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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Before Mr. Justice S. K. Shah
Writ Petition No. 56 of 1999, decided on 17.10.2000

SOPHIA SHREE BASANT KUMAR MEMORIAL POLYTECHNIC
v.
REGIONAL PROVIDENT FUND COMMISSIONER (II) MAHARASHTRA AND GOA & ANR.

Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Sec. 14B r/w Sec. 7A and paras 30 and 32 of the Schemes formulated under the Act - Powers of Commissioner - To determine the amount of contribution due from the employer - Payment of contribution to be made by the employer and from the wages of the employee for the past period - Consent by employees to deduct their contribution from future wages - Complaint by employees of illegation collection by employer - Commissioner's direction to the employer to refund the contribution to the employees - No opportunity of hearing given to the employer before direction - No provision in the Act to direct refund of contribution to the employees - Order of the Commissioner not sustainable.

Held *: While determining the amount due from any employer under the provisions of the Act and Scheme framed under the Act, the Commissioner has power to enquire into and see whether the amount due is properly arrived at and whether the deductions made under paragraph 32 are properly made or otherwise. Thus, the contention raised on behalf of the petitioner that respondent No. 1- Commissioner had no powers to look into this aspect is not acceptable. In view of the provisions of sub-clause (b) of clause (1) of section 7A, the Commissioner has powers to consider and determine the amount due by taking into consideration the provisions of paragraphs 30 and 32 of the Scheme.*

As per the Scheme formulated under the provisions of the Act, as provided in para 30 itself, the responsibility was of the employer to first make the contribution of the employer's share as well as the employees' share to the Provident Fund. It is thereafter that under the provisions of para 32 the employer can make recovery of the employees' share from the wages payable to the employees. The provisions of para 32 prescribes such deduction to be made only in respect of the wages from the period for which the contribution of the employees is to be made and not otherwise. Therefore, the deduction made by the petitioner from the employees subsequent wages on account of the deduction made by the employer on account of the employees contribution was in violation of the provisions of para 32 of the Scheme. As discussed above, respondent No. 1- Commissioner had powers to see this aspect also while exercising the powers under Section 7A(1)(b). Having exercised these powers, respondent No. 1- Commissioner had found that the petitioner had made wrongful deductions from the subsequent wages of the employees on account of the employees' share to the Provident Fund which was deducted from the period between August 1982 and August 1991. Therefore, respondent No. 1- Commissioner on a complaint being made to him by two employees, made an enquiry and directed the petitioner to refund such deductions having been made by the petitioner to the employees.

The provision of section 14B empowers the Commissioner to make recovery of damages in case where the employer makes default in payment of any contribution to the Provident Fund. It does not anywhere prescribe that the Commissioner had powers to direct the refund of the deductions made in violation of the provisions of para 32 of the Scheme. As such the Commissioner could have taken action under the provisions of section 14B for making recovery of damages from the petitioner for committing default in payment of the contribution to the Provident Fund only. It does not prescribe for any action on account of deduction made in violation of para 32 of the Scheme. Therefore, the provisions of section 14B are not attracted to enable respondent No. 1- Commissioner to direct refund.

The direction of refund given by respondent No. 1- Commissioner was of a penal nature for which there is no provision in the Act. The direction for refund was given keeping the amount of employees share of contribution made by the employer to the petitioners. As a result, the refund would have caused an additional burden on the petitioner and that too by way of punishment. As discussed above, such action could not have been taken by the Commissioner under the provisions of section 14B of the Act. There is no other provision under the Act empowering the Commissioner to take such penal action of directing refund, particularly in the facts and circumstances of this case where the employees had volunteered to make deduction from their wages. The direction of refund being given by the Commissioner, it was necessary for the Commissioner also to give show cause notice to the petitioner and give a hearing to the petitioner before passing the order of refund. In this case, that was not done and, therefore, the order was made in violation of the principles of natural justice and, therefore, it cannot be sustained. This apart there is no specific provision in the Act whereunder the Commissioner can pass such an order by way of punishment. Looking to the aspect from the equitable point of view also it was inequitable to direct the refund. *[Paras 9, 13, 17, 19]*

Cases Cited :

District Exhibitors Association, Muzaffarnagar & Ors. v. Union of India & Ors., (1991) 3 SCC 119 : AIR 1991 SC 1381 : 1991 (2) S.C.R. 477 : 1991 L.I.C. 1332 : 1991 (62) F.L.R. 812 : 1991 (2) L.L.J. 115 : 1991 (79) F.J.R. 177 : 1991 (2) L.L.N. 1.

Gosalia Shipping Pvt. Ltd., Goa & Anr. v. Regional Provident Fund Commissioner, Goa & Anr., (1997) 1 C.L.R. 44 : 1997 (3) All M. R. 642 : 1997 Lab. I.C. 3256.

Mr. S. C. NAIDU with Mr. M. DESAI i/b C. R. NAIDU & CO., for the Petitioner.
Mr. K. R. CHOUDHARI with R. C. MASTER, for Respondents.

ORAL JUDGMENT (Per S. K. Shah, J.)

1. By this writ petition the petitioner-institution challenges the communications dated 6th July, 1997 and 15th October 1998 issued by respondent No. 1- Regional Provident Fund Commissioner (hereinafter referred to as the Commissioner), whereby the Commissioner directed the petitioner-institution to refund to its employees the amount that was deducted by the petitioner from the wages payable to the employees on account of the petitioner having made employees contributions to the funds for the period between August 1982 and August 1991.

2. The Central Government by Notification dated 19th February, 1982, the provisions of the Employees' Provident Fund & Miscellaneous Provi

sions Act, 1952 came to be extended to the educational, scientific, research and training institutions specified in the Notification. It was made applicable prospectively with effect from 6th March, 1982. The petitioner-institution was covered by that Notification. Therefore, the petitioner-institution was required to make employers as well as employees contributions with effect from 6th March 1982. In the meantime, however, number of educational institutions in India filed petitions challenging the virus of the Notification in various High Courts as also in the Supreme Court. All the petitions came to be transferred and clubbed together in the Supreme Court. The Apex Court had granted interim stay to the operation of the Notification. In 1991-92, the Apex Court upheld the virus of the aforesaid Notification, as a result of which the petitioner-institution was required to comply with the Act. The petitioner made contribution of its own as well as of the employees making up the difference between the contribution which was voluntarily made and the contribution which was required to be made under the Notification. On 11th November, 1992, prior to transferring of the funds and taking the decision to contribute the differences as well as the share of the employees for the period between August 1982 to August 1991, the petitioner held a meeting between the employees and the management. In that meeting all the employees consented for the deduction of the amount from their wages to the extent of their contribution required to be made under the Notification. Consequently and pursuant to the decision taken with the consent of the employees, the petitioner made contribution to the Provident Fund not only of their share but also of the share of the employees and subsequently deducted the employees share from the salaries/wages.

3. The two employees, namely, Nisar Merchant and Vinay Shirgaonkar who were not present at the time of the meeting complained to the respondent No. 1 - Commissioner for the alleged recovery of their share of the contribution by the management being in contribution of the provisions of the Employees Provident Fund Act. As a result of such complaint having been made, Respondent No. 1 - Commissioner wrote a letter to the petitioner requiring the petitioner to refund the amount of deductions made by the petitioner from the wages of the employees and the employees share of the contribution. There was exchange of correspondence between the petitioner and respondent No. 1 - Commissioner on this aspect. The petitioner contended saying that the deduction on account of the employees contribution from the employees wages was made consequent upon the consent given by them. The proceeding of the meeting in which the employees had consented for deduction was also forwarded to respondent No. 1 - Commissioner. The Commissioner, however, stuck up to his stand and directed the petitioner to refund the amount of deductions made from the employees wages on account of contribution to the provident fund. It is this communication which is assailed in this writ petition.

4. The learned Counsel for the petitioner mainly contended that order of refund was passed in violation of principles of natural justice, and if at all the refund was to be made then the Commissioner himself should make the refund either directly to the employees or to the petitioner as the contribution on account of the employees share has already been made and the funds are lying with the Commissioner himself. He further contended that there was no provision in the Employees Provident Fund Act which

empowers the Commissioner to direct refund of the deductions made from the wages of the employees on account of the employees share of contribution. He further contended that the direction given by the Commissioner was, therefore, illegal as also inequitable. He contended that the petitioner did not start making contribution, implementing the Notification issued by the Central Government as the operation of the said Notification was stayed by the order of the Apex Court. As soon as the Apex Court upheld the virus of the Notification he made representation to the respondent No. 1 - Commissioner for waiving the contribution to be made on account of the employees share, but Respondent No. 1 -Commissioner did not reply to the same. Ultimately, there was joint meeting in which a separate Code Number was given on receipt of which the petitioner made the entire contribution, including the employers contribution as well as the employees contribution which are required to be made under the provisions of the Employees Provident Fund Act. He therefore contended that there was no provision under the Employees Provident Fund Act to make deduction of such contribution from the wages of the employees and, therefore, a meeting was held and with the consent of the employees a deduction was made from their wages. He further contended that it was totally inequitable and unjust to require the petitioner to refund the deductions made from the employees wages while keeping the contribution made on that account by the petitioner with the Commissioner himself. He further contended that in absence of any provision in the Act for making deduction on account of the employees contribution in such eventualities and on equitable consideration the petitioner was entitled to deduct the amount of contribution made for and on behalf of the employees.

5. As against this, the learned Counsel representing the Commissioner vehemently submitted that the petitioner was a defaulter. The provisions of the Act came to be made applicable to the petitioner with effect from 6th March 1982 and the petitioner was required to make contribution not only of the employees contribution but also of the employers contribution with effect from that date. The petitioner, however, defaulted. He further submitted in that even though the operation of the said Notification was stayed by the Apex Court, it was applicable only in respect of the petitioner in the writ petition before the Apex Court and not to the petitioner who had not filed any writ petition. He further submitted that in any event the Apex Court by order dated 7th January, 1988 had directed the petitioners before it to comply with the provisions of the Act with effect from 1st February 1988. As such the petitioner should have complied with the provisions of the Act with effect from 1st February 1981 but the petitioner preferred to wait till the final decision of the Apex Court. In all these circumstances, the petitioner had committed default and was liable to be proceeded against in view of the provisions of Section 148 r/w 7A of the Act of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The Commissioner in exercise of his power under section 14B has passed the aforesaid order for refunding of the amount of the contribution made on account of the employees contribution.

6. The main question, therefore, that arises for consideration is whether the Commissioner has powers to direct the refund of the deduction already made by the petitioner on account of employees contribution to the

Provident Fund which he has already deposited with respondent No. 1. In this regard, the provisions of section 7A of the Act are relevant. The provisions of section 7A read as under :-

"*Section 7A. Determination of moneys due from employers* :- (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Find Commissioner may, by order,

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the (Pension) Scheme of the Insurance Scheme, as the case may be.

and for any of the aforesaid purpose may conduct such inquiry as he may deem necessary."

From these provisions, it is clear that respondent No. 1 Commissioner has the powers to determine the amount due from any of the employer under any of the provisions of the scheme as the case may be. As per paragraph 30 of the Scheme, the employer, is liable in the first instance, to pay both the contributions payable by himself as also payable by the member-employee. Recovery of member-employee's share of contribution from the wages to be paid to the employee can be made under the provisions of paragraph 32 of the Scheme. Thus, while determining the amount due from the employer, as contemplated in sub-clause (b) of clause (1) of section 7A of the Act, would include as to what is the amount due from the employer on account of his contribution as also on account of the contribution on behalf of the member-employee and also to see whether the contribution made by the employer of the employee's share can be made. Para 32 deal with this aspect as to what amount is recoverable from the wages of employee under the provisions of the Act and the Scheme.

7. Under paragraph 32 of the Scheme the amount of the member employee's contribution paid by the employer is recoverable by means of deduction from the wages of the member-employee and not otherwise. The first proviso to paragraph 32 provides that no such deduction may be made from any wage other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable. In other words, the deduction from wages can be made only from wages which is paid in respect of which the contribution is payable and not otherwise. By way of third proviso to paragraph 32 it is provided that where no such deduction has been made on account of an accidental mistake or a clerical error, such deduction may, with the consent in writing of the Inspector could be made from the subsequent wages.

8. Much reliance is placed on behalf of the petitioner on the third proviso in order to submit that the deduction from the employee's subsequent wages could be made under this proviso. However, in the present case the petitioner had not made the contribution of his own as well as of the employees right upto 1992. In 1992, for the first time, the petitioner made the contribution for the period from August 1982 to August 1992, including the employee's share. It is this deposit of the provident fund on account of employee's share that was tried to be deducted from the wages to be paid to the employees subsequently. For not making the contribution of the

employee's share along with employer's share the petitioner alone was responsible. It was not a case of accidental mistake or a clerical error as contemplated in the third proviso wherein the petitioner could make deduction from subsequent wages. Even in such contingency for making the deduction from the subsequent wages there has to be consent from the Inspector which is also not obtained in the present case. As such in the facts of the instant case, the provisions of the third proviso will not be applicable.

9. Thus, while determining the amount due from any employer under the provisions of this Act and Scheme framed under this Act, the Commissioner has power to enquire into and see whether the amount due is properly arrived at and whether the deductions made under paragraph 32 are properly made or otherwise. Thus, the contention raised on behalf of the petitioner that respondent No. 1- Commissioner had no powers to look into this aspect is not acceptable. In view of the provisions of sub clause (b) of clause (1) of section 7A, the Commissioner has powers to consider and determine the amount due by taking into consideration the provisions of paragraphs 30 and 32 of the Scheme.

10. It was further contended on behalf of the petitioner that the contribution made by him could be made by him only after the decision of the Supreme Court and, therefore, no fault can be found with the petitioner for making belated deposit of the employer's contribution as well as employee's contribution. This argument is also not acceptable. In the first place, the petitioner had not filed any writ petition. Therefore, there was no stay of the operation of the Notification *vis-a-vis* the petitioner. Even if it is taken that the order of the Apex Court staying the operation of the Notification had general application even then there was no justification on the part of the petitioner to stay the implementation of the Scheme made applicable to it till 1992. This is so because by specific direction given on 29th January 1988 the Apex Court had given direction to the petitioner before it as under :

"2. We direct that the petitioners shall comply with the Act and the schemes framed thereunder regularly with effect from February 1, 1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between March 1, 1982 and February 1, 1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner. If the petitioners pay all the arrears payable from March 1, 1982 upto February 1, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The writ petitions are disposed of accordingly. No costs."

In view of the aforesaid directions of the Apex Court, the petitioners before the Apex Court were required to give effect to and comply with the provisions of the Act with effect from February 1, 1988. In view of this, the petitioner could not have waited till the final decision of the Apex Court and the petitioner should have started implementing the provisions of the Act at least with effect from 1st February 1988.

11. The next contention raised on behalf of the petitioner is that by Circular issued by the Central Provident Fund Commissioner on 8th November 1989, there was direction to the Regional Provident Fund

Commissioner to waive employee's share of contribution for the period between 1st March 1982 to 31st January 1988 in cases where the educational institution had not actually deducted the employees share of contribution. It is further submitted on behalf of the petitioner that the petitioner in fact made an application to respondent No. 1- Commissioner on March 23, 1992 requesting for waiving the recovery of the employees contribution for the period prior to January 1992. It is further contended that this letter was not replied at all and it is thereafter that there was a joint meeting when the Code Number was given and after having received the Code Number the deposit of the contribution on account of the employers share and the employees share was made. This argument also cannot help the petitioner in any way. This Circular was specifically with regard to the period between 1st March 1982 and 31st January 1988 i.e. till the period when the Apex Court directed the petitioners before it to comply with the provisions of the Act with effect from 1st February, 1988. By the letter dated 23rd March 1992, what the petitioner had claimed was the waiver of the recovery of the employee's contribution for the period upto January 1992. The petitioner could not have made such a claim. Basically, when the provisions of the Act were made applicable to the educational institution, including the petitioner, it was the petitioner's liability to implement the provisions of the Act immediately with effect from 6th March 1982, but the petitioner failed to do that. As indicated above, in view of the order passed by the Apex Court, the petitioner was expected to implement the provisions of the Act at least with effect from 1st February 1988. That has also not done by the petitioner and, therefore, the argument advanced on behalf of the petitioner cannot be accepted.

12. The position that emerges from what has been discussed above is as under :-

1. The provisions of the Act and the Scheme came to be made applicable to the educational institution petitioner with effect from 6.3.1982.

2. Although the petitioner was expected to implement and give effect to the provisions of the Act and the Scheme with effect from 6.3.1982, the petitioner had committed default in making the employer's as well as employee's contributions to the Provident Fund.

3. Even if it is taken that the general application of the Notification issued by the Central Government making the provisions of the Act and the Scheme applicable to the petitioner-institution was stayed by the Apex Court, the same was definitely raised by the Apex Court by order dated 7.1.1988. Therefore, the petitioner was expected to give effect to the provisions of the Act and the Scheme at least with effect from 1.2.1988. But the petitioner had failed to do that and waited till the final decision of the Apex Court upholding the validity of the Notification.

4. The petitioner made the employer's contribution and the employees' contribution to the Provident Fund for the first time in 1992, covering the period from August 1982 to the period upto August, 1991 after obtaining the Code Number from respondent No. 1- Commissioner.

5. The petitioner made both the aforesaid contributions only after holding a joint meeting between the employer and the employees wherein the employees gave consent for deduction of the employees contribution from their subsequent wages.

13. The question, therefore, that arises for consideration is whether respondent No. 1- Commissioner had powers to direct the petitioner to refund to the employee's deductions made from the wages of the employees on account of the employees' contribution made by the employer to the Provident Fund. As per the Scheme formulated under the provisions of the Act, as provided in para 30 itself, the responsibility was of the employer to first make the contribution of the employer's share as well as the employees' share to the Provident Fund. It is thereafter that under the provisions of para 32 the employer can make recovery of the employees' share from the wages payable to the employees. The provisions of para 32 prescribes such deduction to be made only in respect of the wages for the period for which the contribution of the employees is to be made and not otherwise. Therefore, the deduction made by the petitioner from the employees subsequent wages on account of the deduction made by the employer on account of the employees contribution was in violation of the provisions of para 32 of the Scheme. As discussed above, respondent No. 1- Commissioner had powers to see this aspect also while exercising the powers under Section 7A(1)(b). Having exercised these powers, respondent No. 1- Commissioner had found that the petitioner had made wrongful deductions from the subsequent wages of the employees on account of the employees' share to the Provident Fund which was deducted from the period between August 1982 and August 1991. Therefore, respondent No. 1- Commissioner on a complaint being made to him by two employees, made an enquiry and directed the petitioner to refund such deductions having been made by the petitioner to the employees.

14. What is questioned herein is the power of respondent No. 1 Commissioner to direct the refund of the wrongful deduction made by the petitioner on account of employees' contribution for the earlier period. It is submitted on behalf of the petitioner that deduction was made pursuant to the consent given by the employees themselves in the meeting held on 11th November 1992. It is clear from the provisions of para 32 of the Scheme that there is no provision wherein the contingency, as arisen in the present case, is contemplated and thus to provision is made therefor. Thus, in the absence of any provision for the deduction as the petitioner made whether the petitioner could make such deduction pursuant to the consent given by the employees and whether the action taken by Commissioner directing refund could be taken by him. It is submitted on behalf of the petitioner that the said contingency has not been dealt with in para 32 and, therefore, the provisions of para 32 will have no application. In this respect, the petitioner has placed reliance on a decision of the Apex Court in the case of *District Exhibitors Association, Muzaffarnagar & Ors. v. Union of India & Ors.*[1]. In the said case, the Apex Court held that the Scheme was made applicable retrospectively to cinema theatres and, therefore, the employer was not liable to pay contribution of employees as the employer had already paid full wages to the employees for the retrospective period and he cannot make deduction of the employees' share to their future wages. It was also further held that para 32(1) was not attracted to such situation.

1. (1991) 3 SCC 119 : AIR 1991 SC 1381 : 1991 (2) S.C.R. 477 : 1991 L.I.C. 1332 : 1991 (62) F.L.R. 812 : 1991 (2) L.L.J. 115 : 1991 (79) F.J.R. 177 : 1991 (2) L.L.N. 1.

15. In the present case, however, it is an admission position that the employees had consented for the deduction to be made from their wages on account of their share of contribution made by the petitioner-employer to the Provident Fund. It is submitted on behalf of respondent No. 1- Commissioner that even then the petitioner cannot make deduction as it is not provided under the provisions of para 32 of the Scheme. It is also further submitted on behalf of respondent No.1- Commissioner that the employer and the employees cannot arrive at any understanding in respect of the period for which the authority can exercise jurisdiction and that such understanding has no bearing on the order passed by the authority. For making this submission the learned Counsel for the respondent has placed reliance on the ruling of this Court in the case of *Gosalia Shipping Pvt. Ltd., Goa & Anr. v. Regional Provident Fund Commissioner, Goa & Anr.*,[1]. However, the facts of the case therein were different. The understanding which was arrived at between the employer and the employees was with regard to the period for which the authority can exercise jurisdiction. In other words, by the mutual understanding the employer and the employees had come to a settlement that the authority had no jurisdiction with regard to the particular period of contribution. However, such is not the case in the instant case before me. Here the Scheme came to be made applicable to the educational institutions, including petitioner, for the first time in 1982. There was litigation and by the order of the Apex Court a stay was granted to the operation of the Notification. It is after the Notification and the application of the Scheme to the educational institutions was upheld by the Supreme Court the petitioner had started implementing the Scheme. It is true that since the petitioner was not a party to any of the proceedings before the Apex Court, it was expected of the petitioner to start implementing the Scheme right from 6th March 1982, but the petitioner had committed default. The petitioner had also not implemented the Scheme after the specific direction given by the Apex Court in its judgment on 7th January 1988 and further committed default. For such defaults, action as contemplated under section 14B of the Act could have been taken by respondent No. 1- Commissioner

16. It is however necessary to be seen whether the action, as the respondent No. 1- Commissioner has taken directing refund, was prescribed by any of the provisions of the Act or the Scheme. In this regard the learned Counsel for the petitioner submits that there is no such provision. However, the learned Counsel for respondent No. 1- Commissioner has submitted that such powers are available under the provisions of section 14B of the Act.

17. The provision of section 14B empowers the Commissioner to make recovery of damages in case where the employer makes default in payment of any contribution to the Provident Fund. It does not anywhere prescribe that the Commissioner had powers to direct the refund of the deductions made in violation of the provisions of para 32 of the Scheme. As such the Commissioner could have taken action under the provisions of section 14B for making recovery of damages from the petitioner for committing default in payment of the contribution to the Provident Fund only. It does not

1. (1997) 1 C.L.R. 44 : 1997 (3) All M. R. 642 : 1997 Lab. I.C. 3256.

prescribe for any action on account of deduction made in violation of para 32 of the Scheme. Therefore, the provisions of section 14B are not attracted to enable respondent No. 1- Commissioner to direct refund.

18. In this particular case the deduction of employee's contribution was made from their wages with the consent of the employees which was given in a joint meeting held between the employer and the employees. The Circular issued by the Central Provident Fund Commissioner on 8th November 1989 had directed the waiver of the contribution made by the employer on account of employees' share of contribution for the period between 1st March 1982 and 31st August 1988 in cases where the deductions from employees' wages were not made. The Circular further, however, made exception in cases where the employers or employees volunteered to pay the same in lumpsum or in instalments. This Circular came to be issued in view of the fact that the operation of the Notification was stayed by the Supreme Court. In view of this Circular, therefore, the petitioner was not required to make contribution on account of the employees' share to the Provident Fund for at least the period between 1st March 1982 to 31st August 1988. A similar view could have been taken in respect of the subsequent period. At any rate the Circular had made exception in cases where the employer or the employees' volunteered to pay the amount in lumpsum or in instalments. In the present case, therefore, the employer and the employees both had volunteered to make the contribution on account of the employees' share and further the employees had volunteered to make the deductions from their wages on account of their share of the Provident Fund. Respondent No. 1- Commissioner, therefore, should have taken into consideration this aspect while directing the refund.

19. The direction of refund given by respondent No. 1- Commissioner was of a penal nature for which there is no provision in the Act. The direction for refund was given keeping the amount of employees share of contribution made by the employer to the petitioners. As a result, the refund would have caused an additional burden on the petitioner and that too by way of punishment. As discussed above, such action could not have been taken by the Commissioner under the provisions of section 14B of the Act. There is no other provision under the Act empowering the Commissioner to take such penal action of directing refund, particularly in the facts and circumstances of this case where the employees had volunteered to make deduction from their wages. The direction of refund being given by the Commissioner, it was necessary for the Commissioner also to give show cause notice to the petitioner and give a hearing to the petitioner before passing the order of refund. In this case, that was not done and, therefore, the order was made in violation of the principles of natural justice and, therefore, it cannot be sustained. This apart there is no specific provision in the Act whereunder the Commissioner can pass such an order by way of punishment. Looking to the aspect from the equitable point of view also it was inequitable to direct the refund. It is true that the petitioner had committed default as discussed above. Therefore, the Commissioner could have contemplated an action under section 14B of the Act by directing the petitioner to pay damages. Under these circumstances, the orders passed by Respondent No. 1- Commissioner, directing the petitioner to refund the deductions made from the wages of the employees with their consent, on account of their share

of contribution to the Provident Fund, the orders, therefore, cannot sustain and the same need to be set aside.

20. Petition allowed.

21. In the result, the impugned communications from respondent No. 1- Commissioner dated 6th July 1997, 6th July 1998 and 15th October 1998 are hereby quashed and set aside.

Rule made absolute accordingly.