

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 147 of 2011 (P)

PETITIONER(S):

THE TRAVANCORE SUGARS & CHEMICALS LTD.,
VALANJAVATTOM, THIRUVALLA, PATHANAMTHITTA DISTRICT
REPRESENTED BY ITS GENERAL MANAGER (P&A)
SHRI.T.S.AKBAR KHAN.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH

RESPONDENT(S):

1. EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, SCOPE MINAR, CORE II
4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR
NEW DELHI-110 092.
2. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND, ORGANISATION
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-695 004.

BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION
BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 147 of 2011 (P)

APPENDIX

EXHIBITS

P1- TRUE COPY OF THE NOTICE DATED 25.09.2004 ISSUED BY R2
PROPOSING LEVY OF DAMAGES

P2- TRUE COPY OF THE ORDER DATED 3.1.2005 PASSED BY R2
ASSESSING DAMAGES UNDER SECTION 14B OF THE ACT.

P3- TRUE COPY OF THE APPEAL PETITION ATA NO.68 (7) 2005 (WITHOUT
ITS ANNEXURES) DATED 18.1.2005

P4- TRUE COPY OF THE ORDER DATED 18.11.2010 IN ATA NO.68 (7) 2005

P5- TRUE COPY OF THE ORDER OF THE TRIBUNAL IN ATA NO752(7) 2003
DATED 22.10.2010 FILED BY THE OTHER PLANTATION COMPANY

P6- TRUE COPY OF THE ORDER IN WP.21195/2008 DATED 15.7.2008

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 147 of 2011

Dated 12th March, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P2 order passed under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act), which the Appellate Authority refused to interfere with, as is indicated in Ext.P4. The only issue is as to whether the financial stringency can be a mitigating factor in considering the imposition of damages under Section 14B. The issue is no longer *res integra*. A Division Bench of this Court has held in **Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd. (2013 (3) KLT 790)**, that it would be a mitigation; to be considered on facts; by the Original Authority.

2. However, the learned Standing Counsel

would specifically point out that, but for making a blank statement that financial difficulty was the reason for non-payment of contribution, no substantiating material was produced. The said contention has to be considered in the perspective of the law as it stood at that point of time. The authorities as also the assesseees were under the belief that financial stringency would not be a mitigation under Section 14B. The said belief has now been overturned by the afore cited decision.

3. In the above circumstances, the fact that no substantiating materials were produced is not a compelling reason for this Court to stay its hands from interfering with the impugned orders. Definitely, an opportunity has to be given to the petitioner, a completely owned Government of Kerala undertaking, which was allegedly facing stringent financial crisis

during the period in which the default occurred.

4. In such circumstances, Exts.P2 and P4 orders would stand set aside. Petitioner shall appear before the authority within a period of three weeks from today and on production of the certified copy of this judgment, petitioner shall be granted a month's time to produce sufficient material to substantiate their contention. On production of such materials, the Assessing Authority, after affording an opportunity of hearing to the petitioner, shall consider the matter finally within a period of four months from the date of hearing.

The writ petition is disposed of. Parties shall suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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