



Serial No.
01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 40 of 2023

Date of Decision: 05.08.2024

North Eastern Electric Power Corporation
Employees Provident Fund Trust,
NEEPCO Ltd., Brookland Compound,
Lower New Colony, Shillong – 793003,
represented by its Secretary

:::Petitioner

-Vs-

Regional Provident Fund Commissioner-II,
Office of the Employees Provident Fund
Organization, N.E.R., Laitumkhrah,
Shillong – 793003

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Ms. P. Bhattacharjee, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication | |



in press:

Yes/No

JUDGMENT AND ORDER

1. By the present writ petition, challenge has been put to a notice dated 21.10.2021, issued by the respondent wherein it has been alleged that the petitioner made certain payments for the period 01.04.1996 to 31.03.2014, after the respective due dates and as such, the petitioner was liable to pay penalty and interest under Section 14B and 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act). Thereafter, in the proceedings that ensued, vide order dated 03.02.2023, under Section 14B of the Act, the petitioner was found liable to pay damages amounting to Rs.41,73,951/- and by another order of the same date passed under Section 7Q of the Act, the petitioner has been found liable to pay interest amounting to Rs.18,83,923/-. The petitioner on the ground that the aforesaid proceedings and orders passed therein, being without jurisdiction, inasmuch as, recovery was sought for a period beyond 25 years is therefore before this Court by way of the instant writ petition.

2. Mr. S. Jindal, learned counsel for the petitioner has submitted that by the impugned notice dated 21.10.2021, the respondent had indicated the period of scrutiny to be from 01.04.1996 to 31.03.2014, wherein it was found that certain payments were made after the respective due dates,



which made the petitioner liable to payment of damages and interest. Thereafter, it is submitted the petitioner appeared before the respondent on several dates for hearing, and it was stated by the petitioner before the respondent that the delay if any, was not intentional but on account of change from the CDA pattern to IDA pattern on the applicable scales of pay. It has further been submitted that as the queries from the respondent required the production of bank statements for the period 1996 to 2001, the same though on being requested from the bank, could not be obtained, as the records pertained to the periods before the bank was computerized, which communicated the same vide letter dated 14.12.2021 (Annexure -3), It is also submitted that, it was pointed out to the respondent that it was not possible to trace out records or documents of the last 15-25 years, and as such, it was prayed that the respondent close the proceedings on the ground that the demand was for very old cases. As due to the circumstances, it was impossible to produce the relevant records, it is submitted that the petitioner by a letter dated 25.05.2022, addressed to the respondent, highlighted the fact that exercise of powers under Section 14B of the Act, was to be within a reasonable period of time and not for periods that extend beyond 25 years, which would result in irretrievable prejudice being caused. However, he submits that there was no acknowledgement to the said letter, and the result was in the impugned orders being passed.



3. It is then contended that even though Section 14B itself, does not contemplate any period of limitation, it would be an unjust and unfair exercise to order for production of documents for the period stretching as far back as 26 years. To support his contention with regard to ‘reasonable period’ and ‘irretrievable prejudice’ learned counsel has placed reliance on the following judgments.

- (i) ***Regional Provident Fund Commissioner, Jalpaiguri vs. Darjeeling Dooars Plantation (Tea) Limited & Anr.*** reported in ***2015 SCC OnLine Cal 6868***
- (ii) ***Presidency Kid Leathers (Private) Ltd. vs. Regional Provident Fund Commissioner, Madras*** reported in ***1997(3) LLN 381***
- (iii) ***Gandhidham Spinning and Manufacturing Company, Ltd. vs. Regional Provident Fund Commissioner & Anr.*** reported in ***1986 SCC OnLine GUJ 68***
- (iv) ***Hindustan Times Ltd. vs. Union of India & Ors.*** reported in ***(1998) 2 SCC 242***

4. The learned counsel has also contended that the presence or absence of Mens Rea would be a determinative factor in considering the matter under Section 14B of the Act, and in this regard has cited the case of ***Regional Provident Fund Commissioner-II vs. Hooghly Mills Company Ltd. & Anr.*** reported in ***(2022) SCC OnLine Cal 248***. It is also lastly contended that the presence of alternative remedy of appeal under Section



7I of the Act, will not act as a bar, as the impugned orders have been passed without jurisdiction and in violation of the Principles of Natural Justice.

5. Ms. P. Bhattacharjee, learned counsel for the respondent has firstly submitted that, the contention that the orders were passed in violation of the Principles of Natural Justice is incorrect, inasmuch as, the letter dated 25.05.2022, had been given due consideration and the impugned order reflects that the representative of the petitioner was heard. The learned counsel has taken the Court to the relevant part of the impugned order, wherein it is recorded that the letter was taken into consideration and the submissions of the petitioner duly recorded. She further submits that a simple perusal of the impugned order would reflect that challans submitted by the petitioner for the wages month 01/2001 to 01/2007, were examined and found that they were deposited within a grace period of 5 days, as also, revision was done for the wages month of 06/2002 and 08/2005, but however, for wage month 07/1999, 04/2008, the contention of the petitioner was rejected. Further she submits a revised calculation sheet was then prepared, and on the petitioner's inability to provide the data substantiating particular payment of dues, the matter was closed and order for the damages for the late payments for the period from 03/1995 to 04/2008, totaling Rs.60,57,874/- had been passed. On the ground of delay of initiation of proceedings by the respondent, learned counsel submits that



there is no limitation provided for proceedings to be initiated under Section 14B, and it is necessary that such damages are levied to recoup the loss sustained by the respondent and also as a deterrent on the employer against defaulting in future. With regard to the judgment placed by the learned counsel for the petitioner that is ***Hindustan Times Ltd. vs. Union of India & Ors.(supra)***, she submits that the judgment has clearly underlined the fact that, there is no limitation period for computing and recovering arrears under Section 14B of the Act, and that the ground of reasonableness in this case was not found sustainable.

6. It is then submitted that the writ petition itself is not maintainable, due to the availability of alternate remedy under Section 7I of the Act, which provides for appeal before the Tribunal against orders passed under Section 14B of the Act. She therefore submits that the petitioner is at liberty to challenge the instant impugned orders before the said tribunal, and that, the writ petition does not deserve any consideration, as no irretrievable prejudice has been caused to the petitioner to warrant the invocation of writ jurisdiction of this Court.

7. Upon hearing the learned counsel for the parties, and on examining the materials on record, the ground of challenge simply put, is basically not on the merits of the matter that is, whether there were delayed payments or any other laches on the part of the petitioner, that called for the initiation of



proceedings for recovery of the same, but in the manner and method, the same was initiated and conducted. It is first to be noted that, notwithstanding the absence of any limitation period under Section 14B, in the instant case, by the impugned notice dated 21.10.2021, the respondent had made demands for payment of damages and interest for alleged delayed payments for the period 01.04.1996 to 31.03.2014. As rightly submitted by the learned counsel for the petitioner, the earliest period therein, that is, 01.04.1996, is over 25 years ago, and even the end period thereof, that is, 31.03.2014, is after 7 years, from the date of the impugned notice. As such, the question of reasonableness of exercise of powers under Section 14B by the respondent, for initiating the said proceedings, assumes considerable importance. A perusal of the letter dated 25.05.2022, which was submitted to the respondent in the course of the proceedings, shows that the petitioner had apprised the respondent that the bank statements for the period 1995 to 2001, could not be provided, as the records pertain to a period before the concerned bank started digitizing or computerizing its records, and that further, that clarification had been provided for the delay that had occurred on account of the switch over from the CDA to IDA system. It is also seen that in the said letter, the petitioner had expressed its inability to trace documents pertaining to 15-25 years back, to reconcile certain figures in the statement.



8. In the impugned order as observed above, the proceedings were actively conducted by the respondent for verification to discern the alleged delays for fixation of damage periods. To clearly portray the same, for the sake of convenience, an extract of the impugned order is reproduced herein below.

“Shri. Dwijen Kumar, Secretary, however sought some more time and stated that the detailed and comprehensive explanation of the queries of EPFO, Shillong, will be submitted along with relevant documents on the next date of hearing. The submission of Shri. Dwijen Kumar, Secretary, is taken on record, and the next date of hearing was fixed on 06/05/2022 at 11am. Shri. Dwijen Kumar Secretary of the estb. attended the proceeding on 06/05/2022 and he prayed for more time to find the records required by EPF office as stated in the previous hearing 28/04/2022, the request is granted. The next date of hearing was fixed on 25/05/2022. On 25/05/2022 Sh. Dwijen Kumar, Secretary, of the establishment attended the proceeding, and submitted a letter reference no. neepc/2022-23/3103 dated 25/05/2022, and case was adjourned to 21/10/2022. On 21/10/2022 Sh. Dwijen Kumar, Secretary of the establishment attended the proceeding. They were again directed to bring the deposit statements of the damage period 04/1997 and 04/2008, also on perusal of the letter ref. no. NEEPCO/2022-23/3013 dated 25/05/2022 the estb. hasn't given the point wise clarification sought on the daily order date 28/04/2022. They



were directed to bring the requisite bank statements and the point wise clarification sought in the next hearing 04/11/2022 and 30/11/2022. Sh. Dwijen Kumar Secretary of the NEEPCO attended the proceeding, he is advised to submit the challans and bank deposit statements for the contested period 02/2002 to 12/2007. The next date of hearing is fixed on 15/12/2022. On 15/12/2022 Sh. Dwijen Kumar Secretary of the estb. attended the proceeding. He submitted a letter along with supporting documents for cross verification by EPF Office and also stated that from the year 1999 to 2007 the dues were deposited within the grace period of 5 days (which was allowed by EPFO earlier), and damage dues for the period 04/2008 actually relates to 04/2010. In regards to the other damage periods, the estb. contested that the delay arose as a result of the delay in credit by the Bank, even though the estb. has deposited the payments on time. The estb. is informed that damage calculations is done by taking the date of credit as the date of receipt of dues by EPFO. As verification needs to be done for the first two matter, the case is fixed on 22/12/2022. On verification of challans submitted by the establishment it is seen that for the wages month 01/2001, 02/2002, 05/2002, 08/2002, 12/2002, 04/2003, 06/2003, 03/2004, 05/2004, 06/2004, 03/2005, 04/2006, 06/2006, and 01/2007, the challans were deposited within the grace period of 5 days. For wages month 06/2002 and 08/2005, the number of delays days was revised and taken as 7 and 10 days respectively and the damage and interest has



been calculated accordingly and duly intimated to the estab. For wage month 07/1999, the contestation of the estab. is rejected, as on scrutiny of the challans submitted by the estab. it is found that there is variation in the amount reflected in Annexure – A and the challan submitted by the estab. Further no proper explanation or supporting documents could be furnished by Establishment with regards to the variation. For 04/2008 on scrutiny of challan and bank statement it was seen that contribution mentioned against 04/2008 actually pertains to 04/2010 and payment was also made on time. Therefore damage and interest for 04/2008 has been struck off. A Revised Calculation Sheet was prepared and handed over to the Establishment for perusal and their submissions before next date of hearing, that is on 24/01/2023. On 24/01/2023 Shri. Dwijen Kumar, Secretary, NEEPCO EPF Trust and Sh. Paritosh Deb Assistant Accounts Officer attended the proceeding on behalf of the establishment. When enquired whether they have any objection with the Revised Calculation Sheet forwarded to them, they asked the reason for non acceptance of their petition that the damage dues relating to 04/1997 relates to arrear payment. Regarding the reason for their inability to provide the documents, be it the number of employees who have opted on that particular month, that is 04/1997, for IDA pay pattern, the establishment representative stated-



“that arrear payment can be given to employees only when option is made by the particular employees and that as the records pertain to a period of 25 years back they are unable to provide the data substantiating that this particular payment of dues relates to arrear payment of the employees.” Also for the month of 03/1995 they have stated that they couldn’t trace out the old records.

Considering that the clarifications sought by this office in the daily order dated 28/04/2022 has still not been furnished by the estab. despite lapse of over 8 months and as all their other objections, regarding the calculations of damage dues, have already been taken into account, and as Revised Calculation Sheet has also been furnished, and since more than a year has elapsed with regards to this case, and as adequate time and opportunities have already been given to the establishment, it was felt that there is no further need to prolong the case and therefore the same is hereby concluded and closed.

NOW THEREFORE, I, Kamlalbel Neitham, Regional Provident Fund Commissioner-II, Shillong, in exercise of the powers conferred on me under section 14-B of the Act and on application of my mind to the facts and circumstances of the case and on perusal of the relevant records, consider it to be a fit case for levy of damages as per the rates prescribed under Para 32-A of the EPF Scheme, 1952, Para 5(1) of the Employees’ Pension Scheme, 1995



and Para 8-A of the EDLI Scheme, 1976, notified vide notification dated 14.08.91 and 26.09.2008 issued by the Government of India and accordingly order that the damages for the delayed payments for the period from 03/1995 to 04/2008.....totaling Rs.60,57,874/- be recovered as per the account wise schedule indicated below from the employer in relation to M/S NORTH EASTERN ELECTRIC POWER CORPORATION LTD, BROOKLAND COMPOUND, LOWER NEW COLONY, SHILLONG 793003, HAVING P.F. CODE NUMBER NE/SHG/941.

<i>Nature of Damages</i>	<i>Amount due</i>	<i>Account No.</i>
<i>P.F. Contribution</i>	<i>Rs. NIL/-</i>	<i>1</i>
<i>Administrative charges</i>	<i>Rs. 29806/-</i>	<i>2</i>
<i>FPF/EPF contributions</i>	<i>Rs. 4109457/-</i>	<i>10</i>
<i>EDLI contributions</i>	<i>Rs. 34018/-</i>	<i>21</i>
<i>EDLI administrative charges</i>	<i>Rs. 670/-</i>	<i>22</i>
<i>Total</i>	<i>Rs. 4173951/-</i>	

I further order that the amount as mentioned above shall be paid by M/s NEEPCO Ltd. into the respective EPF accounts maintained in the State Bank of India within 15 days of receipt of this order, failing which, action will be taken under Section 8 of the Act to recover the amount in the same manner as laid down under Section 8B to 8G of the Act.

Issued under my signature and seal on this 6th day of February' 2023.

Sd/-



9. On the contention of the petitioner that, the letter dated 25.05.2022, was not addressed by the respondent, a perusal of the impugned order reflects that apart from mechanically verifying the submitted challans for the various periods, that could be provided, the reason for the inability of the petitioner to provide the documents, as to the details of the employees, who have opted for the IDA pay pattern for the month 04/1997, as also payment of dues or arrears for earlier years, on account of the same being old records of over 25 years, was never considered by the respondent. The finding tersely just records that clarification sought by the respondent were still to be furnished, and that adequate time and opportunity being already given, there was no need to prolong the case. The question of reasonableness, which had been raised by the petitioner has been given a total go by, without considering the fact that though Section 14B of the Act, does not provide for any limitation for initiation of proceedings for levy of damages, such power should be exercised within a reasonable period of time. The petitioner, as they have demonstrated before the respondent and also before this Court, were totally handicapped, as the old records especially the bank details were not in their possession, and in fact, the concerned bank had also expressed its inability to provide the same in time, as it related to very old transactions before the advent of



computerization or digitization. This aspect in the considered view of this Court is vital, inasmuch as, notwithstanding that the Act is a socially beneficial piece of legislation, the actions of the respondent in implementing the same should not be visited with arbitrariness or unreasonableness.

10. In this context, reference may be made to a few judgments where this aspect has been discussed by various High Courts and also the Supreme Court. The same are as follows.

(i) Regional Provident Fund Commissioner, Jalpaiguri vs. Darjeeling Dooars Plantation (Tea) Limited & Anr.(supra), wherein at Para -18, it has been held as follows:-

“18. It is a principle of law that though Section 14B of the Act does not provide for any limitation for initiation of proceeding for levy damages, but the power should be exercised within a reasonable period.”

(ii) Presidency Kid Leathers (Private) Ltd. vs. Regional Provident Fund Commissioner, Madras(supra) wherein at Para – 13, it has been held as follows:-

“13. We cannot also ignore the legitimate contention of the learned counsel for the petitioner that by reason of the delay in the initiation of the proceedings under S.14B of the Act, the petitioner/appellant was totally handicapped in putting forth the reasons for the alleged delay in the payment of the contribution and, therefore, the order impugned is liable to be modified.



Though it is contended by the petitioner/appellant that the respondent's failure in initiating the proceedings within a reasonable time, viz., not later than one year, will render the impugned order non est in law and liable to be set aside, we are unable to accept the said contention. But, however, we hold that the initiation of proceedings with a delay of 4 1/2 years to 8 years cannot at all be easily ignored. Therefore, the interest of justice and fair play will be amply met if we reduce the amount of damages levied by 50 per cent in both the writ petition and the writ appeal for the relevant periods in question.”

(iii) Hindustan Times Ltd. vs. Union of India & Ors.(supra), wherein at Para – 25, 26 and 29, it has been held as follows:-

“25. The Gujarat High Court in Gandhidham Spg. & Mfg. Co. Ltd. v. R.P.F. Commr. (to which, one of us Majmudar, J. was a party), laid down a principle that “prejudice” on account of delay could arise if it was proved that it was “irretrievable”. There it was observed that for purposes of Section 14-B, there is no period of limitation prescribed and that for any negligence on the part of the Department in taking proceedings the employees, who are third parties, cannot suffer. It was further observed:

“The only question that would really survive is the one whether on the facts and circumstances of a given case, the show-cause notice issued after lapse of time can be said to be issued beyond reasonable time. The test whether lapse of time is reasonable or not will depend upon the further fact



whether the employer in the meantime has changed his position to his detriment and is likely to be irretrievably prejudiced by the belated issuance of such a show-cause notice."

(emphasis supplied)

It was also stated that such a defence of irretrievable prejudice on account of delay, was to be pleaded and proved in the reply to the show-cause notice. We may add that if such a plea is rejected by the Department, it cannot be raised in the High Court unless specifically pleaded. The above principle of prejudice laid down by Gujarat High Court in Gandhidham Spg. & Mfg. Co. Ltd. (Guj) has been followed by the Bombay High Court in Soaner Taluka Ginning, Pressing and Dal Mill Prakriya v. R.P.F. Commr., Super Processors v. Union of India.

26. A different aspect of prejudice was referred to in Sushma Fabrics (P) Ltd. v. Union of India by a learned Single Judge of the Bombay High Court. It was stated that in some cases there could be serious prejudice on account of abnormal delay in taking proceedings under Section 14B, either because the records or accounts of the defaulter are lost or on account of the concerned personnel acquainted with the facts of a bygone period no longer being available for unearthing the facts. But such pleas must be raised before the Department and strictly proved. In case such facts are proved it is possible in some cases that there is irretrievable prejudice.



29. *From the aforesaid decisions, the following principles can be summarised:*

The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power-cut, financial problems relating to other indebtedness or the delay in realisation of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14-B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14-B would be taken; mere delay in initiating action under Section 14-B cannot amount to prejudice inasmuch as the delay on the part of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B, he has changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to



him is of an "irretrievable" nature; he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show-cause notice and must satisfy the authority concerned with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

11. The respondent therefore having come to a finding that for the period 03/1995 to 04/2008, the petitioner was liable to pay damages and interest thereon, in the circumstances as has been narrated earlier, does not pass the test of reasonableness, inasmuch as, the impugned orders have been passed without regard to relevant considerations, and thus lack proportionality. In the considered view of this Court, though in Section 14-B there is no limitation for initiation of proceedings, the powers exercised by the respondent in this regard should be in a rational and reasonable manner, which is not the case in the instant matter.

12. On the point of irretrievable prejudice being caused to the petitioner by the delay in the initiation of proceedings, the only aspect that



can be said to contribute to this being caused, to the mind of the Court, is the fact that between the period of default and the date of initiation of proceedings under Section 14B, the position has some what altered as there was a switch over from the CDA to IDA pay pattern, and that the petitioner had expressed in its inability to trace the documents, to reconcile certain figures in the statement, as arrear payments were given only to employees who opted for the same. This surely has caused a certain amount of prejudice, as the petitioner was not in a position and therefore helpless to supply certain documents, due to the inordinate delay in the initiation of proceedings under Section 14B. A ground of absence of Mens Rea, has also been raised by the petitioner and in this regard, the judgment in the case of ***Regional Provident Fund Commissioner vs. Hooghly Mills Company Ltd. & Anr.(supra)***, has been placed. Though, the same is a factor to be taken into consideration, in the facts of the present case, the main plank of challenge being on ground of unreasonableness and irretrievable prejudice, this aspect is not discussed.

13. Though, the Act provides for alternate remedy by way of an appeal under Section 7I, against orders passed under Section 14B, in the considered view of this Court, the impugned order which suffers from arbitrariness, non-consideration of the circumstances, as put forth by the petitioner by letter dated 25.05.2022, and passed in a mechanical fashion



without any application of mind, as to whether the power as vested had been exercised within reasonable time, deserves to be interfered with by this Court in exercise of powers under Article 226 of the Constitution of India.

14. Accordingly, in the given facts and circumstances and as discussed above, the instant writ petition is allowed, and the impugned notice dated 21.10.2021, and both the impugned orders dated 03.02.2023 under Section 14B and 7Q are accordingly set aside and quashed.

Judge