

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 31.08.2017****CORAM :****The Hon'ble MR.JUSTICE M.SUNDAR****W.P.Nos.16924 and 16925 of 2004
and WP.M.P.Nos.20059 and 20058 of 2004**

Sivakumar Spinning Mills (P) Ltd.,
Madurai Road, Sankarnagar-627 357,
Tirunelveli District, Rep. By its Managing
Director, Mr.K.Vee.R.Kousigan. .. Petitioner in both WPs.

-VS-

Regional Provident Fund Commissioner,
Employee's Provident Fund Organisation,
Sub-Regional Office, 10A/3, St. Thomas
Road, High Grounds, Tirunelveli. .. Respondent in both WPs.

Petitions filed under Article 226 of the Constitution of India
praying for issue of Writ of Certiorari to call for the records of the
respondent levying damages made in his proceedings
No.TN/TI/7942/14B/1622/PDC(1)/2003 dated 16.12.2003 and levying
interest in proceedings No.TN/TI/7942/7Q/1622/PDC(1)/2003 dated
16.12.2003 and quash the same.

For Petitioner : No appearance

For Respondent : No appearance

* * * * *

COMMON ORDER

Two writ petitions, i.e., W.P.Nos.16924 of 2004 and 16925 of 2004 are disposed of by this common order, as the factual matrix out of which the two writ petitions arise is the same.

2. Subject matter of these two writ petitions arise under the Tamil Nadu Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as 'said Act').

3. The writ petitioner before me, Sivakumar Spinning Mills Pvt. Ltd., Madurai Road, Sankarnagar-627 357, Tirunelveli District, Rep. By its Managing Director, Mr.K.Vee.R.Kousigan, is hereinafter referred to as 'employer', for the sake of brevity, convenience and clarity. The sole respondent before me, namely, Regional Provident Fund Commissioner, Employee's Provident Fund Organisation, Sub-Regional Office, 10A/3, St. Thomas Road, High Grounds, Tirunelveli., is hereinafter referred to as 'said authority', and this is also for the sake of brevity, convenience and clarity.

4. The employer, which is the writ petitioner before me, is an

establishment to which the said Act applies. The employer had admittedly/concededly committed default in payment of contribution to provident fund for the period 03/98 to 06/01 under the said Act. This resulted in the said authority passing two orders. One order is under Section 14B of the said Act, wherein and whereby 37% of the arrears has been levied as damages. This is an order dated 16.12.2003 bearing Ref. No. TN/TI/7942/14B/1622/PDS(1)/2003. This order is called in question by the employer in W.P.No.16924 of 2004 and is hereinafter referred to as 'damages impugned order', for the sake of convenience and clarity. The other order is an order levying simple interest at the rate of 12% per annum on the arrears under Section 7Q of the said Act. This is an order dated 16.12.2003 bearing Ref. TN/TI/7942/7Q/1622/ PDS(1)/2003. This order is called in question by the employer in W.P.No.16925 of 2004 and is hereinafter referred to as 'interest impugned order' for the sake of convenience and clarity.

5.This matter was listed before me earlier on 12.07.2017. I recorded the proceedings and passed an order. The proceedings/ order made by me on 12.07.2017 read as follows:

"When the matter was called, there was no representation for both sides in the first call. The matter was passed over and

called again before lunch/before rising. Again there was no representation for both sides in the 2nd call also. Post for dismissal whenever the matter is listed in due course."

The above order/proceedings speaks for itself.

6. Today also, when the matter was called, there was no representation on both sides. With a view to give one more opportunity, the matter was passed over and called after lunch. In the second call/post lunch also, there was no representation on both sides. The writ petitions are of the year 2004. They were filed on 18.06.2004 to be precise and have been pending for one decade and three years in this Court. The writ petitions, which were filed on 18.06.2004, were admitted and Rule Nisi was issued by this Court on 22.06.2004. While admitting the writ petitions and issuing Rule Nisi, a common interim order being interim stay of the operation of the two aforesaid impugned orders was also granted. Such common interim order is operating until today, as the records before this Court do not show that the same was vacated, lifted or varied. Adjournment of such matters, which have been pending for well over a decade, for mere non-appearance of counsel more than once and in spite of

repeated opportunities being given, leads to avoidable delay in disposal of other cases. It also adds to the existing arrears. In my opinion, this is avoidable addition to arrears. Other option (other than adjournment) is dismissal for default/non-prosecution. This again does not help alleviate the maladies of delay/arrears, as filing of a restoration petition will commence one more round of litigation at the same tier, i.e., before a learned Single Judge. Therefore, I proceed to examine the matter on the basis of records before me and dispose of the writ petition on merits.

7. For dealing with the matter on merits, I deem it appropriate to extract Sections 14B and 7Q of the said Act, which read as follows:

"7Q. *The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:*

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank."

"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 subsection 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."

8.A perusal of the damages impugned order as well as the interest impugned order shows that the employer is an establishment to which the said Act applies. The two impugned orders, i.e., damages impugned order and interest impugned order, say that the employer is required to pay contributions under Section 6 of the said Act, besides

making contributions under Section 6A of the said Act read with para 3(1) of the Employees' Pension Scheme, 1995. The employer is also liable to pay administrative charges under para 38 of the Employees' Provident Fund Scheme, 1952. Besides this, the employer is liable to pay Deposit Linked Insurance contributions and administrative charges under Section 6(c) of the said Act. In other words, the employer is required to pay under four different heads.

9.I deem it appropriate to extract that portion of the impugned order, which reads as follows:

This is an establishment to which the Employees' Provident funds and Miscellaneous Provisions Act, 1951 applies and was required to pay

- i. the Employees' Provident Fund contributions under Section 6 of the Act*
- ii. the Employees' Provident Fund contributsion under Section 6A of the Act read with para 3 (1) of the Employees' Pension Scheme, 1995*
- iii. administrative charges under para 38 of the Employees' Provident Fund Scheme, 1952*
- iv. Employees Deposit Linked Insurance contributions and administrative charges under Section 6 (c) of the Act."*

10.To be noted, the extracted portion is ad verbatim the same in both the impugned orders, i.e., damages impugned order and interest impugned order.

11.Thereafter, the impugned orders go on to state that the employer failed to pay under the above said four heads within time, for the period 03/98 to 06/01.

12.It is also clear from both the impugned orders, i.e., damages impugned order and interest impugned order, that a show cause notice was issued by the said authority and the same is dated 22.10.2003 bearing reference No.TN/7942/TNY/SRO/PDC(1)/2003.

13.In the personal hearing, the employer's representative appeared and clearly admitted the default. The employer has only attempted to explain the default by stating that the employer could not pay due to financial crisis. The said authority has also clearly recorded in the impugned orders that the provisions of law pertaining to damages and interest (Sections 14B and 7Q) were explained to the representative of the employer. As the employer admitted non-payment/default and only pleaded financial distress, the said authority

proceeded to levy damages and interest under Sections 14B and 7Q of the said Act respectively. With regard to damages, as would be evident from the extracted section supra, though the said authority had powers to levy damages upto an amount not exceeding the arrears itself, the said authority, considering the financial crisis pleaded by the employer, has levied only 37% as damages.

14.As far as interest is concerned, as would be evident from the extracted Section 7Q of the said Act, the Statute itself provides for levy of simple interest @ 12% per annum and therefore, the said authority has gone by the Statute.

15.This takes me to the grounds on which the two impugned orders, i.e., damages impugned order and interest impugned order, passed by the said authority have been called in question in the instant writ petitions.

16.A perusal of the two affidavits filed in support of the respective writ petitions, reveal that the employer, which is the writ petitioner before me, has clearly admitted default/non-payment, as it had done before the said authority. In other words, that the employer

did not discharge its obligations under the said Act, as well as the Rules and Schemes thereunder, is not disputed before this Court. As alluded to supra, it was not disputed before the said Authority either. All that has been pleaded in the writ petitions is that there was financial crisis.

17. It is also seen that the employer has obtained an interim order from this Court on 22.06.2004 to the effect that both the impugned orders, i.e., damages impugned order and interest impugned order, stand stayed. As mentioned supra, the common interim order is operating.

18. Besides pleading financial difficulty, the employer has made a faint attempt to say that the two impugned orders are violative of Article 14 of the Constitution of India (CoI). To my mind, as the said authority has gone by the statutory provisions and the rule book, the question of infraction of Article 14 of the CoI does not arise at all. There is also a reference to a reported judgment of the Hon'ble Supreme Court in **Organo Chemical Industries & Anr. vs. Union of India & Ors.**, reported in **AIR 1979 SC 1803**. A reference to the ratio in this judgment has been made by the employer for the limited

purpose of saying that an order passed under Section 14B should be a speaking order. There is no difficulty about this proposition. This proposition is not disputed. As alluded to supra, a show cause notice was issued and the employer was also afforded an opportunity of personal hearing. The employer has clearly admitted default/non-payment. The employer has merely pleaded financial difficulty. That this was the position before the said authority cannot be disputed at all or in other words, it is indisputable because the plea of the employer before this Court is also the same. The said authority has clearly recorded the submission of the employer and after further recording the position that the relevant provisions of the said Act were explained to the said employer's representative, the impugned orders came to be passed. In the light of admission of default, there is nothing more for the said authority to articulate in the impugned orders.

19. Therefore, the plea that the impugned order under Section 14B of the said Act should be a speaking order, though indisputable, is of no avail or help to the writ petitioner in the instant case.

20. There is also a faint attempt to say that interest ought not to have been levied at 12%. From Section 7Q of the said Act, which has

been extracted supra, it would be clear that 12% interest is what is provided for under the statute. The other plea that levy of damages was high is also untenable, as the said authority has levied damages only @ 37%.

21.The legislations such as the said Act are beneficial legislations. Under such legislations, it is imperative that the employer is compliant. Compliance with the requirements take precedence over all other obligations of the employer. As, in the instant case, the employer has clearly admitted default/non-payment, the task is very simple.

22.I have discussed the grounds raised and the pleas made in the affidavits filed in support of the respective writ petitions before this Court. That would go on to reveal that there is no ground at all much less a tenable or acceptable ground that has been made out by the writ petitioner (employer) for interfering with the impugned orders. There is absolutely no ground for interfering with the impugned orders. The impugned orders are legal and well within the four corners of the respective provisions of law, which have been extracted supra. To my mind, it appears that even the plea of the employer qua financial

difficulty has been taken into account in passing the impugned orders, as the said authority has levied damages only @ 37%, while the statute gives provision and powers to the said authority to levy damages to a sum equivalent to the said arrears.

23.Owing to all that have been stated supra, I have no hesitation in coming to the conclusion that both the writ petitions are completely bereft of merits.

24.Therefore, both the writ petitions are dismissed. Consequently, WP.M.P.Nos.20058 and 20059 of 2004 are also dismissed and therefore, though obvious, it is made clear that the common interim order dated 22.06.2004 stands vacated. Considering the facts and circumstances of the case and the trajectory which this litigation has taken, there shall be no order as to costs.

31.08.2017

Index : Yes
Website : Yes
Speaking/non-speaking order

sra

M.Sundar, J.

(sra)

To

The Regional Provident Fund Commissioner,
Employee's Provident Fund Organisation,
Sub-Regional Office, 10A/3, St. Thomas
Road, High Grounds, Tirunelveli.



W.P.Nos.16924 and 16925 of 2004

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