IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1605 of 2012
Date of Decision: 17.09.2015

Regional Provident Fund Commissioner
... Petitioner

Versus

M/s Essen Deinki and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Tangri, Advocate,
for the petitioner.

Mr. Rahul Sharma, Advocate,
for the respondent.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. Challenge is to the order dated April 26, 2011 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (for short "EPFAT"). The challenge is laid by the Assistant Provident Fund Commissioner, Chandigarh ("APFC"). The appeal of the respondent-Company has been accepted to the extent of remand for re-consideration. The appeal was filed against the order passed under section 14-B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short "EPF&MP Act") read with para.32-A of the Employees' Provident Fund Scheme, 1952 ("1952 Scheme"), paragraph 5 of the EPS, 1995 and section 8-A of the Employee's Deposit Linked Insurance Scheme, 1976 imposing damages on delayed payments for the period 10/06 to 12/06,

02/07, 07/07, 03/03 to 02/06. The total penalty levied under different heads comes to Rs.1,28,630/-. In addition to the above penalty, interest under section 7-Q of the EPF&MP Act has also been levied for the same period totalling Rs.50,699/-. Penalty and interest have been assessed in a total sum of Rs.1,79,329/-. It has been directed by the APFC that this amount if not deposited within 15 days will carry simple interest @12% per annum till the amount is deposited by the establishment. The order was passed on June 13, 2008 without prejudice to other actions to be initiated under sections 8-B to 8-G and under sections 14 and 14-A of the EPF&MP Act. The establishment sought review of the order which prayer was rejected on August 22, 2008.

2. The appeal before the EPFAT has succeeded in ATA No.822 (II) 2008 vide order dated April 26, 2011 against which the present writ has been filed. Applicability of the EPF&MP Act was not and is not questioned by the establishment. The EPF&MP Act prescribes that contribution is to be paid when salary becomes due and not when it is actually paid. The Appellate Court has held that the order of the Authority cannot be sustained and has remanded the case to assess liability @17% inclusive of interest. The EPFAT has applied the law in **Employees Provident Fund Organization vs. Birlapur Vidyalaya**, 2007(2) LLN 476 where the Division bench of the Calcutta High Court held that when the EPF&MP Act lays down condition when contribution is to be paid when salary becomes due and not when it is actually paid it does not mean that paying liability starts from the date when it accrues. The EPFAT noticed the facts of this case and found that the appellant therein had not deposited the contribution

in time but the fact that he had deposited the contribution as soon as the payment of arrears was demanded showed that the delay in payment of contribution is not an intentional one. Moreover, the appellant had paid interest as well. The DB held:

> *"Paragraph 30 requires the employer to enter the contribution made by the employee and the employer in the contribution card, the currency whereof is for one year. Relying on these provisions, he submitted that unless the amounts are paid, no amounts can be deducted and nothing can be recovered. But the proposition seems to be falacious inasmuch as Section 2(c) defining contribution provides that the contribution means contribution payable in respect of the employee by the principal under the scheme or the contribution payable by an employee to whom the insurance scheme applies. The definition does not use the expression 'paid', neither Section 6 says so. On the contrary, it says that the percentage of the contribution, as stipulated therein, calculated on the basis of the basic wages etc. for the time being is payable to each of the employees. These two provisions clearly indicate that the contribution is calculable on the basic charges etc. payable. These provisions do not use the expression 'paid'. When the legislature chooses a particular expression, the same follows the intention of the legislature. The word 'payable' indicates the amount which becomes payable on the basis of which the employer's liability accrues. Nowhere from the scheme of the Act or from the arrangement of the Scheme, it is possible to hold that such contribution are to be recovered or deducted only when the amount is paid. If such a proposition is accepted, in that event the entire scheme would toe stultified. The paragraph 29 also uses the word 'payable' as is used in paragraph*

30. An amount becomes payable as soon the amount accrues and becomes due to be paid. If it is not paid on the due date but paid at a later date, the payability starts from the due date and remains payable until paid. Therefore, the crucial point would be the date when the wages become payable. Paragraph 32 prescribes that the employer's contribution paid shall be recoverable by means of deduction from the wages. But this payment is to be deducted as soon as the wages are paid, but that does not mean that the liability will accrue only when the wages could be paid. If the employer makes the payment according to its convenience, the same would not enable the employer to pay at his whims or at his will for the reasons which may be justifiable or may not be justifiable. The sending of the return is not dependent on the payment but it is to be sent on the date it is supposed to be sent. The delay in payment of wages does not absolve the employer from submitting the return in terms of the scheme or the Act itself. A reading of sub-paragraphs 1 and 4 of paragraph 36 does not imply that the contribution is to be deducted only when the wages are paid. The liabilities that have been mentioned in paragraphs 40 and 41 are to be entered into the card. To take a different view would not be in commensurate with the scheme or the Act and the scheme so framed was simply because that certain liabilities have been imposed on the employer to maintain certain accounts. This maintenance of accounts is not dependent on the whims and caprice of the employer for choosing the time for payment or making payment at a later date. This question arose in Organo Chemical Industries v. Union of India *1979 (2) Lab IC 1261 : 1979 (2) Lab LJ 416. In the said decision it was held-*

The whole project gets stultified if employers thwart *contributory responsibility and this wider fall-out must colour the concept of damages when the Court seeks to define its content in the special setting of the Act.*

3. To allow the employer to make the contribution only when he pays the wages would be to stultify the project. To accept the petitioner's contention in this case would be to enable the employer to divert remittances to the Fund to suit his convenience putting forward sometimes reasonable grounds, sometimes justifiable grounds and most often unjustifiable grounds. The authority under the Act has discretion to mitigate damages depending upon the circumstances of the case but never a discretion to condone the delay; damages in rare cases can be nil percentage but failure to pay will always attract Section 14B. In reinforcement of the view that we take we think it necessary to refer to para 32 also, which reads:

32. Recovery of a member's share or contribution. - (1) The amount of a member's contribution paid by the employer or a contractor shall, notwithstanding the provisions in this scheme or any law for the time being in force or any contract to the contrary, be recoverable by means of deduction from the wages of the member and otherwise:

xx xx xx The caption of this para is recovery of a member's share or contribution. A close reading of this para makes it abundantly clear that it relates to the recovery by the employers of the member's contribution paid by him. This contemplates the earlier payment by the employer of the employee's contribution before deduction is made from the wages to be paid. A combined reading of paras 30 and 32 shows that in cases where due payment of wages is made impracticable for certain reasons, the obligation of the employer to pay both the contributions payable by himself and on behalf of the member continues. If the

> *two paras are so understood it is not difficult to reject the submission made by the petitioner, that his obligation arises only when wages are paid. Paras 30 and 32 occur in Chapter V of the Scheme under the heading 'Contributions' and para 38 occurs in Chapter VI under the headings 'Declaration, Contribution Cards and Returns'. Though the sub-heading of para 38 is 'Mode of payment of contributions', it is to be understood as the mode in the normal circumstances where wages are paid by the employer in due time. In unusual circumstances, para 30 comes into operation and para 32 enable the employer to recover the contribution paid by him in the first instance.*
>
> *As a result of this discussion we hold disagreeing with the petitioner's contention that even in cases of a lockout, strike etc. failure to make the contribution resulting in default will have to be visited by damages under Section 14B. The only when that can be considered by the authority is mitigation of damages having regard to the attendant circumstances that had resulted in the delay."*

3. The Appellate Tribunal relied on **Shanti Garments vs. Regional PF Commissioner**, 2003(1) CLR 228 where the Madras High Court held that where default is found but no apparent fault the quantum of damage should be compensatory rather than penal in nature. On facts, the EPFAT, in the present case, examined the record from where it was revealed that the delay in payment of contribution is not an intentional one. These are the premises on which the matter has been remanded.

4. Learned counsel for the petitioner submits that the view taken in *Shanti Garments* (supra) has not been approved by this Court in CWP No.22297 of 2012 in case titled *The Regional Provident Fund*

Commissioner vs. M/s Shivon International and another decided on July 30, 2015 of which the downloaded copy has been produced. This Court in *Shivon* considered the issue against an order of the Tribunal reducing the liability @22% (inclusive of interest) in the light of para.32-B of the 1952 Scheme.

5. The Court applied the law in **Hindustan Times Ltd. vs. Union of India**, 1998(2) SCT 256 and **Organo Chemical Industries vs. Union of India and others**, AIR 1979 SC 1803=1980(1) SCR 61; holding in the former case that *"from the aforesaid decisions, the following principles can be summarized: 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 realization of amounts paid by the cheques or drafts, cannot be justifiable ground for the employer to escape liability....".*

6. It is manifest that the Supreme Court has laid down financial problems relating to other indebtedness or the delay in realization of amounts paid by cheques and drafts cannot be a justifiable ground for employer to escape liability. On facts, the Court found in *Shivon* that the establishment was guilty of repeated defaults and for diverting the amount of contributions of the employees for its own purposes as there was

considerable delay in depositing the contributions. This Court cited an example from the facts of the *Shivon* case that the contribution for the month of February 1999 which was due on March 15, 1999 was deposited after a period of one year. In these circumstances, the period of delay and its recurring default cannot absolve the establishment from liability and that is how the order of the Tribunal was reversed and the order of the APFC was maintained. The Tribunal had applied the test of financial crisis to scale down liability for damages and penalty. In *Organo Chemical Industries*, the Supreme Court was faced with the misdeeds of the establishment which was a habitual defaulter in the matter of making contributions to the EPF, Family Pension Scheme and payment of administrative charges from the very inception. The establishment in *Organo Chemical Industries* had deliberately concealed the facts pertaining to its earlier defaults and the attending levy of damages under section 14-B of the EPF&MPAct. The defaults were explained on one pretext or the other and the company had been utilizing the amounts deducted from the wages of the employees including their own contributions etc. in running their business. The order of the RPFC in appeal before the Supreme Court was maintained having regard to the past record of the defaulter which deserved to be visited with the maximum penalty. It is well settled that the ratio of judgments lie in the principle of law culled out from facts and not what may follow by necessary implication. Therefore, the issue of maximum penalty and damages has to be viewed on a case to case basis.

7. Mr. Sanjay Tangri, learned counsel appearing for the petitioner relies on the decision of the Orissa High Court in **Radhanath Co-operative**

Press Ltd. vs. RPFC, Orissa and another, 1998(3) LLJ 1160 to contend that *mens rea* is not a necessary ingredient for awarding damages for default in payment of PF contributions. In determining quantum of damages mitigating circumstances have to be borne in mind. The element of *mens rea* stands excluded from section 14-B of the EPF&MP Act otherwise it will be an escape route for defaulters. The Division Bench judgment in *Radhanath Co-operative Press Ltd.* was authored by B.L. Hansaria, J. when His Lordship was the Chief Justice of the Orissa High Court. After noticing the decision in *Organo Chemical Industries* in paras.4 to 8 the Court observed as follows:-

> *"4. Our attention is first invited to what was stated in Organo Chemical Industries (supra) which is a leading decision on the validity and interpretation of Section 14B of the Act. This is what was stated by Krishna Iyer, J. in paragraph 15 regarding the rationals of enacting Section 14B at p 421 :*
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> > *"The measure was enacted for the support of a weaker sector viz., the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages completing it with his own equal share and duly making over the gross the sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes, the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself."*
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> *5. Sen, J. dealt with the object of imposing damages in the following words in paragraph 47 at p. 429:*
>
> > *"The expression 'damages' occurring in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The objection of*

> *imposition of penalty under Section 14B is not merely 'to provide compensation for the employees'. We are clearly of the opinion that the imposition of damages under Section 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees.... The word 'damages' in Section 14B is related to the word 'default'. The words used in Section 14B are 'default' in the payment of contribution' and, therefore, the word 'default' must be construed in the light of paragraph 38 of the Scheme which provides that the payment of payment of contribution has got to be made by the 15th of the following month."*

Earlier to this, it had been observed in paragraph 46 that "imposition of damages under Section 14B serves a two fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults.

6. The above would show that mens rea is not a necessary ingredient for awarding of damages under Section 14B inasmuch as the words used in this Section are "default in the payment of contribution". Therefore, the decision rendered in ***Cement Marketing Company v. Assistant Commissioner of Sales Tax, 1980 1 SCC 71****, which has been relied upon by Shri Das in support of his plea that mens rea in necessary, cannot assist the petitioner inasmuch as in that case the Court was seized with the question of levying penalty for filing 'false' returns which necessarily encompassed within its conception the element of mens rea.*

The same is, however, missing in the present case for the reason that the default has not to be wilful. We, therefore, reject the first submission of Shri Das.

7. The learned counsel then submits that as Section 14B requires the authority to recover damages not exceeding the amount of arrears "as it may think fit to impose", mind has to be applied by the authority as to why the employer has defaulted. It is, therefore, urged that in determining the *quantum of damages, the circumstances which go a long way to mitigate the gravity of the guilt have to be borne in mind as was stated in* ***C.L. Anand v. Regional Director, 1980 L.I.C. 901*** *in which decisioin financial hardship was regarded as a relevant circumstance. In this connection, Shri Das also refers to* ***Regional Provident Fund Commissioner v. Bharat Plywood & Timber Products (Pvt.) Ltd., 1980 41 P.L.R. 103 (Kerala)****. Therein reference was made to* ***Coalmines Provident Fund Commissioner v. I.P. Lalla, (1976-II-LLJ-91) (SC)*** *which has dealt with Section 10F of the Coalmines Provident Fund and Bonus Scheme, 1948, which is in pari materia with Section 14B of the Act. In Lalla's case, the Supreme Court had observed that the words "as it may think fit to impose" show that the authorities are required to apply their minds to the facts and circumstances of the case.*

8. We have no difficulty in accepting the aforesaid submission of Shri Das. A perusal of the impugned order shows that the contention of the petitioner that because of the financial difficulties it could not pay the contribution in time had not cut much ice. We would, however, think that keeping in view the fact that the employer is a co-operative society in which the workers are the members, and that it was continuously under financial difficulty, the default might not have been seriously viewed as was done by the Commissioner, which is apparent from the fact that he had awarded damages in some cases even up to 100 per cent. Another circumstance which weighed with the Commissioner was the fact that the petitioner was a "habitual defaulter". This also had happened, according to Shri Das, because of the persistent financial difficulty of the petitioner which was to such an extent that it was unable to pay its employees in time any wages who were compelled to obtain advances of paltry sums against their unpaid wages."

8. On these premises, the Division Bench set aside the order of the Commissioner and ordered fresh assessment of damages.

9. In *Radhanath Co-operative Press Ltd.* the Court made allowance to a Cooperative Society in which the workers were members and it was continuously under financial difficulty then the default might not have been seriously viewed as was done by the Commissioner, which is apparent from the fact that he awarded damages in some cases even upto 100 per cent.

10. In **Mansaram vs. S.P. Pathak**, (1984) 1 SCC 125 the Supreme Court observed that when a power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in reasonable manner inheres the concept of its exercise within a reasonable time.

11. Cases falling under section 14-B of EPF&MP Act read with para.32-A and their schedule inserted in para.32-A of the 1952 Scheme damages have to be credited in relation to the period of default. If it is less than two months then the rate of damages (percentage of arrears per annum) is seventeen per cent and if the period of default is six months and above the rate of damages is thirty seven per cent.

12. Mr. Tangri submits that the Tribunal has erred in reducing damages from 37% to 17% without paying out due regard to the schedule and the period in default. The other error committed by the Tribunal is that it has not given any sound reasoning while remanding the matter to the assessing authority with a direction to assess liability @17% inclusive of interest. It is submitted that as per provisions of the EPF&MP Act the employer is under legal obligation to deduct the particular percentage of wages as provident fund contribution of the employees and contribute matching amount and deposit the same representing the twin elements with

the provident fund authority within 15 days after wages become due.

13. It is the contention of Mr. Tangri that the Tribunal failed to appreciate correctness of damages imposed under section 14-B of the EPF&MP Act whereas the interest levied under section 7-Q of the EPF&MP Act, 1952 is statutory leaving no discretion. The establishment challenged the order dated June 13, 2008 by which only damages under section 14-B were challenged and interest levied under section 7-Q could not have been challenged by the establishment as the appeal under section 7 (I) is not maintainable against the order under section 7-Q of the EPF&MP Act and, therefore, interest component remains operational even after remand in case the appellate order is maintained. It is lastly submitted that there are no mitigating circumstances for setting aside the order imposing damages under section 14-B of the EPF&MP Act. Damages under section 14-B is in the nature of penalty. The word default under section 14-B must mean "failure in performance" or "failure to act". The traditional view of damages as meaning actual loss does not take into account the social content of a provision like section 14-B contained in a socio economic measure like the Act in question. The word "damages" has different shades of meaning. It must take its colour and content from its context and cannot be read in isolation nor can section 14-B be read out of context. The very object of the legislation would be frustrated if the word damages appearing in section 14-B of the EPF&MP Act was not construed to mean penal damages. It serves a twofold purpose resulting in damnification and also serves as a deterrent. The predominant purpose being to thwart further defaults. In summing up his argument, Mr. Tangri submits that the

modification of the order by an express direction in remand would not only cause loss to the employees but it would also give premium to the employer for defaults committed by him by not depositing the PF dues within time. On facts, it is stated that the representative of the establishment appeared before the Commissioner and admitted the delay in making payments, and period the damages may be levied as per notification dated November 01, 2007. If delay was admitted then the law would follow and no sympathetic considerations are involved in the process.

14. On the other hand, Mr. Rahul Sharma, learned counsel appearing for the establishment submits that the order dated June 13, 2008 passed under section 14-B of the EPF&MP Act is cryptic and contains no reasons for imposing damages on delayed payments and it does not behove the APFC to accuse the Appellate Tribunal of passing a short order remanding the case to the Authority.

15. In order to appreciate the arguments of Mr. Sharma it would be necessary to reproduce section 14-B of the EPF&MP Act

> *"14B.* ***Power to recover damages*** *- Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, 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 the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."*

16. Mr. Sharma relies on a selection of judgments the first of which is a Division Bench decision of the Madhya Pradesh High Court in **Vrijlal Manilal and Company vs. Regional Provident Fund Commissioner**, 2013(2) LLJ 293. The Division Bench held in paras.12 & 13 as follows:-

> *"12. Contention put-forth, on behalf of organization that with the introduction of structured table vide Paragraph 34A, the competent authority is left with no choice but to implement the same as it is though prima facie appears convincing; however, when the provisions contained in Section 14B is minutely scrutinized, the expression 'may recover from employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the scheme', leaves no iota of doubt that the competent authority is not divested of the power to exercise discretion. Had there been intention of the Legislature to leave no discretion with the competent authority, the aforesaid expression would not have been enacted. Instead, the structured rate mandatorily would have been made applicable, then there was no need for the first proviso to Section 14B that "before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard", which in absence of exercise of discretion, in our considered opinion, would be reduced to an empty formality. The second proviso which empowers*

the Board (i.e. Board of Trustees constituted under Section 5A of 1952 Act) comes into operation when the damages are levied. It is no terms curtails the discretion of the competent authority to determine the damages by way of penalty less than the rate prescribed under Paragraph 32 (A) of EPF Scheme. However, under no circumstances it should exceed the amount of arrears, as may be specified in the scheme. Paragraph 32 A of the EPF Scheme no doubt provides for the rates of damages to be recovered qua the period of default. The rates qua the period in our considered opinion are the maximum cap which under no circumstances be exceeded, for example, if the period of default is of less than two months the damages shall not exceed 17% of the arrears per annum and so on so forth. However, it is nowhere mentioned that it cannot be less than the maximum cap.

13. In view whereof we are of the considered opinion that the powers exercised by the competent authority under Section 14B of 1952 Act are wider and are not limited by the EPF Scheme as would prevent the Authority to exercise the discretion and in a given case wherein the circumstances are beyond the control of the employer to remit the contribution, to reduce the damages by way of penalty."

17. The rule evolved by the Division Bench rests on the word "may recover" in section 14-B. There is no straight jacket formula or an arithmetic calculation in levying damages or that it must necessarily follow. The authority exercised its discretion and was required to hear the establishment in an effective manner and the underlying principles of natural justice had to be afforded. The authority cannot act automatically or mechanically and remain blinded by the structured table in paragraph 32-A. If discretion vests in the authority then it equally vests in the Appellate Tribunal.

18. Mr. Sharma next cites the decision of the Division Bench of the Madras High Court in **RH 153, Ramanathapuram District Co-operative Spinning Mills Ltd., Achankulam-Kamudhi Taluk, Ramnad District, rep. by its Administrator and others vs. Central Board of Trustees of Employees' Provident Fund Organization, through its Chief Executive Officer (Central Provident Fund Commissioner), New Delhi-110 066 and others**, 2014(3) LLJ 77 in which an interesting question arose for decision on the interpretation of the second proviso to section 14-B of the EPF&MP Act which empowers the Central Board of Trustees under the EPF&MP Act to reduce or waive the damages levied under section 14-B to an establishment which is a sick industrial company and in respect of which a scheme of rehabilitation has been sanctioned under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). The Bench considered the provisions of para.32-B of the 1952 Scheme to answer the moot point which provision reads as follows:-

> *"**32-B Terms and Conditions for reduction or waiver of damages-** The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the following terms and conditions, namely:*
>
> *(a) In case of a change of management including transfer of the undertaking to workers, co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;*
>
> *(b) In cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf recommends, waiver of damages up to 100 per cent, may be allowed;*
>
> *(c) In other cases, depending on merits, reduction of*

damages upto 50 per cent, may be allowed.”

19. The question for determination was whether the cooperative society could benefit from reduction or waiver of damages. The Bench in *Ramanathapuram* case (supra) affirmed on a construction of the provisions of the EPF&MP Act and the scheme framed thereunder that a cooperative society would certainly fall in section 14-B read with para.32-B but commended the view that benefit of relaxation and waiver of damages could be extended to cooperative societies even though they do not come within the purview of SICA. The Division Bench relied on an earlier authority of the same Court where status to cooperative societies was put on a special footing. The Bench relied on earlier Division Bench judgment of the Madras High Court in **Regional Provident Fund Commissioner-II vs. Shrine Velankanni Senior Secondary School**, LNIND 2009 MAD 484; (2009) 4 MLJ 647 where Court permitted a school to make a request to the Central Board of Trustees in terms of paragraph 32 of the Scheme for reduction or waiver of penalty. The Bench commended the view the Court is not powerless to direct the organization to waive damages. Though this case does not apply to the facts of this case but Mr. Sharma relies on to show the extent of jurisdiction which can be exercised by Court in the face of provision which makes no allowance for cooperative societies and schools but which were read into the provision.

20. Learned counsel relies on a decision of the Kerala High Court in **M.Sundararaajan, s/o. Muthuswamy Company, Palakkad vs. Employees Provident Fund Appellate Tribunal, New Delhi and others**, 2014 (2) CLR 158; 2014 LabLR 771 to urge that in an appropriate case levy

of damages under section 14-B can be reduced. The Court relied on an earlier decision of the same High Court in **Sreekamakshy Agency (P) Ltd. vs. Employees Provident Fund Appellate Tribunal and another**, 2013 (1) KHC 457 where the learned Single Judge took the view that the authorities are under an obligation to consider levy of damages objectively, taking note of the peculiar facts and circumstances of each case. It is observed that if one has the money to pay and he deliberately withholds payment, there is scope for the authorities to impose damages. But if it is shown that one was under severe financial constraints on account of reasons stated supported by documents produced, the authorities are bound to consider the same in a pragmatic manner by not taking a pedantic approach. The above observation is made after referring to various decisions of the Supreme Court as well as decision of this Court on the issue.

21. In **Hindustan Steel Ltd. vs. State of Orissa**, AIR 1970 SC 253 the Supreme Court held that;

> *"penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances."*

22. The last contention put forth by Mr. Sharma is that even if an order is wrong but it is just and equitable it need not be interfered with by the High Court in the exercise of its writ jurisdiction. For this proposition, he relies on a service matter decided by the Division Bench of the Allahabad High Court in **Vipin Kumar Agarwal vs. Board of Director, Vidur Gramin Bank, Bijnor through its Chairman**, 1988(2) CLR 368. The Tribunal may fall into some legal errors but if substantial justice has

been rendered to a person the Court may not interfere with such a decision cf. **Council of Scientific and Industrial Research and another vs. K.G.S. Bhatt and another**, (1989) 4 SCC 635 and **Rashpal Malhotra vs. Mrs. Satya Rajput and another**, (1987) 4 SCC 391.

23. It is also a matter of some doubt whether the Regional Provident Fund Commissioner or the Board of Trustees can appeal against the order passed by the Appellate Authority. The Act is administered by the Board of Trustees and the aggrieved person, if any, can only be the Trustees. It has not been clarified whether the Board of Trustees had delegated its power to sue and be sued on the Regional Provident Fund Commissioner, Chandigarh. If there is no delegation of power on the Regional Provident Fund Commissioner to present the writ petition then he cannot be accepted as a person aggrieved by the impugned order.

24. In the main, I would accept the broad view propounded by Mr. Rahul Sharma that interference is not called for in this case and no substantial justice has resulted to either of the parties in the remand proceeding. A writ would not issue merely because it is lawful to do so. There is sufficient room in section 14-B of EPF&MP Act and paragraph 32-A of 1952 Scheme to accommodate the remand order even though it may be a little sketchy in nature. If it is sketchy then so is the order passed by the APFC dated August 22, 2008.

25. For these reasons, I would not accept the argument of Mr. Tangri and would dismiss the writ petition as calling for no interference with the remand order where the matter would be thrashed out again even on the point of levy of 17% interest as such a direction would remain

inherent in remand proceedings and would be read in since in remand the Tribunal cannot be understood as foreclosing as to the manner in which the case would be decided on any of the moot points in issue unless the remand directions dictate otherwise.

26. In view of the above, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

17.09.2015
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