IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2341 OF 1996

The Rajwade Mandal People's
Co-operative Bank Ltd.,
Dhule – PETITIONER

VERSUS

1. Regional Provident Fund
Commissioner,
Office of the Sub Regional Employees
Provident Fund Organisation,
Wani House, Opp.Runanubandh
Karyalaya,
New Bombay-Agra Road,
Nasik – 422 011.

2. The Union of India,
Through : The Ministry of
Law and Judiciary and Company
Affairs,
Aaykar Bhavan,
Churchgate,
Bombay – 400 020 – RESPONDENTS

Mr.P.M.Shah, Sr.Counsel with Mr.M.M.Jadhav h/f Mr.S.P.Shah,
Advocate for the petitioner.
Mr.K.B.Choudhary, Advocate for respondent No.1.

CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/12/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the order dated 12/12/1994 passed by the PF Authorities thereby directing payment of

Rs.79,960/- towards damages u/s 14-B.

2. By order dated 18/01/1995, this Court had granted an ex-parte interim relief in terms of prayer clause "B" while admitting the petition and issuing notice. By virtue of the ad-interim order, the impugned order has been stayed.

3. Mr.Shah, learned Senior Advocate has strenuously criticized the impugned order and his submissions can be summarized as under :-

[a] The petitioner started the Co-operative Bank in 1933.

[b] In 1940, it started a sort of a scheme for depositing employees' contribution and the employer's contribution in a separate bank account opened with the Dhule District Central Co-operative Bank, Dhule.

[c] By notice dated 05/01/1989, the respondents/authorities informed the petitioner that it is covered by the Employees' Provident Fund and Misc.Provisions Act, 1952 (In short, EPF Act). The coverage was made effective from 30/07/1988.

[d] In March 1989, the amount of provident fund dues were deposited by the petitioner.

[e] A hearing was conducted by the respondents/authorities and

by the order dated 12/12/1994, damages u/s 14-B were sought to be recovered from an amount of Rs.79,960/-

[f] There is no intentional and deliberate failure on the part of the petitioner in depositing the PF subscriptions.

[g] There is no *mens rea* on the part of the petitioner in failing to deposit the PF subscriptions.

[h] For the pre discovery period, excessive damages are sought to be recovered.

[i] No damages can be imposed for the pre discovery period.

[j] The petitioner/bank had no knowledge as to whether the EPF Act had become applicable to the petitioner Bank.

[k] Further deposits were regularly made.

[l] If there is no wilful, intentional and deliberate failure in depositing the PF contributions, damages should not be imposed.

4. Mr.Choudhary, learned Advocate for the respondents/ PF authorities has drawn my attention to the provisions of the PF Act. He submits that there is no question of *mens rea* in failing to deposit the PF contributions. A definite scheme has been framed under the PF Act and there is a machinery provided for enforcing the recovery of dues of PF contributions. Since it is a part of social security legislation, certain stringent provisions in the nature of 14-B for

imposing damages and recovery interest u/s 7-Q are provided. He, therefore, submits that owing to the ex-parte ad interim relief, the money which belongs to the PF beneficiaries and the interest which they are legally entitled to, has been deprived as the petitioner has not deposited a single penny with the PF Authorities.

5. I have considered the submissions of the learned Advocates as are recorded above.

6. The judgment cited by the petitioner under the Employees State Insurance Act, 1948 in the matter of Emp. State Insurance Corporation Vs. H.M.T. Ltd., and another, AIR 2008 SC 132, in my view, would not be applicable to the case in hand. Though the levy of damages is not mandatory, Section 14-B has been provided to ensure that the defaulting employer is made to pay the damages.

7. It has been consistently held by the Hon'ble Apex Court and especially in the matter of M/s K.Streetlite Electric Corporation Vs. Regional Provident Fund Commissioner, Haryana [AIR 2001 SC 1818] that though the damages may not be in the nature of imposing any punishment, the proceedings initiated for the recovery of dues, entitles the RPFC/PF authorities to award damages since the legal

obligation cast upon an employer in making timely deposit of PF accumulations, has been violated.

8. In so far as the contention of the petitioner as regards the pre discovery period is concerned, I find from the impugned order that the PF authorities have imposed only 10% damages for the pre discovery period. In fact, the PF Authorities are obliged to search for defaulting employers and the EPF Act provides for a mechanism for discovering such defaulting employers. In fact, the pre discovery period is normally synonymous with the act of an employer in evading the payment of contributions under the PF Act. Yet, the PF Authorities have taken into account that the petitioner was earlier operating a private scheme claimed to be of the nature of Provident Fund for its employees.

9. Taking that aspect into account, only 10% damages have been imposed upon the petitioner though the PF Authorities could have imposed higher damages. In fact, the competent authority has considered the written submissions of the petitioner and has taken into account its bonafides and the investments it has made in fixed deposits in a bank and has therefore concluded that levy of 100% damages would not be proper. In this backdrop, damages @ 10% to

22% and on 3 counts, upto 25% have been levied by the concerned authority.

10. It is also seen from the impugned order that where ever possible, the PF Authorities have shown leniency even for the periods of violation by the employer post discovery and has imposed damages @ 22% on one count and 17% on another count.

11. The Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682] has laid down the law that this court can exercise its supervisory or writ jurisdiction only when the impugned order appears to be perverse, erroneous and likely to cause gross injustice. In the instant case, neither do I find that the impugned order is perverse or erroneous, nor can I ignore the fact that this amount of about Rs.80,000/- having not been deposited by the petitioner, has led to the loss of interest for the past 22 years, which amount is liable to be paid to the PF beneficiaries who are workers / employees working with the petitioner/Co-operative Bank.

12. Considering the above, this petition, being devoid of merit, is

dismissed. Rule is discharged.

13. Needless to state, the petitioner shall deposit the amount of Rs.80,000/- alongwith interest @ 7% from 12/12/1994 on the said amount within a period of 4 weeks from today, failing which, the said amount shall carry enhanced interest @ 12% from 12/12/1994.

( RAVINDRA V. GHUGE, J.)