Union of India and Others Vs. Super Processors

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SooperKanoon Citation : sooperkanoon.com/354928

Court : Mumbai

Decided On : Aug-12-1992

Reported in : (1993)IILLJ203Bom

Judge : B.P. Saraf and;Sujata V. Manohar, JJ.

Acts : Employees Provident Fund and Miscellaneous Provisions Act, 1952 - Sections 14B

Appeal No. : Appeal No. 45/1992

Appellant : Union of India and Others

Respondent : Super Processors

Advocate for Def. : J.P. Cama, Adv.

Advocate for Pet/Ap. : V.R. Manohar A.G.

Judgement :

Mrs. Sujata Manohar, J

1. This appeal and the writ petitions which are listed in Annexure-A are placed together before us for hearing. The appeal and the writ petitions raise common issues regarding the applicability of the provisions of Section 14-B of the Employees' Provident funds Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) and the validity and applicability of the guidelines which

have been issued under it from time to time by the Central Government and/or the Central Board of Trustees.

2. For the sake of convenience we are setting out the facts in Appeal No. 45 of 1992 which are similar to facts in other writ petitions. The respondents in the appeal are hereinafter referred to as the petitioners while the appellants are hereinafter referred to as the respondents (as in the original writ petition in which this appeal is filed). The petitioners filed Writ Petition No. 150 of 1986 challenging an order dated March 15, 1985 passed by the Regional Provident Fund Commissioner under Sec. 14-B of the said Act claiming damages in the sum of Rs. 1,18,057.60 for delayed payments of provident fund contributions. The period of defaults was from August 1978 to March 1982. The defaults consisted of delayed payments which ranged from 8 days to about 2(1/2) months. The Regional Provident Fund Commissioner levied damages ranging from 2% to 100% of the amount in arrears. This order was the subject matter of challenge in the writ petition. The learned single Judge by his judgment and order dated October 16, 1991 has set aside the impugned order and has made the rule absolute. He has remanded the matter to the Regional Provident Fund Commissioner directing him to make calculations of damages in accordance with the ratio of his judgment. The Regional Regional Fund Commissioner and the Union of India have filed the present appeal from the judgment and order of the learned single Judge.

3. Prior to November 1, 1973 the relevant provision under Section 14-B of the said Act was as follows :

14-B. 'Where an employer makes default in the payment of any contribution to the fund ..... the proper Government may recover from the employer such damages not exceeding 25% of the amount of arrears as it may think fit to impose'.

With effect from November 1, 1973 Section 14-B was amended to read as follows :

14-B. 'Where an employer makes default in the payment of any contribution to the Fund .... 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 arrears as it may think fit to impose.

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

Section 14-B has been further amended by Act No. 33 of 1988. The amended Section has been brought into operation from September 1, 1991. The amended Section 14-B is as follows :

14-B. 'Where an employer makes default in the payment of any contribution to the Fund ... 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 by way of penalty such damages, not exceeding the amount of arrears as may be specified in the scheme.

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

Provided further that ....'

4. After the amendment of Section 14-B with effect from November 1973, the Central Government had framed a table of damages which were to be recovered in the case of defaults depending upon the period over which the default continued and the number of times that such a default occurred. the damages were levied at rates ranging from 2% to 100% of the defaulted amount. The impugned damages in all these matters have been calculated as per this table.

5. The quantum of damages levied in accordance with this table gave rise to certain difficulties. As a result, the Employees 'Provident Fund Review Committee was appointed some time prior to 1981 for considering the question of levy of damages under Section 14-B. The Committee which was headed by Shri. G. Ramanujam submitted to the Government of India its report in January 1981. It recommended that instead of imposing damages on the employers for the belated payment of the Employees' Provident Fund, Family Pension Fund and Employees' Deposit Linked Insurance dues, the defaulting employer should be asked to pay

penal interest at the maximum lending rate of banks plus 3% if the employers are occasional defaulters and at the maximum lending rate plus 5% in the case of employers who are habitual defaulters. The Central Board of Trustees of the Employees' Provident Fund considered this recommendation and decided that keeping in view the frequent fluctuations in the lending rates of banks and the consequential difficulties in calculating damages if the same are linked to the lending rates of banks, the damages should be charged at a flats rate of 25% per annum on all belated remittances subject to the condition that the total damages levied do not exceed the actual amount in arrears. This decision of the Central Board was referred to the Government of India for approval. The Government of India, while conveying their approval, advised the Central Provident Fund Commissioner that pending amendment of Section 14-B, the decision of the Central Board should be given effect to.

6. The revised guidelines for calculation of damages under Section 14-B which were conveyed to the Central Provident Fund Commissioner were to the effect that on all belated remittances damages should be charged at a flat rate of 25% per annum subject to the ceiling of the actual amount in arrears.

7. The Central Provident Fund Commissioner issued a circular dated November 3, 1982 informing all his officers of those revised guidelines. This circular of November 3, 1982 is at Exhibit-D to the original petition. After setting out the circumstances in which the Central Government has revised guidelines for determination of damages, it goes on to state :

'.... You are accordingly advised to regulate the levy of damages of 25% per annum subject to the condition specified in the preceding paragraph' (i.e., the total damages should not exceed the actual amount in arrears) 'in all cases of default with immediate effect.'

'All pending cases and those cases where hearing under Section 14-B have already been held but final orders have not been issued should also be regulated as per this letter. Cases where speaking orders have already been issued may not, however, be reopened except as otherwise instructed in this Officer Circular Letter No. E/11 Dam(GENL)/80 dated the December 31, 1980.'

It goes on to state,

'... Now that the rate of damages has been changed, application of the graded rates of damages should be discontinued forth with..'

Under this circular, revised guidelines for levy of damages were to be followed from October, 1982. All pending cases as of October 1982, where final orders had not been issued, were to be governed by the new guidelines instead of the previous table of damages.

8. On May 13, 1983, however, a further circular was issued by the Central Provident Fund Commissioner to all the Regional Provident Fund Commissioners. It states that on a careful examination of the difficulties experienced and the doubt expressed regarding pending cases, 'it is hereby clarified that the defaults committed after the issue of the said guidelines are advised to be regulated in accordance with the revised guidelines issued as aforesaid. Therefore, all defaults for the period upto September 1982 (September 1982 dues payable on or before October 15, 1982) are advised to be processed and decided as per the then existing guidelines. Defaults arising for the month of October 1982 for provident fund dues which are payable on or before November 15, 1982 and defaults onwards are advised to be regulated under the revised guidelines'. Accordingly, the previous circular of November 3, 1982 in so far as it dealt with pending cases, was cancelled. The circular of May 13, 1982 also further stated that all guidelines on the levy of damages were designed to provide necessary guidance in the matter of levy of damages with a view of bring an element of uniformity in the working of the organisation in this regard. However, the officers were advised to consider judiciously all relevant facts and circumstances of each case of default having regard to the provisions of Section 14-B and then pass a considered order in each case.

9. These two circulars are the subject matter of challenge before us in all these mattes. The persons aggrieved in each of these cases are employers who have committed defaults in payment of their provident fund and other dues under the said Act for periods prior to October 1982. In some cases some defaults are also for a period subsequent to October 1982. The adjudication in each of these cases

of the quantum of damages to be paid by these employers, has taken place after the coming into force of the revised guidelines in October 1982. According to the respondents, as per the circular of May 13, 1983, in respect of defaults which have taken place prior to October 1982, damages will have to be calculated in accordance with the table of damages which was in force prior to the revised guidelines. They have levied damages accordingly. The employers have challenged the circular of May 13, 1983 and have submitted that the determination of damages must be governed by the guidelines in force at time when the damages were determined.

10. In order to determine this question we must first see the nature of the two circulars which have been issued. Both the circulars support to give effect to the same guidelines framed by the Central Board of Trustees and approved by the Central Government. Under Section 5 of the said Act, the Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Provident fund Scheme for the establishment of provident funds under this Act as set out in that section and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme. Under sub-section (1-A) of Section 5 the fund shall vest in, and be administered by the Central Board constituted under Section 5-A.

11. The Central Board which is constituted under Section 5-A is required to administer the fund vested in it in such manner as may be specified in the scheme. Under Section 5-D the Central Government shall appoint a Central Provident Fund Commissioner who shall be the Chief Executive Officer of the Central Board and shall be subject to the general control and superintendence of that Board. Therefore, the Central Provident Fund Commissioner is required to act under the direction of the Central Board of Trustees, who in turn have to function in accordance with the scheme which may be framed by the Central Government. Under Section 19-A of the said Act, if any difficulty arises in giving effect to the provisions of this Act the Central Government may, by orders, make such provision or give such direction, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

12. Under Section 14-B as it stands after November 1, 1973 the Central Provident Fund Commissioner had the discretion to impose such damages, not exceeding the amount of arrears as he may think fit. The Central Government has issued directions for the purpose of giving guidance in the exercise of this discretion so as to ensure uniformity and lack of arbitrariness. The two circulars purport to implement the directions so given by the Central Government. Both the circulars purport to give effect to the same directions of the Central Government and they relate to the same guidelines which are framed by the Central Government. The guidelines are to the effect that damages should be charged at a flat rate of 25% per annum on all delayed payments subject to the condition that the total damages levied do not exceed the actual amount in arrears. The first circular of the Provident Fund Commissioner applies these guidelines to pending cases, while the second circular applies these guidelines only to defaults which take place after the coming into force of the new guidelines i.e., after October 1982. It is submitted by the respondents that the guidelines are prospective and, therefore, must apply only to defaults which have taken place after October 1982. Hence the second circular of May 13, 1983 gives the correct application of the guidelines and must be upheld. The first circular gave incorrect instructions regarding the application of new guidelines to pending cases. It has, therefore, been correctly superseded by the second circular.

13. The petitioners, however, submit that the second circular of May 13, 1983 violates Article 14 of the Constitution because it makes a distinction between defaults committed prior to October 1982 and defaults committed after October 1982. They content that this is not a rational basis for classification and hence the second circular should be struck down. Is the classification of defaults into two groups-those committed before October 1982 and those committed before October 1982 and those committed after October 1982 a valid classification When there is a change in the law from a given date, it is undoubtedly true that a distinction can be made between events governed by it-those occurring prior to the date of the change and those coming into existence after the change. Such a date-wise classification is not invalid unless it is wholly arbitrary. For example, if the rate of tax is changed from a given date, the goods on which the taxes are levied would carry a higher rate of tax from the date of change. Thus in the case of Union of

India v. M/s. Parameswaran Match Works reported in : 1978(2)ELT436(SC) , there was a notification issued under the Central Excise Rules under which a concessional rate of duty on match boxes was provided only to those manufacturers who had filed declaration before September 4, 1967. The Supreme Court said that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice, unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be, and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be a accepted unless it can be said that it is very wide of any reasonable mark.

14. Similarly in the case of D. G. Gouse & Co. v. State of Kerala reported in : [1980]1SCR804 , the choice of a date for imposition of a tax under the Kerala Buildings Tax Act was held as not assailable under Article 14 of the Constitution for the reasons set out by the Supreme Court in M/s. Parameswaran Match Works' case (supra).

15. Nevertheless the choice of a date cannot be wholly arbitrary or capricious. In the case of D. S. Nakara v. Union of India reported in 1983-I-II-104, the Supreme Court said (pp. 107-108) 'Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differential which distinguishes persons or things that are grouped together from those that are left out of the group; and that differential must have a rational nexus to the object sought to be achieved by the statue in question'. Therefore, there can be a datewise classification. But the classification which is so made must have a rational nexus with the object which is sought to be achieved.

16. In the present case the changed guidelines do not affect the nature of the default which are committed prior to the coming into force of the guidelines and after the coming into force of the guidelines. The change in the guidelines is regarding the manner in which discretion is to be exercised while determining the quantum of damage in respect of defaults. Therefore the change which is brought about from a given date is change in the manner of exercise of discretion. The

classification datewise, therefore, must have a nexus with the manner of exercise of discretion. The second circular, however, ignores this vital aspect of classification. It merely classifies defaults into two classes; those occurring prior to the date in question and those subsequent. This kind of classification of defaults does not have any nexus with the date from which discretion has to be exercised in levying damages as per the new guidelines. The circular of May 13, 1983, would, therefore, be hit by Article 14 of the Constitution.

17. The respondents pointed out to us two judgments, one of the Delhi High Court and another of the Punjab and Haryana High Court, which have considered these two circulars. In the case of M/s. Birla Cotton Spinning & Weaving Mills Ltd. v. Union of India (CWP No. 396 of 1978) the Division Bench of the Delhi High Court (Sachar and Khannan JJ.) by their judgment and order dated August 29, 1983, considered these two circulars. The challenge before the Delhi High Court was to the first circular of November 8, 1982. The submission before the Court was to the effect that the circular, in so far as it applied to pending cases, was discriminatory and violative of Article 14. However, while the matter was pending before the Delhi High Court, the second circular of May 13, 1983 came into effect. The Delhi High Court said that in view of the second circular, the defaults relating to previous period upto September 1982 will continue to be governed by the graded rates of damages in the standard table. Hence the pendency of a matter anywhere will cease to have any relevance. The fortuitous circumstance of a matter which remained pending, would no longer operate to give any advantage to any party, and hence the argument which was before it did not survive. The Delhi High Court, therefore, was not required to consider and did not consider the validity of the second circular at all. It came to the conclusion that the objection which was raised before it regarding the first circular, had been met by the second circular. The Delhi High Court upheld the second circular on the ground that the date-wise classification was valid. The Delhi High Court did not consider the basic question whether the classification which was brought about by the second circular had any nexus with the object for which the cut-off date was prescribed. We therefore, respectfully differ from the view of the Delhi High Court in so far as it upholds the validity of the second circular.

18. The second decision cited before us is of the Punjab and Haryana High Court in Civil Writ Petition No. 2813 of 1984, decided by Kang J. on December 4, 1984. After discussing the two circulars, the Punjab and Haryana High Court has merely followed the decision of the Delhi High Court in the case of M/s. Birla Cotton Spinning & Weaving Mills Ltd. (supra). The Punjab and Haryana High Court has examined at length the power of the Central Provident Fund Commissioner to issue the two circulars. It has, however, not examined the validity of the second circular as violative of Article 14. Hence this judgment has only a limited bearing on the questions which are before us.

19. The basic question, however, which we have to consider is not whether the first or the second circular is violative of Article 14, but how the guidelines which are the subject matter of both these circulars should be applied. There is no doubt that both the circulars refer to the same guidelines which have been issued by the Central Board of Trustees with the approval of the Central Government viz., that damages should be calculated uniformly at 25% per annum subject to a maximum of the amount of arrears. Both the circulars which have been issued by the Central Provided Fund Commissioner relate to how these guidelines should be applied by his officers while adjudicating matters before them. In the first circular, the Central Provident Fund Commissioner said that the new guidelines would also apply to pending cases; while the second circular said that the new guidelines will not apply to pending cases but only when there is an adjudication in respect of defaults which are committed after the new guidelines came into force. We have to consider which of the two circulars lays down the correct position in law.

20. In the first place, the provisions of Section 14-B have not undergone any change in October 1982. Prior to October 1982 also the Central Provident Fund Commissioner and the officers specified in the section had the discretion to determine damages not exceeding the amount of arrears. They continued to have this discretion after October 1982 also. However, the exercise of his discretion was regulated by one set of guidelines prior to October 1982. It is regulated by a different set of guidelines after October 1982; and it is the case of the respondents that the revised guidelines are more rational and better guidelines than the previous guidelines. This is in fact the raison d'etre for their revision.

21. The second aspect we must emphasise is, that the basic liability of the employer to pay damages if he makes a default in the payment of any contribution under the said Act was in existence prior to October 1982. It continues to remain in existence after October 1982. The maximum penalty on damages leviable under Section 14-B also remains unchanged. Therefore, the law regarding default and penalty remains the same. The guidelines are merely to regulate the manner in which the discretion on levying penalty/damages has to be exercised. By their very nature, these guidelines have to be applied when an occasion arises for exercising discretion in determining the quantum of damages. The Regional Provident Fund Commissioner, when he is required to exercise his discretion, when he is required to exercise his discretion, must bear these guidelines in mind. If, therefore, an occasion arises for him to exercise his discretion after October 1982, he will have to exercise this discretion in accordance with the guidelines which are in force at that time. It may be that the default had taken place prior to October 1982. It continues to be a default and it invites damages. But at the time when the damages are determined, if the revised guidelines are in force, then those guidelines must be applied. The officer cannot go back to the old guidelines which are already discarded as being less satisfactory than the revised guidelines. On a plain interpretation, therefore, of the guidelines for exercising discretion while determining damages, the guidelines which are in force at the time when an occasion arises for determining the quantum of damages, must be applied. Such an occasion may arise either because a case is pending or it may arise if the matter is remanded to the officer for a fresh determination or it may arise in any other circumstances. But if the officer has to exercise his discretion a fresh in any such matter, he will be governed by the guidelines in force at that time. There is no question, in such a situation, of referring to old discarded guidelines which were found to be unsatisfactory or problematic, simply because the default relates to a period prior to the coming into force of such guidelines.

22. This interpretation is in consonance with the general principles of law and Article 20(1) of the Constitution of India; although these may not apply directly to the present case. Where the law defining an offence does not change but the penalty which was provided under the law is changed after the commission of offence but before adjudication, a question arises whether the penalty should be

levied under the new law or the previous law which was in force at the time when the offence was committed. Article 20(1) provides a protection to the accused in such a situation by prescribing that a person shall not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Therefore, if as a result of the change, the amount of penalty is increased, the offender cannot be subjected to a heavier penalty. On the other hand, if the penalty is reduced pending adjudication, then the benefit of a more favourable penalty law is granted to the accused. The changed penalty provisions at the time of adjudication will apply subject to Article 20(1) of the Constitution.

23. In the case of T. Barai v. Henry Ah Hoe, reported in : 1983 CriLJ164 , the Supreme Court was concerned with a case where, for an offence which was punishable under the Prevention of Food Adulteration Act, 1954, a reduced punishment was subsequently provided. The Supreme Court said :

'We are not concerned with new offences created by the Central Amendment Act or with offences for which an enhanced punishment is provided for and therefore there is no question of Article 20(1) of the Constitution being attracted. We are here concerned with the same offence, namely an offence punishable under Section 16(1)(a) of the Act for which a reduced punishment is provided for.

It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence (sic) prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that in so far as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence, no person can be convicted by such ex-post facto law nor can be enhanced punishment prescribed by the amendment be applicable. But in so far as the Central Amendment Act reduced the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction

requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and commonsence'.

(Italics ours)

24. Similarly in the case of K. Satwant Singh v. The State of Punjab AIR 1960 S 226, the offence with which the appellant had been charged was cheating punishable under Section 420 of the Indian Penal Code. After the commission of the offence, however, Ordinance No. XXIX of 1943 came into effect as a result of which a certain minimum sentence of fine was prescribed. The Court said that the new law can be applied because under the new law, although a minimum sentence was prescribed for the first time, the maximum sentence of fine which could be imposed was not greater than that which could be imposed under Section 420-the latter being the law in force at the time of the commission of the offence. Hence Article 20(1) of the Constitution would not be attracted.

25. In the case of Union of India v. Sukumar Pyne, reported in : 1966 CriLJ946 , the Supreme Court said that when the new law imposed penalty which was not greater than the previous law, the new law should be applied. This position has been reiterated by the Supreme Court in the case of Smt. Maya Rani Punj v. Commissioner of Income-Tax, Delhi reported in : [1986]157ITR330(SC) . The Supreme Court in this case, reaffirmed the ratio laid down by it in the case of Satwant Singh v. The State of Punjab (supra) and said that the law laid down by the Supreme Court in Satwant Singh's case had held the filed for a quarter of century without challenge and that there was no need to reconsider that decision.

26. As against this position, the respondents have drawn our attention to a decision in the case of Commissioner of Wealth-Tax, Amritsar v. Suresh Seth reported in : [1981]129ITR328(SC) . The respondents have emphasised the observations of the Supreme Court in that case to the effect that ordinarily a wrongful act or failure to perform an act required by law to be done, becomes a completed act of commission or of omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case. The liability arising therefrom gets

fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. These observations, however, do not deal with a case where the penalty for the offence is subsequently either changed or reduced but not increased. In such a situation, the Supreme Court has expressly stated (in Satwant Singh's case (supra) that the law relating to changed penalty shall apply provided that the maximum penalty is not increased. In fact the decision in the case of Commissioner of Wealth-Tax, Amritsar v. Suresh Seth (supra) has been substantially overruled in the decision of the Supreme Court in Smt. Maya Rani Punj's case (supra) although this aspect has not been dealt with by the Supreme Court in the subsequent case. If these principles are applied to the present case, the revised guidelines of October 1982 are considered by all parties to be more rational and based on a sounder footing than the earlier guidelines. The maximum penalty remains unaltered as this is prescribed by Section 14-B which remains the same. Therefore, when the exercise of discretion is governed by more rational and generally better guidelines, such guidelines must be applied from the date when they come into existence whenever an opportunity arises thereafter for their application.

27. In the cases, however, there has been a further change in the position relating to determination of damages during the pendency of the matters. As from September 1991, Section 14-B, however, makes no difference to the position relating to defaults. Nor does it make any difference to the position that the defaulters are liable to pay damages for such defaults not exceeding the amount of arrears. The only change which is brought about in Section 14-B is to the effect that such damages are now no longer to be determined by the Central Provident Fund Commissioner or his officers exercising their discretion. These damages are now to be determind by the Central Provident Fund Commissioner or his officers in accordance with what may be specified in the scheme. The scheme has also accordingly been modified from September 1991. A new Clause 32-A has been added to the scheme prescribing the rate of damages depending upon the period of default in question. When the default is for a period less than two months, the rate of damages prescribed is 17% of arrears per annum; and it goes upto a maximum of 37% of the arrears per annum subject of course to the maximum laid

down under Section 14-B. There is also a discretion given to the Central Board to reduce or waive the damages in the circumstances which are spelt out in Clause 32-B. Once again, there is no increase in the maximum damages which are provided under the scheme and under Section 14-B. The amended scheme, therefore, will not be applicable if damages are required to be calculated afresh by the Central Provident Fund Commissioner. Since the new scheme does not increase the maximum penalty or damages which are leviable, it does not violate Article 20(1) of the Constitution. Since the latest scheme is considered more rational, there is no reason why that scheme should not be applied if the damages are required to be calculated afresh. Learned counsel who have appeared before us on behalf of the petitioners, have also accepted that if the damages are required to be determined afresh, they would be governed by the scheme and the guidelines prescribed by it which are in force at the time when such damages are determined, as the quantum of maximum penalty is not increased.

28. There are, however, certain petitions such as Writ Petition Nos. 3109 of 1986, 13 of 1987, 2227 of 1984, Appellate Side Writ Petition No. 1652 of 1988, Writ Petition No. 371 of 1988 and others where some of the defaults in question pertain to a period to a period prior to November 1, 1973. Under Section 14-B as it stood prior to November 1, 1973 the maximum damages which could be levied were not to exceed 25% of the amount of arrears. This maximum limit was increased from November 1, 1973 to 100% of the amount of arrears. This is a clear case where there was an increase in the quantum of damages from November 1, 1973. For defaults committed prior to November 1, 1973, the increased ceiling cannot be applied since this was not in force when the defaults were committed. Article 29(i) prohibits this. Therefore the cases of defaults which have been committed prior to November 1, 1973 fall in a totally different category from defaults which are committed after November 1, 1973. The damages in such cases will have to be determined in the light of Section 14-B as it stood prior to November 1973.

29. All defaults subsequent to November 1, 1983 are subject to a maximum penalty equal to the amount of arrears. Hence in determining the quantum of damages in such cases, the guidelines or the scheme as the case may be, for determination of damages, which operates at the time when the damages are

determined, will prevail; but in the case of defaults which have been committed prior to November 1, 1973, damages cannot exceed 25% of the amount of arrears. Hence in the case of such defaults prior to November 1, 1973 whenever they occur in any of the petitions which are before us, damages will have to be determined bearing in mind the maximum prescribed under Section 14-B prior to its amendment on November 1, 1973.

30. All the matters are, in the premises, remanded to the respondents for determination of damages afresh in the light of the principles laid down herein.

31. We are informed that in some of these petitions there are questions other than those relating to the manner in which damages are required to be determined. If there are any such questions in any of these petitions, the petitioner shall make an application by way of an affidavit before the learned single Judge concerned, setting out the other questions which are required to be so determined, and praying that the petitions be placed before the concerned single Judge for determination of those additional questions. Such application shall be made within four weeks from today after notice to the respondents. All those petitions in which such applications are not made within the prescribed time as aforesaid, shall be treated as disposed of by reason of this judgment on the expiry of four weeks.

32. All those matters in which the petitions are considered as disposed of, shall be remanded to the Regional Provident Fund Commissioner for determination of the quantum of damages in the light of our judgment. The Regional Provident Fund Commissioner shall determine the quantum of damages within 5 months from today. The deposits made and/or bank guarantees which are given pending the disposal of these matters, shall remain in force for a period of five months from today. If in any of the matters the petitioners are entitled to any refund as a result of the fresh adjudication which takes place, the same shall be granted to such petitioners within one week after adjudication, by the concerned authority with whom the deposit is made. Such adjudication shall be made in accordance with law after notice to the concerned parties. As far as the bank grantees are concerned, on payment of the adjudicated amount the bank guarantees shall stand discharged.

33. In all those cases where the petitions stand disposed of i.e., where no applications are made to the learned single Judge as set out above, if any fresh points arise on adjudication under the scheme, which are not covered by our judgment, it will be open to the petitioners to take such steps as may be open to them in law for the adjudication of those points, even if such points may have already been taken in these petitions but not raised by way of an application before the learned single Judge.

34. In the circumstances of the case, there will be no order as to costs.

35. Certified copy expedited.