Item No.5 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Execution Application No.03/2023(WZ)
[Earlier O.A. No.11/2023(WZ)]
In
Original Application No.01/2020(WZ)
I.A No.42/2023(WZ) & I.A. No.210/2023(WZ)

Razzak Rajmohammad Baig & Ors.

.....Applicant(s)

Versus

The District Collector, Ahmednagar & Ors.

....Respondent(s)

Date of hearing: 18.10.2023

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant	:	Mr. K.B. Katake, Advocate
Respondent(s)	:	Mr. Anirudha Kulkarni, Advocate for R-7& 8/MPCB Mr. Saurabh Kulkarni, Advocate along-with Ms. Siddhi Mirghe, Advocate for R-12

ORDER

<u>I.A. No.210/2023(WZ)</u>

1. This I.A. has been filed by the respondent No.12/Balasaheb Janardhan Murdare seeking recall of order dated 08.08.2023 passed by this Tribunal in the present matter, where-in it is submitted that there have been material lapses on the part of Respondent Nos.7 & 8/MPCB in offering an opportunity of hearing to the Respondent No.12/ Balasaheb Janardhan Murdare. The Respondent Nos.7 & 8/MPCB have imposed compensation for environmental damages without any material on record or evidences to that effect nor have they provided any calculation for imposing the said compensation. The Respondent Nos.7 & 8/MPCB have not proved that there has been any damage caused to the environment.

The Respondent Nos.7 & 8/MPCB ought to have considered that there was substantial delay at their end in granting consent to the applicant. Therefore, this Original Application needs to be dismissed.

2. A copy of this I.A. is said to have been served upon all other parties including the applicant but no written objection has been filed.

3. The learned counsel Mr. Anirudha Kulkarni representing respondent Nos.7 & 8/MPCB has orally opposed this application, alleging that the order dated 06.07.2023 passed by the respondent Nos.7 & 8/MPCB, where-by the calculation of environmental compensation of Rs.29,62,500/- was made for the period from 01.12.2016 to 20.03.2018 to be levied from the respondent No.12, has not been assailed by the respondent No.12 and based on that calculation, this Tribunal has made consideration on 08.08.2023. Based on that, the said amount was directed to be deposited by the respondent No.12 before the MPCB within a month, the said order has also not been challenged before the Appellate Court. Besides that he has also made it clear that the impugned order was passed in the Open Court by this Tribunal in presence of the respondent No.12 and the respondent No.12 had been given an opportunity of hearing by the MPCB, while arriving on the above environmental compensation. Hence, the said application has no force and it needs to be rejected.

4. From the side of Respondent No.12/Balasaheb Janardhan Murdare, reliance is placed on several case laws, which are as follows:-

SR.NO.	JUDGMENT
“ 1.	2004-6-SCC-254 KUSUM INGOTS VS UNION OF INDIA
2.	2000-6-SCC-359 KUNHAYAMMED VS STATE OF KERALA

3.	1975-1-SCC-559 RAMCHANDRA KESHAV ADKE VS GOVIND CHAVARE
4.	1979-4-SCC-573 ORGANO CHEMICALS VS UNION OF INDIA & OTHERS

”

5. Out of these case laws, the learned counsel for respondent No.12 has drawn our attention specifically to the Judgment of Hon'ble Supreme Court in the matter of *Organo Chemical Industries & Anr. vs. Union of India & Ors. [(1979) 4 SCC 573]*, where-in reliance is placed on following paragraphs:-

> *“17. Turning now to the main question, the contention is that s. 14B of the Act does not authorise 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 though the maximum amount of damages that can be recovered has been indicated in the section, it is submitted that the damages must have some correlation 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 s. 14B 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.*
>
> *22. The expression 'damages' occurring in s. 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/s 14B is not merely 'to provide compensation for the employees'. We are clearly of the opinion that the imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of s. 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recommence the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Schemes. The word 'damages' in s. 14B is related to the word 'default'. The words used in s. 14B 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 s. 14B must mean 'failure in performance' or 'failure to act.' At the same time, the imposition of damages u/s 14B is to provide reparation for the amount of loss suffered by the employees.*

38. What do we mean by 'damages'? The expression 'damages' is neither vague nor 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 wrong-doing 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 property 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 Edition p. 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. Sec. 14B 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, by deducting from the workers' 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 demoralizes 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 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 Art. 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a 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 famished by 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 object 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 14B, included 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."

6. We find that this Judgment relates to the defaults in payment of Provident Fund and Family Pension Scheme dues for a specific period. The Regional Provident Fund Commissioner had issued show cause notice to the Petitioners, in response to which they explained that the defaults were owing to difficulties beyond their control. The Commissioner after giving the petitioners an opportunity of hearing, by his reasoned order negatived the grounds taken in mitigation of the

defaults and having regard to their past record, concluded that they being 'habitual defaulters' had to be visited with the maximum penalty i.e. 100% on each of the amounts in arrears. The Petitioners challenged the Commissioner's order on the grounds that (1) Section 14-B is violative of the Article 14, and (2) it deals with the power to recover damages and not penalties and it, therefore, bad. The appeal filed before the Hon'ble Supreme Court was dismissed holding that the power of the Regional Provident Fund Commissioner to impose damages under Section 14B is a *quasi-judicial* function, which 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 Statute.

7. Further, it is held that having regard to the punitive nature of the power exercisable under Section 14B and the consequences that ensue therefrom, an order under Section 14B must be a 'speaking order' containing the reasons in support of it. The guidelines are provided in the Act and its various provisions. While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The determination of damages is not 'an in flexible application of a rigid formula'.

8. Therefore, we find that the said Judgment has totally different set of facts and we can distinguish the present matter from the matter in which above Judgment has been passed. In the present matter, we have passed impugned order holding that there was a default committed on the part of the respondent No.12 in not obtaining Consent to Establish and Consent to Operate, therefore, for that default, based on the principle laid by the CPCB in Paryavaran Suraksha's Case, the computation of the

EDC has been made by the MPCB. Therefore, this is being levied in view of the principle of Polluters Pays, which is recognized principle in the case of causing damage to environment.

9. We may also mention here that the impugned order was passed in Open Court in presence of the learned counsel for respondent No.12 and at that point of time, when the order was dictated, no such objections were made at his end, therefore, we do not find sufficient ground to recall this order and accordingly dismiss this application.

I.A. No.210/2023(WZ) stands disposed of.

Execution Application No.03/2023(WZ)

10. By our previous order dated 08.08.2023, we had granted the applicant last opportunity to provide us documentary evidence with respect to the crop yield prior to the setting up of the hot mix plant and the yield subsequent to the operation of the plant so that the amount of personal compensation could be calculated, in pursuance of which the learned counsel for applicants has filed an affidavit, which is not signed by the applicants, though they are present. However, the same is notarized and there is an error also in the date of putting signature by the applicant, which is shown as 18.10.2023 at Pune, while the notary has fixed his seal on 17.10.2023. The learned counsel for applicants submits that this is a clerical error. He has also shown us original receipts of the dates i.e. 27.12.2015, 16.11.2022, 20.03.2016 and 01.09.2023. He says that he has already e-filed this application but the Registry says that the same is not found to have been e-filed nor the applicants could show any receipt to have been filed. He says that he will file them today itself. We direct him to file this application along-with an affidavit today itself and a

copy of the same shall be served upon all other parties, who may file objection against the same, if any, within two weeks.

11. By our previous order dated 08.08.2023, we had directed the MPCB to submit a reply against the allegations made by the applicants that the total period for which the test was conducted, should have been 24 hours run, while in the case in hand, the same was conducted for 4 hours and 13 minutes only. In this regard, the learned counsel for respondent Nos.7 & 8/MPCB has filed reply affidavit dated 03.10.2023, where-in it is made clear that their Officials visited the industry of respondent No.12 on 31.05.2023 & 01.06.2023 and carried out 24 hours Ambient Air Quality Monitoring. The Hot Mix Plant was in operation on 31.05.2023 from 7.30 a.m. to 9.30 a.m. and 2.00 p.m. to 3.15 p.m. and on 01.06.2023 from 8.00 a.m. to 10.55 a.m. Since the plant was in operation for that duration only, the Ambient Air Quality Monitoring was carried out for the aforesaid period and results were found to be within limit.

Put up this matter for final hearing on 02.02.2024

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 18, 2023
Execution Application No.03/2023(WZ)
[Earlier O.A. No.11/2023(WZ)] In
Original Application No.01/2020(WZ)
I.A No.42/2023(WZ) & I.A. No.210/2023(WZ)
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