

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 27190 of 2013 (W)

PETITIONER:

COMMONWEALTH TRUST (INDIA) LTD.,
REP. BY ITS EXECUTIVE DIRECTOR
REGD. OFFICE 7/1136, SOUTH MANANCHIRA ROAD
KOZHIKODE-673 001.

BY ADVS.SRI.C.K.KARUNAKARAN
SMT.T.P.LEKSHMI VARMA

RESPONDENT(S) :

1. CENTRAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAWAN, 14, BHIKAJI CAMA PLACE
NEW DELHI-110 066.
2. REGIONAL PF COMMISSIONER
EPF ORGANIZATION, ERANJIPALAM P.O., KOZHIKODE-673 006.
3. ASSISTATN PROVIDENT FUND COMMISSIONER & RECOVERY OFFICER
EPF ORGANIZATION, SUB REGIONAL OFFICE
KOZHIKODE-673 006.
4. ENFORCEMENT OFFICER
EPF ORGANIZATION, ERANJIPALAM P.O.,
KOZHIKODE-673 006.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

WP(C).No. 27190 of 2013 (W)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1. TRUE COPY OF JUDGMENT DATED 10/4/2013 IN WPC NO.19438/2012.

EXHIBIT P2A. TRUE COPY OF ORDER NO.KR/KK/222/ENF-III(2)/2011-12/945 DATED 7/6/2011.

EXHIBIT P2B. TRUE COPY OF ORDER NO.KR/KK/222/ENF-III(2)/7Q/2011-12/946 DATED 7/6/2011.

EXHIBIT P3A. TRUE COPY OF ORDER NO.KR/KK/1058/ENF-III(2)/2011-12/2009 DATED 8/8/2011.

EXHIBIT P3B. TRUE COPY OF ORDER NO.KR/KK/1058/ENF-III(2)/7Q/2011-12/2010 DATED 8/8/2011.

EXHIBIT P4A. TRUE COPY OF ORDER NO.KR/KK/185/ENF-III(2)/2012-13/3096 DATED 6/11/2012.

EXHIBIT P4B. TRUE COPY OF ORDER NO.KR/KK/185/ENF-III(2)/7Q/2012-13/3095 DATED 6/11/2012.

RESPONDENT(S)' EXHIBITS :

EXT. R1(a) COPY OF LETTER DATED 10-2-2012 OF ENFORCEMENT OFFICER TO ASST. P.F. COMMISSIONER (COMPLIANCE & RECOVERY) CALICUT.

//TRUE COPY//

P.A. TO JUDGE

Mn

K.VINOD CHANDRAN, J

W.P.(C).No. 27190 of 2013

Dated 23rd January, 2015

JUDGMENT

The petitioner challenges Exts.P2A, P3A and P4A orders wherein the damages under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act) have been imposed on the petitioner for various periods.

2. Admittedly, default was committed, assessments were made under Section 7A and interest was also levied under Section 7Q. The petitioner submits that, they have paid the entire assessed amounts as also the interest levied under Section 7Q. The petitioner has challenged the orders under Section 14B before this Court since, according to the petitioner, default was committed in the contributions only for reason of labour unrest and subsequently,

the entire factory was closed down. The orders impugned herein also hence, could not be challenged in statutory appeal.

3. It is also stated in Ext.P1 that, with respect to various periods, the petitioner had been diligently prosecuting the matter and the petitioner had challenged the orders under Section 14B before the Appellate Authority and the appeals having been rejected, this Court by Ext.P1, directed payment of 25% of the assessed amounts as damages under Section 14B of the EPF & MP Act. It is also pertinent that a Division Bench of this Court has in Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd. (2013 (3) KLT 790) held that Section 14B damages is not to be levied automatically and financial stringency would be a mitigating circumstance which has to be considered by the authority proceeding under Section 14B.

4. The learned counsel for the respondent Organization opposes the application on the ground that the impugned orders are appealable and no appeals were filed in time. It is to be noticed that the petitioner has raised very valid contentions for not having challenged the orders in appeal since the petitioner's establishment itself was closed down. It is also to be noticed that the petitioner had been diligent in taking up the matter before the Appellate Authority and challenging such orders before this Court as is indicated in Ext.P1.

5. In the above circumstances, it is only proper that the respondent authority consider the issue as laid down in the afore cited judgment of the Division Bench of this Court. Exts.P2A, P3A and P4A orders would stand set aside only for the reason of non consideration

of the issue of financial stringency. A representative of the petitioner shall be present before the authority on 10.02.2015 upon which, the respondent authority shall give one month's time to the petitioner for producing sufficient documents and shall also give a date of hearing; on the date of appearance with due acknowledgment. No further notice need be issued. The matter shall be determined and finalized within two months from the date of hearing.

The writ petition is disposed of. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//