



Recovery of Damages- Powers Unfettered



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It is certainly true that Section 14-B of the Employees provident Fund (Misc. provisions) Act, 1952 itself does not provide for any limitation for initiation of a proceeding for levy of damages. But even where the statute does not provide for any limitation, it has been held in several verdicts of the Apex Court and other High Courts that such powers should be exercised within a reasonable period. The 'determination of reasonable period' depends on the peculiar circumstances of a particular case. Similarly it has also been held that while initiating belated penalty proceedings the Commissioner should spell out justifiable reasons for doing so. It therefore follows that legality versus justifiability and legality vis-à-vis justifiability should not be lost sight of in matters of levying damages. This is the basic dichotomy of the proposition.

It is indeed therefore alluring and at the same time daunting to write on the chemistry of this provision and the legal concept that has evolved on this.

When an adjudicator is turned into a prosecutor he actually "persecutes" and the plight of the employer becomes that of a "pigeon thrown to the cat". It so happens that the commissioners of the Provident Fund departments take bold postures that there being no period of limitation prescribed by law, no objection can be taken on the ground of long delay in initiating

action. The Commissioners further labour under the misconception that section 14-B by not prescribing any period of limitation, give a license to them to sit over the matters for any period of time and initiate proceedings as and when they feel like doing so. This is patently an erroneous approach. It is submitted that powers of the doing so. This is patently an erroneous approach. It is submitted that powers of the Provident Fund Commissioners in the matter of levy of damages under Section 14-B are quasi judicial and the approach should be given a freedom to levy damages. But that being so, it is also expected that the officers entrusted with the task of administering such enactments are aware of their duties and responsibilities. When an action for levy of damages initiated after 10/15 or 17 years it would be a case of inefficiency, in action or considerations apply in dealing with different category of case but if the payment is not made within time default is committed and liability under section 14-B is attracted. The case of *K. T. Rolling Mills (Pvt.) Ltd. v/s. R.M. Gandhi and Ors.* 1993 Lab IC 1466 has dealt with the various limbs of this section 14-B. In the instant case before their Lordships, the proceedings under Section 14-B were initiated after 8 to 17 years. There was no explanation whatsoever for his delay from Regional Provident Fund Commissioner. There was nothing to show how this case remained unattended for

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such a long time and how it suddenly came to surface except the plea that no period of limitation being provided in the law, action may be taken at any time.

The basic case is that of Supreme Court in *state of Gujrat v/s. P. Raghav (AIR) 1959 SC 1297*. This was a case under Bombay Land Revenue Act, 1879 which empowered the Commissioner to revise an order made under Section 211 of the said Act. No period of limitation was prescribed for revising the said order. In this case the Apex Court ruled that it was true that there was no period of limitation prescribed under Section 211 but it seemed to their Lordships plain that power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of order which was being revised. Similar views were expressed by the Apex Court in the case of *Gurbax Singh v/s Union of India (AIR) 1976 SC 1115*. The court observed that it might well be that for an exercise of the suo moto revisional powers also; the revision authority is to initiate the proceedings within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is reasonable time, however, will depend upon the facts of each case. Although in this case the powers were exercised within few months. So it was held as having been exercised in time. The Supreme Court again in the case of *Mansa Ram v/s S.P. Pathak (AIR) 1983 SC1239* reaffirmed the position. The case related to C.P. & Berar letting of Houses and Rent Control Order 1949 wherein the Supreme Court very aptly observed that undoubtedly, power is conferred on the Collector to see that the provisions of the Rent Control Order which disclosed a public policy are effectively implemented and if the Collector, therefore, comes across information that there is a contravention, he is clothed with adequate power to set right the contravention by ejecting anyone who comes into the premises in contravention of the provisions. But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner, which inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand aghast that a landlord to some extent in pari delicto could turn the table against the person who was in possession for 22 years as a tenant.

The Supreme Court also ruled that revisional power must be exercised within the reasonable time. The Supreme Court in the case of *Paras Ram Potery*

Works Co. Ltd. v/s Income Tax Officer (1977) 106 ITR 1 (10) observed that there must be a point of finality in all legal proceedings and that stale issues should not be reactivated beyond a particular stage and that a lapse of time must induce repose and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activities. It would therefore be clear from the catena of Supreme Court cases that exercise within a reasonable time.

The Bombay High Court in the case of *M/s Sushma Fabrics Pvt. Ltd. v/s Union of India (1991) Lab IC 1946* dealt with section 14-B of the EPF(MP) Act, 1952 itself and ruled that absence of a prescribed period within which section 14-B becomes operational, does not mean that the authorities can initiate action at any time. They must move within a reasonable interval of the commission of the lapse. Ascertainment of compliance with this requirement would depend upon the circumstances of each case. Again in the case of *S. Tolan v/s B.C. Agarwal 1983 ELT 14 (Bom.)*, a foreign Exchange Regulation matter, adjudication was held after a lapse of 11 years from the date of alleged violation, the court held it to be a stale matter and did not allow to be reopened. Similar views have been echoed in the case of *Mohd. Atiq v/s Income Tax Officer (1962) 46 ITR 452; Income Tax Officer v/s Bisheshwar Lal (1970) 70 ITR 653 and Aminchand & Sons v/s State of Punjab (AIR) 1965 (Punj.) 441*.

The Orissa High Court in the case of *Orissa Forest Development Corporation Ltd. v/s Regional P.F. Commissioner Orissa 1995(71) FLR 388* observed that it was true that section 14-B of the Act itself does not provide for any period of limitation for levy of damages but then the powers should be exercised within a reasonable period.

The period of default in this case before their Lordships was ranging from 1971 to 1980 and 1987 to 1989 and the initiation of the proceedings was in the year 1992 and no justifiable reasons were advanced for this gross delay on the part of the Commissioner. The court therefore quashed the levy of damages proceedings.

The contrary views of Delhi High Court in *Birla Cotton Spg. & Wvg. Mills Ltd. v/s Union of India CW 396/78 dt:29.07.83* and of the Gujrat High Court *Gandhi Dham Spg. And Manufacturing Co. Ltd. v/s Regional PF Commissioner (1980) 57 FJR 94* were not accepted by the Court in view of the several cases of

the Supreme Court. These two cases ruled that delay would not vitiate proceedings under social welfare legislation like the Provident Funds Act.

Here it may not be out of place to mention that recently the Supreme Court in the case of K. Streetlite Electric Corporation versus RPF – Haryana 2001 (11) CLR 314 held that delay in initiating proceedings under section 14-B of the Act would be a no ground for setting aside the order of imposing damages unless specific plea of prejudice is pleaded and proved because in absence of the same it would not be possible to discern the rationale. This holding certainly displays new jurisprudential vision. However, it has further ruled that non availability of records could also be a ground for prejudice and it is very obvious that old and obsolete records are not preserved and they are destroyed. It therefore follows that this holding of the Apex Court also does not endorse the belated initiation of proceedings under section 14-B of the Act.

It is extremely unfortunate that many of our labour laws still bristle with ambiguities and accentuate uncertainties in their application. The worst part of it is that those who are entrusted with the administration of such laws are not well conversant with the prevalent trend of case law on this particular provision 14-B of the Employees Provident Fund (MP) Act. This is one of such a provision under which uninformed commis-

sioners initiate actions on stale, obsolete and belated claims after many a years unmindful of the fact that where law did not prescribe period of limitation the proceedings if any should be initiated within a reasonable period. This is just paradoxical.

The law on this provision has more or less been crystallized in as much as that proceedings should not be initiated which are more than 3/5 years old and if initiated ground should be spelled out with a speaking order else the whole of the legislative purpose may be frustrated. The reckoning of the reasonable time within which such proceeding could be initiated would depend on the facts of each case. Law abhors perpetuation of proceedings and it very much stands for finality of an order.

It is further enjoined that those who are entrusted with the task of calculating and realizing damages should familiarize themselves with the technicalities of the provision and the law that has developed around it. However, there is no predicting that the bureaucrats of today would do it.

It is humbly suggested that this provision of law should be amended so as to include some period of limitation or there could be a rider in the section that very old, stale and obsolete claim shall not be initiated. ■

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