

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.14149 of 2015

and

MP.No.01 of 2015

M/s. Emerald Engineering Unit 2
represented by its
Deputy Managing Director
P.Dhanraj, Survey No.128A,
Kelambakkam - Vandalur Main Road
Mambakkam Village, Chennai - 48. ... Petitioner

Versus

The Regional Provident Fund Commissioner - II
Employees' Provident Fund Organization
(Ministry of Labour), Government of India
Regional Office, No.3, Rajaji Salai,
Tambaram, Chennai -600 045 .. Respondents

Writ petition filed under Article 226 of the
Constitution of India praying for a writ of Certiorari calling
for the records relating to the order passed by the respondent
herein in Proceedings No.TR/RO/TAM/60662/ Gr.58/PDC/2015 dated
22.4.2015 quash the same.

For Petitioner : Mr.J.Pothiraj

For Respondent : Mr.J.Sathyanarayana Prasad

ORDER

The petitioner Engineering Unit is aggrieved by the order dated 22.4.2015 passed by the respondent levying damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act 1952. The petitioner Unit would state that all their units have been merged as single Unit as M/s. Diamond Engineering Chennai (P) Ltd, and they had closed down the operations of the Sholinganallur Units of M/s.Diamond Engineering and Topaz Engineering due to the development of Rajiv Gandhi Salai and hence they were unable to provide employment for the entire work force. The petitioner Unit would further state that they had earlier received "Best Exporter" Award and they were paying the statutory charges regularly. The

petitioner would also state that due to the financial crisis faced by them, they have become sick.

2. At the time when the writ petition was entertained, the petitioner was directed to remit 50% of the amount demanded and the same has been complied with.

3. Now the question would be as to whether the petitioner should be permitted to adjudicate the correctness of the impugned proceedings by way of this writ petition or is there any other remedy available to the petitioner under the Act or the Scheme.

4. The learned counsel for the respondent submitted that the Employees Provident Fund Scheme 1952 provides for alternative remedy in terms of para 32B and in cases, where BIFR in its Scheme has recorded certain requests and recommended waiver, the authority, namely, the Central Board may consider waiver. However, in other cases, the reduction of damages may be allowed up to 50%.

5. Learned counsel for the petitioner submitted that though the petitioner has become sick, they have not approached BIFR for declaring them as sick industry. However, it is submitted that the petitioner is not entitled to approach the Central Board under Para 32B of EPF Scheme, 1952.

6. In the light of the fact that the petitioner has already complied with the conditional order passed by this Court by depositing 50% of the dues levied by the respondent as damages, this Court is of the view that the petitioner should be permitted to move the Central Board under Para 32B of EPF Scheme, 1952.

7. Accordingly, the writ petition is disposed of giving liberty to the petitioner to file appropriate application / appeal before the Central Board under para 32 B of EPF Scheme, 1952, within a period of six weeks from the date of receipt of a copy of this order and shall produce the proof of such appeal/application being filed before the Board to the respondent, within one week thereafter. If the petitioner produces such proof, the respondent shall not proceed further with the impugned proceedings and should await the decision of the Central Board, failing which the respondent shall proceed further in terms of the impugned order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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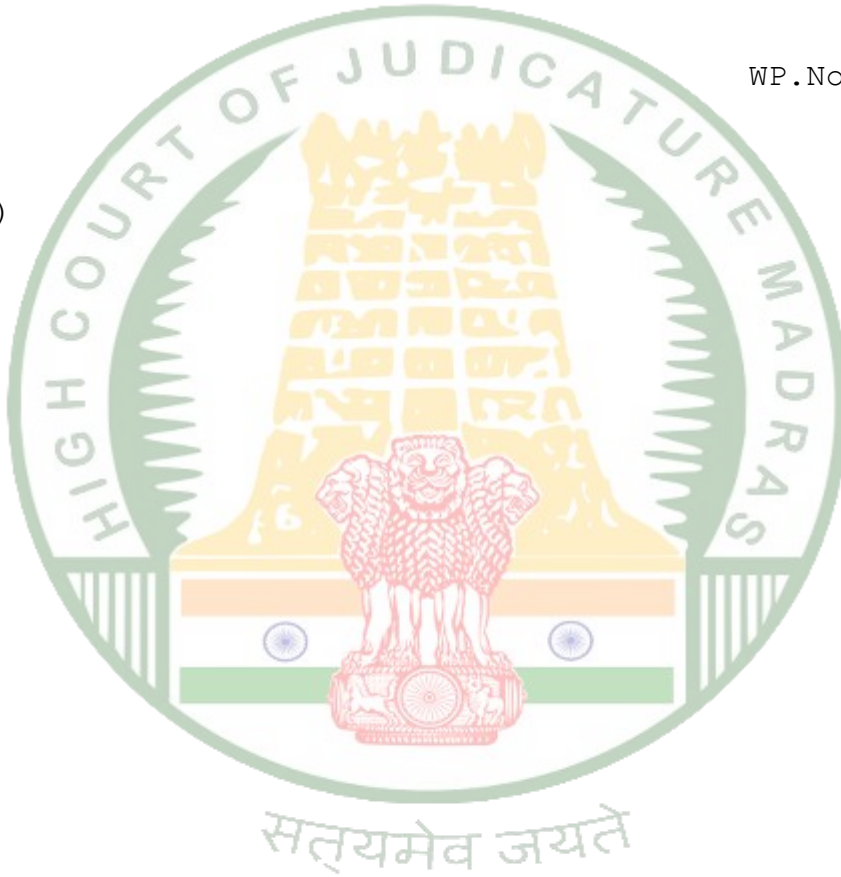
To

The Regional Provident Fund Commissioner - II
Employees' Provident Fund Organization
(Ministry of Labour), Government of India
Regional Office, No.3, Rajaji Salai,
Tambaram, Chennai -600 045

1 cc to Mr.J. Sathya Narayana Prasad, Advocate, Sr. 14726
1 cc to Mr.J. Pothiraj, Advocate, Sr. 14922

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