 6-A in the Act for the establishment of the Family Pension Fund. In exercise of the powers conferred by Section 6-A, the Central Government framed the Employees' Family Pension Scheme, 1971 by GSR 315, dated March 4, 1971. Under Para 4 of the Scheme, every employee who is a member of the Employees' Provident Fund, is given the option to join the Family Pension Scheme. Para 9 created the Family Pension Fund and provides that from and out of the contributions payable by the employer and employees in each month under Section 6 of the Act, a part of the contribution, representing 1 1/6% of the employees' pay along with an equivalent amount of 1 1/6% from out of the employer's contribution, shall be remitted by the employer to the Family Pension Fund.

10. In its working, the authorities were faced with certain administrative difficulties. An employer could delay payment of Provident Fund dues without any additional financial liability. Parliament, accordingly, inserted Section 14-B for recovery of damages on the amount of arrears. The reason for enacting Section 14-B is that employers may be deterred and thwarted from making defaults in carrying out statutory obligations to make payments to the Provident Fund. The object and purpose of the section is to authorities the Regional Provident Fund Commissioner to impose exemplary or punitive damages and thereby to prevent employers from making defaults. Section 14-B, as originally enacted, provided for imposition of such damages, not exceeding 25% of the amount of arrears. This, however, did not prove to be sufficiently deterrent. The employers were still making defaults in making contributions to the Provident Funds, and in the meanwhile utilising both their own contribution as well as the employees' contribution, in their business. The provision contained in Section 14-B for recovery of damages, therefore, proved to be illusory. Accordingly, by Act No. 40 of 1973, the words 'twenty-five per cent of ' were omitted from Section 14-B and the words 'not exceeding the amount of arrear' were substituted. The intention is to invest the Regional Provident Fund Commissioner with power to impose such damages that the employer would not find it profitable to make defaults in making payments.

11. In support of the petition, learned counsel for the petitioners assails the impugned order on two grounds, namely, (i) Section 14-B of the Act is violative of Article 14 of the Constitution as it confers unguided, uncontrolled and arbitrary power on the Regional Provident Fund Commissioner to impose damages which may be to the extent of 100% i.e., equal to the amount of arrears. The conferral of such unguided, uncanalised and arbitrary power on the Regional Provident Fund Commissioner to arrive at a decision, without any guidelines whatsoever, makes Section 14-B constitutionally invalid as offending against Article 14, and (ii) Section 14-B deals with the power to recover damages. It is not the power to impose penalties. The word 'damages' in Section 14-B must, therefore, be understood in the legal sense. Damages must have some corelation with the loss suffered as a result of delayed payments. The authority imposing the penalty or damages must, therefore, apply its mind to this aspect of the matter. The defaulting employer under Section 14-B is accordingly, liable to pay damages which represents the loss to the benefits the loss to the beneficiaries of the scheme, such as recovery of interest; but not anything more, as such recovery would amount to penalty, and that is not permitted under the section. There is no substance in any of

the contentions.

12. Section 14-B of the Act reads as follows :

> Power to recover damages. - Where an employer makes defaults in the payment of any contribution to the Fund (the Family Fund of the Insurance Fund) or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 (for sub-section (5) of Section 17) or in the payment of any charges payable under any other provision of this Act or of (any scheme or Insurance Scheme) or under any of the conditions specified under Section 17, (the Central Provident Fund Commissioner, or such other officer as may be authorised by the Central Government, by notification in the Official Gazette in this behalf) may recover from the employer such damages, not exceeding the amount of arrear, as it may think fit to impose :
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> Provident that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

13. The contention that Section 14-B confers unguided and uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such damages 'as he may think fit' is, therefore, violative of Article of the Constitution, cannot be accepted. Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under Section 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statutes. Having regard to the punitive nature of the power exercisable under Section 14-B and the consequences that ensue therefrom, an order under Section 14-B must be a 'speaking order' containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word 'damages' the liability for which in Section 14-B arises on the 'making of default '. While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he as done here, various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word 'damages' in Section 14-B lays down sufficient guidelines for him to levy damages.

14. Learned counsel for the petitioners, however, contends that in the instant case, the period of arrears varies from less than one month to more than 12 months and, therefore, the imposition of damages at the flat rate of hundred per cent for all the defaults irrespective of their duration, is not only capricious but arbitrary. The submission is that if the intention of the legislature was to make good the loss cause by default of an employer, there could be no rational basis to quantity the damages at hundred per cent in case of default for a period less than one month and those for a period more than than 12 months. It is urged that the fixation of upper limit at hundred per cent is no guideline. If the object of the legislation is to be achieved, the guidelines must specify a uniform method to quantify damages after considering all essentials like loss or injury sustained, the circumstances under which the default occurred, negligence, if any, etc. It is said that the damages under Section 14-B, which is the pecuniary reparation due, must be correlated to all these factors. In support of his contention, he drew our attention to Section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1958, which uses the words 'damages not exceeding twenty-five per cent' like Section 14-B of the Act, and also to a tabular chart provided under that Act itself showing that the amount of damages was correlated to the period or arrears. We regret, we cannot appreciated this

line of reasoning. Section 10-F of the of the 1958 came up for consideration before this Court in Commissioner of Coal Mines Provident Fund, Dhanbad v. J. P. Lalla ((1976) 3 SCR 365 : (1976) 1 SCC 964 : 1976 SCC (L&S) 161 : AIR 1976 SC 676). This Court observed, firstly, that the determination, of damages is not 'an inflexible application of a rigid formula : and secondly, the word 'as it may think fit to impose' show that the authority is required to apply its mind to the facts and circumstances of the case. The contention that in the absence of any guidelines for the quantification of damages, Section 14-B is violative of Article 14 of Constitution, must therefore, fail.

15. In this connection, it was also urged that the absence of any provision for appeal, leaves the defaulting employer with no remedy. The conferral of arbitrary and uncontrolled powers on the Regional Provident Fund Commissioner to quantify damages, it is said, without a corresponding right of appeal or revision, makes the provision contained in Section 14-B per se void and illegal and it is liable to be struck down on that ground. We are afraid the contention is wholly devoid of substance. Mere absence of provision for an appeal does not imply that the Regional Provident Fund Commissioner is invested with arbitrary or uncontrolled power, without any guidelines. The conferral of power to award damages under Section 14-B is to ensure the success of the measure. It is dependent on existence of certain facts; there has to be an objective determination, not subjective. The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of section 14-B but is cast with the duty of making a "speaking order", after conforming to the rules of natural justice.

16. This Court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such high authority will not be abused. The Government or such authority is in a position to have all the relevant and necessary information in relation to each kind of establishment, the nature of defaults made by the employer, and the necessity to decide whether the damages to be imposed should be exemplary or not : Mohmedalli v. Union of India (1963 Supp 1 SCR 993 : AIR 1964 SC 980 : (1963) 1 LLJ 536). It was stated in K. L. Gupta v. Bombay Municipal Corporation ((1968) 1 SCR 274 : AIR 1968 SC 303 : (1969) 1 SCJ 392) that when power has to be exercised by one of the highest officers, the fact that no appeal has been provided for 'is a matter of no moment. The same view was reiterated in Chinta Lingam v. Government of India ((1971) 2 SCR 871 : (1970) 3 SCC 768 : AIR 1971 SC 474). There is always a presumption that public officials would discharge their duties honestly and in accordance with the rules of law. This was emphasised in Pannalal Binjraj v. Union of India (1957 SCR 233 : AIR 1957 SC 397 : (1957) 31 ITR 565), stress being laid on the power being vested not in any minor official but in top-ranking authority. In the circumstances, the absence of a provisions for appeal or revision can be of no consequence.

17. Turning now to the main question, the contention is that Section 14-B of the Act does not authorised levy of any penal damages, i.e., a penalty or fine but deals with the power to recover damages. It is not the power to impose a penalty on the defaulting employer the maximum amount of damages that can be recovered has been indicated in the section, it is submitted that the damages must have some corelation with the loss suffered as a result of delayed payments and the authority imposing damages must apply its mind to this aspect of the matter. The defaulter under Section 14-B is, therefore, liable to pay damages which represents the actual loss, but not anything more, as such recovery would amount to penalty and that is not permitted under the section. In support of his submissions, he has referred to certain authorities.

18. It is argued that the damages referred to in Section 14-B is different from penalty or fine and is intended to compensate the loss to the beneficiaries of the scheme. It has only the ordinary legal meaning of the term 'damages' viz. actual loss as in law of Contract or Tort. Thus the award of damages under Section 14-B must be, in essence, the pecuniary reparation for loss or injury sustained by one person through the fault or negligence of another.

19. There is a conflict of opinion between different High Courts as to the meaning of the word 'damages' in Section 14-B of the Act. According to some of the High Courts, the word 'damages' in Section 14-B means actual loss to the beneficiaries. The view is that Section 14-B clearly indicates that an employer is liable to pay damages, if he has made default in payment of the contribution. Any delay in paying the amount under Section 6 causes loss to the beneficiaries of the Scheme, such as loss of the interest and the like. This is the loss that is sought to be recovered from the defaulting employer for the purpose of indemnifying the beneficiaries of the Scheme, namely, the employees to the extent of the loss suffered by them. The defaulter under Section 14-B is, therefore, liable to pay damages which represent the loss, but not anything more, as such recovery would amount to penalty, and that is not permitted under the section. It is, therefore, held by these High Court that the damages to be imposed under Section 14-B should have corelation with the loss suffered and that damages under Section 14-B are intended to compensate the loss to the beneficiaries of the Scheme. With respect, these High Courts have obviously fallen into an error in reading the word 'damages' in Section 14-B in isolation, by trying to construe the word in a purely legalistic sense. These High Courts have over looked that we are not concerned in interpreting what damages means in the realm of Contract or Tort but the word had to be given its true meaning, in consonance with the objects and purpose of the legislation.

20. The learned Additional Solicitor General brought to our notice the conflict of opinion between the different High Courts on the Construction of the word 'damages' used in Section 14-B and submitted that this has given rise to confusion in the mind of those charged with the duty of administering the Act. He wants that the conflict should be resolved by placing a proper construction on the word 'damages' in Section 14-B, in the larger public interest, as the question is one of frequent occurrence. He rightly contends that the word 'damages' in Section 14-B must, in the context in which it appears, mean penal damages i.e. a penalty and not merely actual loss to the beneficiaries. He submits that if the word 'damages' appearing therein, were to mean actual loss to the beneficiaries and not anything more, as some of the High Courts have held, it would make the Act unworkable. He also points out that some of the High Courts have taken a view to the contrary. According to these High Courts, the expression 'damages' is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of the legislature in enacting Section 14-B is clearly to punish the recalcitrant employers.

21. The traditional view of damages as meaning actual loss does not take into account the social content of a provision like Section 14-B contained in a socio-economic measure like the Act in question. The word 'damages' has different shades of meaning. It must take its colour and content from its context, and it cannot be read in isolation, nor can Section 14-B be read out of context. The very object of the legislation would be frustrated if the word 'damages' appearing in Section 14-B of the Act was not construed to mean penal damages. The imposition of damages under Section 14- serves a two-fold purpose. It results in a damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults.

22. The expression 'damages' occurring in Section 14-B is, in substance, a penalty impose 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 employer '. 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 provides reparation for the amount of loss suffered by the employees. It is not only a warning to employers in generally 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 the damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme. The word 'damages' in Section 14-B is related to the word 'default' The words used in Section 14-B are 'default in the payment of contribution' and, therefore, the word 'default' must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word 'default' in Section 14-B must mean 'failure in performance' or 'failure to act '. At the same time, the imposition of damages under Section 14-B is to provide reparation for the amount of loss suffered by the employees.

23. The construction that we have placed on the word 'damages' appearing in Section 14-B of the Act, is in accord with the intent and purpose of the legislation. It was brought on the statute book by Act 37 of 1953. The objects and reasons so far material, read :

> There are also certain administration difficulties to be set right. There is no provision for inspection of exempted factories nor is there any provision for the recovery of dues from such factories. An employer .... can delay payment of Provident Fund dues without any additional financial liability. No punishment has been laid down for contravention of some of the provisions of the Act.

The object and purpose of the section is to authorise the Regional Provident Fund Commissioner exemplary or punitive damages and thereby prevent employers from making defaults. The provision for imposition of damages at twenty-five per cent of the amount of arrear, however, did not prove to be effective. Accordingly, by Act 40 of 1973, the words 'not exceeding the amount of arrear' were substituted, for the words 'twenty-five per cent '. The necessity for making this change is brought out in the objects and reasons, a material portion of which reads :

> STATEMENT OF OBJECTS AND REASONS
>
> (Act 40 of 1973)
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> The working of the Employees' Provident Fund and Family Pension Fund Act, 1952 and the Employees' Provident Fund Scheme has revealed that the present provisions of the Act and the Scheme are not effective in preventing defaults in payment of contributions to the Employees' Provident Fund or in recovery of the dues on that account. The result is that the amount of Provident Fund arrears recoverable from the employers has been steadily increasing. In 1959-60, the arrears which amounted to Rs. 3.65 crores, rose to Rs. 5.96 crores as on March 31, 1967. The arrears stood at Rs. 14.6 crores on March 31, 1970 and they have risen to Rs. 20.65 crores as on March 31, 1972.
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> 2. The National Commission on Labour has recommended that in order to check the growth of arrears, penalties for defaults in payment of Provident Fund dues should be

made more stringent and that the default should be made cognisable. In its 116th Report presented to Parliament in April 1970, the Estimates Committee has endorsed the recommendations made by the National Commission on Labour and had further suggested that Government should consider the feasibility of providing compulsory imprisonment for certain offences under the Act. Accordingly, it is proposed to amend the Act so as to render the penal provisions more stringent and to make defaults cognisable offences. Provision is also being made for compulsory imprisonment in cases of non-payment of contributions and administration or inspection charges. As recommended by the Estimates Committee, a further provision is being made to enable levy of damages equal to the amount of arrears from a defaulting employer.

Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words 'devoid of concept or purpose' will reduce most of legislation to futility. It is a salutary rule, well established, that he intention of the legislature must be found by reading the statute as a whole.

24. There appears to be a misconception that the object of imposition of penalty under Section 14-B is not 'to provide compensation for the employees' whose interest may be injured, by loss of interest and the like. There is also a misconception that the damages imposed under Section 14-B are nor transferred to the Employees' Provident Fund and the Family Pension Fund, of the employees who may be adversely affected, but the amount is transferred to the General Revenues of the appropriate Government. We find that this assumption is wholly unwarranted. In assessing the damages, the Regional Provident Fund Commissioner is not only to take into account the loss to the beneficiaries but also the default by the employer in making his contributions, which occasions the infliction of damages. The learned Additional Solicitor-General was fair enough to concede that the entire amount of damages awarded under Section 14-B, except for the amount relatable to administrative charges, must necessarily be transferred to the Employees' Provident Fund and Family Pension Fund. We hope those charged with administering the Act will keep this in view while allocating the damages under Section 14-B of the Act to different heads. The employees would, of course, get damages commensurate with their loss i.e., the amount of interest on delayed payments; but the remaining amount should go to augment the 'Fund ' constituted under Section 5, for implementing the Scheme under the Act.

25. The result, therefore, is that this writ petition fails and is dismissed with costs.

Krishna Iyer, J. (concurring). –

Having had the advantage of reading my learned brother's judgment I should have stopped mine with a single sentence, following the example of Diplock, L.J. who in Hughes v. Hughes (See Foot-note 49 in Law and Politics by Robert Stevens) merely said : 'For the reasons given by my brother Harman I would dismiss the appeal '. But I respect brother Sen's request that my concurrence not-withstanding I should, in a separate opinion, highlight the quintessential aspects and reinforce the legal conclusions which are interpretatively decisive and constitutionally validatory of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (briefly, the E.P.F. and M.P. Act). This is the apology for this separate judgment of mine. Why an apology ? Because exordiums are opprobriums and socio-economic apercus are anathemas for some judicial psyches; and I should have, for that reason, abandoned my habitual deviance from the orthodox norm idealised by some that a judicial judgment shall be a dry statement of facts, drier presentation of law

and logomachy and driest in least communicating to the law-abiding community, which is the court's constituency, the glow of life-giving principles rooted in social sciences and translated into juristic rules which legitimate our institution functionally. The last consideration, in my humble view, is the elan vital of the justicing process and jettisoning it is judicial self-alienation from the nation. Of course, minds differ as rivers differ and habits die hard !

27. The central issues in this civil appeal are whether Section 14-B of the E.P.F. and M.P. Act is unconstitutional and, if not, what is the semantic-justice sweep of the expression 'damages' used therein. Other vital but peripheral matters may be side-stepped for the nonce, especially because my learned brother has neatly and rightly dealt with them. The factual setting of the case, without which the legal contentions argued lose their luscent relevance, have been stated by my brother Sen, J. but I may project them in a single sentence to help focus on the vires of Section 14-B and the conceptual width of 'damages' in the given context. Is the imposition by the 'speaking order' of the Regional Provident Fund Commissioner, Chandigarh, of a heavy penalty of Rs. 94,996.80 by way of damages under Section 14-B of the E.P.F. and M.P. Act, 1952 upon the writ petitioners-employers, for chronic and unjustified defaults in remittances of the provident fund contributions of themselves and their employees legally sustainable, if obviously in excess of the pecuniary loss of interest attributable to the non-payment ? Briefly and broadly and lopping off aspects unnecessary for this case the scheme of the Act is that each employer and employee in every 'establishment' falling within the Act do contribute into a statutory fund a tittle, viz. 6 1/4 per cent of the wages to swell into a large Fund where-with the workers who toil to produce the nation's wealth during their physically fit span of life may be provided some retrial benefit which will 'keep the pot boiling' and some source wherefrom loans to face unforeseen needs may be obtained. This social security measure is a humane homage the State pays to Article 39 and 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory till.

28. The pragmatics, of the situations is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries whey they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers' share. 'Damages' have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual.

29. We may read Section 14-B and Para 38 of the Scheme to vivify the discussion :

> 14-B. Power to recover damages. - Where an employer makes defaults in the payment of any contribution to the Fund (the Family Fund or the Insurance Fund) or in the transfer of accumulations required to be transfer by him under sub-section (2) of Section 15 (for sub-section (5) of Section 15) or in the payment of any charges payable under any other provision of this Act or of (any scheme or Insurance Scheme) or under any of the conditions specified under Section 17, (the Central Provident Fund Commissioner, or such officer as may be authorised by the Central Government by notification in the Official Gazette in this behalf) may recover from

the employer such damages, not exceeding the amount of arrear, as it may think fit to impose :

Provident that before levying and recovering such damages the employer shall be given a reasonable opportunity of being heard.

38. Mode of payment of contribution. - (1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employer's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the total employer's and employee's contribution as may be fixed by the Central Government, he shall within fifteen days of the close of every month pay to the Fund by separate Bank or cheques on account of contributions and administrative charge .....

(2) The employer shall forward to the Commissioner, within fifteen days of the close of the month, a monthly consolidated statement in such form as the Commissioner may specify, showing recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee.

30. Counsel for the petitioners has turned the constitutional fusillade on Section 14-B by charging it with many-sided, in-built arbitrariness and therefore liable to be fatally short down by Article 14. The provision is simple and the contention is familiar. The offending words of Section 14-B are that 'the Provident Fund Commissioner may recover from the employer such damages, not exceeding the amount of arrear as it thinks fit to impose '. Within the limit of 100 per cent, the enforcing agency is vested with naked and unguided power to inflict any quantum of damages as he fancies and this blanket authority is instinct with discriminatory possibility possibility, a vice to which Article 14 is very allergic. No reasons need be given, no appellate or revisional review is prescribed and no judicial qualification is required for the Commissioner. This tiny statutory tyrant must be slain if equal justice under the law were to be part of our fundamental rights package. So runs the argument-traditional, attractive and near-lethal. Indeed, if executive fiats released from legal restrains, were free to run amok, our freedoms would be frothy boasts ! Sedulous scrutiny of this submission of counsel is our solemn duty since I share with him the pensive thought that arrogance of power dressed in little, brief authority is the undoing of our constitutional order. And yet, here the mini-Nero portrait is too naive to meet with approval.

31. A shower of precedents has rained on Article 14 but the cardinal principles have sunk so deep into the constitutional consciousness of the juristic community that recapitulation of citations is an act of supererogation. I desist from it.

32. The power to affect citizen's rights, especially by way punitive impost or damages for wrongdoing, is quasi-judicial in character even if exercised by executive echelons. This Court has underscored the importance of injecting the norms of natural justice when statutory functionaries affect the rights of a person. The most recent of the cases which lay bare the elementals of this branch of jurisprudence are : (1) Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India ((1976) 2 SCC 981 : 1976 Supp SCR 489); (2) Maneka Gandhi (Mrs.) v. Union of India ((1978) 1 SCC 248 : (1978) 2 SCR 621) and (3) Mohinder Singh Gill v. Chief Election Commissioner, New Delhi ((1978) 1 SCC 405 : (1978) 2 SCR 272).

33. In Siemens case this Court observed : (SCC p. 986, para 6)

It is now settled law that there where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Tasteless Ltd. ((1979) 3 SCC 225).

Fair play in Administration is a finer juristic facet, at once fundamental and inviolable and natural justice is an inalienable functional component of quasi-judicial acts. Here, it is indubitable that the imposition of damages on a party, after a statutory hearing, is a quasi-judicial direction. This Court has impressed the requirements of natural justice on such jurisdictions and one such desideratum is spelling out reasons for the order made, in other words, a speaking order. The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance. It is, in my view, an imperative of Section 14-B that the Commissioner shall give reasons for his order imposing damages on an employer. The constitutionality of the power, tested on the anvil of Articles 14 and 19, necessitates this prescription, Such a guarantee ensures rational action by the officer, because reasons imply relevant reasons, not capricious ink and the need for cogency rivets the officer's mind to the pertinent material on record. Moreover, once reasons are set down, the order readily exposes itself to the writ jurisdiction of the court under Article 226 so that perversity, illiteracy, extraneous influence, mala fides and other blatant infirmities straight get caught and corrected. Thus, viewing the situation from the conspectus of requirements and remedies, statutory agencies may be inhibited and the scare of arbitrary behaviour allayed once reasons are required to be given.

34. Nor is the plea of absence of guidelines or appellate review sound enough to subvert the validity of Section 14-B. It is attractive to hear the argument that an order passed by an authority, which becomes infallibly final in the absence of an appeal or revision, is apt to be arbitrary and bad. An appeal is a desirable corrective but not an indispensable imperative and while its presence is an extra check on wayward orders its absence is not a sure index of arbitrary potential. It depends on the nature of the subject-matter, other available correctives, possible harm flowing from wrong orders and a wealth of other factors.

35. If a death sentence is allowed to become conclusive without so much as a single appeal, Article 14 and 21 may imperil such a provision but if a fine of Rs. 5 imposed for a minor offence in a summary trial by a first Class Magistrate is imparted a finality, subject, of course, to a constitutional remedy in the event of perverse or patent illegality we may still uphold that provision with an easy constitutional conscience. In the present case, a hearing is given to the affected party. Reasons have to be recorded in the order awarding damages. The writ jurisdiction is ready to review glaring errors. The maximum harm is pecuniary liability limited by the statute. A high official hears and decides. Under such circumstances the needs of the factual situation and the legal milieu are such that the absence of appellate review in no way militates against the justice and reasonableness of the provision. The argument of arbitrariness on this score is untenable. The section is not bad. May be, action under the section may be challenged in writ jurisdiction provided infirmities which attract such jurisdiction vitiate the order.

36. The bogie of absence of guidelines in the provision and consequential possibility of the authority running berserk or acting hubristically does not frighten. Of course, the more bereft of explicit guidelines a statutory power is, the more searching must be the judicial invigilation to discover hidden injustice and masked mala fides. Even so, let us examine the ground that, absent detailed guidelines, the law is void. What is not explicit may still be implicit. What is not articulated

at length may be spun out from a single phrase. What is not transparent in particularised provisions may be immanent in the preamble, scheme, purpose or subject-matter of the Act. What is real is not only the gross but also the subtle, if I may strike a deeper note. Such a perspective dispels the submission that Section 14-B is bad as uncircumscribed and over-broad.

37. The power under the section permits award of 'damages' and that word has a wealth of implications and limitations, sufficient to serve as guideline in fixing the impost. In Avinder Singh case (Avinder Singh v. State of Punjab, (1979) 1 SCC 137 : (1979) 1 SCR 137) this Court upheld an otherwise unbridled power to levy tax by importing a variety of factors gathered from the statute and relied on many precedents. Likewise, in Radhakrishan case (C. S. T. v. Radhakrishan, (1979) 2 SCC 249, 257 : 1979 SCC (Tax) 108) this Court rejected the plea that a power in the Commissioner to choose one of the two remedies was invalid in the absence of guidelines and observed, on a review of the case-law :

> When power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties and the circumstances under which they will choose either of the remedies available should be left to them. The vesting of discretionary power in the State or public authorities or an officer of high standing is treated as a guarantee that the power will be used fairly and with a sense of responsibility.

It has been held by the Privy Council in Province of Bombay v. Bombay Municipal Corporation (73 IA 271 : AIR 1947 PC 34), that every statute must be supposed to be for public good at least in intention and therefore of few laws can it be said that the law confers unfettered discretionary power since the policy of law offers guidance for the exercise of discretionary power.

Although our democratic ethos is incongruous with the assumption that highly paid officials are more responsible than low-paid minions, the jurisprudence of power must be applied workably and not untouched by reality. More to the point is the decision in Kaushal case (P. N. Kaushal v. Union of India, (1978) 3 SCC 558). There this Court accepted the submission that the seemingly naked power under Section 59 of the Punjab Excise Act was guided by the requirement that it was to be exercised for control of consumption of intoxicants. (The whole scheme of the statute proclaims its purpose of control in time space and otherwise observed the Court). Here the conceptual limitations of 'damages' serve as guideline and barricade the exercise. The Commissioner cannot award anything more than or unrelated to 'damages'. Nor can he go beyond 100% of the amount defaulted. Such limitations without further guidelines are not uncommon in taxing laws to penalise defaults and suppressions.

38. What do we mean by 'damages' ? The expression 'damages' is neither vague not over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrongdoing of another, (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, 'exemplary damages' are damages on an increased scale, awarded to the plaintiff over and above what will

barely compensate him for his properly loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory", damages or "vindictive" damages, and (vulgarly) "smart-money". (See Black's LAW DICTIONARY, 4th Ed., pp. 467-468). It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14-B is good for these reasons.

39. 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.

40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, be deducting from the worker' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys 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 contributory 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. For, judicial in interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed :

> The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty.

41. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages's larger, fulfilling meaning.

42. What are the strands which make the fabric of 'damages' under the Article ? I have stated earlier that the composite idea of 'damages' includes more than pecuniary compensation. Moreover, the injured party is the Board of Trustees who administer the Fund. That Fund not merely loses the interest consequent on the non-payment but receives a shock in that its scarce resources are further by famished employers' default. There is great social injury to the scheme when employers default in numbers. So the lash of the law is delivered when its objects is frustrated. What is more denunciatory is the fact that the employer makes deductions from the poor wages of the workers (and makes them suffer to that extent) and diverts even those sums for his private purposes by failing to make prompt remittances. Thus, default in contributions is compounded by embezzlement, as it were. Naturally, damages will take an exemplary character and inflict a heavy blow on the shady defaulter.

43. I am clearly of the view that 'damages', 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.

44. This Court has in R. S. Joshi, S. T. O. v. Ajit Mills Ltd. ((1977) 4 SCC 98), considered the constitutionality of a penal forfeiture and a bench of seven judges in that case has upheld it.

45. A Patna decision (R. B. H. N. Jute Mills v. Provident Fund Commissioner, (1958) 1 LLJ 598 (Pat HC) : ILR 37 Pat 47) where the levy of damages was attacked as violative of Article 20(2) has taken the view that the amount of damages imposed under Section 14-B is penal in character. Of course, the learned judges repelled the application of Article 20(2) of the Constitution to this situation but made some observations which are misleading. The Court there took the view that the damages imposed under Section 14-B are transferred to the general revenues of the appropriate government and went on to observe :

> In other words, the infliction of the damages under Section 14-B is not meant to provide compensation or redress to the employees whose interest may be injured. It is not meant to provide reparation to such employees and the quantum of damages imposed has no relation to the amount of loss suffered by the employees. I consider that the infliction of the damages under Section 14-B is penal in its nature. It is a warning to employers in general not to commit a breach of the statutory rule.

46. The above observations, in my view, are unsound and I am happy to record that my learned brother take the same view, although in his separate judgment this aspect has not been expressly considered. I speak for both of us. The damages are levied under the Act. The authority levying penal damages is created by the Act and is responsible for the collection of contributions and damage for the Fund. It is not possible to dichotomise and hold that the contributions go into the Provident Fund but the rest of the damages go into the general revenues. This is not a fine under the criminal law. Nor is it recovery, on behalf of the Government of amounts under a general statute for purposes of revenue. A special statute creating a special fund, empowers special officers to recover specially designated contributions and special damages for default. The entire sum belongs to the Fund except perhaps the administrative charges which are usually (as in this case) separately indicated. In our view, therefore, it is wrong to credit the damages into the general revenues. To that extent it is a breach of the statutory scheme and a deprivation of what belongs to the workers' Provident Fund. Indeed, employees are a needy community and if the Fund is replenished by damages the scheme can be improved and the benefits augmented. We, therefore, express the view that if any State is diverting damages under the Act into its own confers, it is improper. Lazarus can ill-afford to lose even a little. State and citizen alone is subject to the rule of law.

47. I am in full agreement with the concluding statement regarding the disposition of the damages made in my learned brother's judgment.

48. The learned Additional Solicitor General was fair enough to concede that the entire amount of damages awarded under Section 14-B, except for the amount relatable to administration charges

must necessarily be transferred to the Fund constituted under the Act. We hope that those charged with administering the Act will keep this in view while allocating the damages under Section 14-B of the Act to different heads. The employees would, of course, get damages commensurate with their loss, that is, the amount of interest on delayed payment but the remaining amount should go to augment the Fund constituted under Section 5 for implementing the schemes under the Act.

49. In this view I direct the appropriate Government to credit the sums allocable to the Fund so that the damages may reach where it belongs.

50. I wholly agree with my learned brother, for the reasons I have given. The writ petition deserves to be and is hereby dismissed with costs.

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