

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 18.05.2017

CWP No.9249 of 2017

Patiala Cooperative Sugar Mills Ltd.

...Petitioner

Vs.

Employees Provident Fund Appellate Tribunal,
New Delhi & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Singh & Ms. Sukhmani Tiwana, Advocates,
for the petitioner.

RAJIV NARAIN RAINA, J.

This petition has been filed by the Patiala Cooperative Sugar Mills Ltd. (in liquidation) through the Official Liquidator. The mill has been ordered to be wound up under Section 57 of the Punjab Cooperative Societies Act, 1961. The Joint Registrar, Cooperative Societies, Patiala was appointed as Liquidator in 2005. The mill is lying closed.

The issue before the Employees Provident Fund Organisation arose from a notice under Section 14-B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the EPF&MP Act') served on the establishment on 07.04.2014 through the Liquidator. The Assistant Provident Fund Commissioner, Chandigarh passed an order on 23.01.2017 imposing damages under Section 14-B of the EPF&MP Act to the tune of ₹67,18,987/- against the mills and also imposed interest under Section 7-Q of the EPF&MP Act for belated provident fund remittances to the tune of ₹32,36,042/-. The petitioner filed an appeal before the Employees Provident

Fund Appellate Tribunal, New Delhi challenging the order. The appeal is pending.

This petition is directed against an interlocutory order passed by the Presiding Officer, EPFAT dated 28.02.2017 (Annex P-7) staying the recovery of the amount of damages assessed under Section 14-B of the EPF&MP Act till further orders. The order is silent qua interest levied under Section 7-Q of the Act. This would mean it has to be deposited.

Mr. Vikas Singh and Ms. Sukhmani Tiwana appearing for the petitioner submit that the order imposing damages/penalty, being a composite order, passed under Sections 14-B and 7-Q of the EPF&MP Act was appealable under Section 7-I of the EPF&MP Act. They submit that EPFAT vide interlocutory order dated 28.02.2017 has granted limited stay regarding damages and penalty under Section 14-B, but has not done so in respect of the interest part, which is a substantial amount.

On maintainability, learned counsel for the petitioner relies on the Supreme Court judgment in Arcot Textile Mills Ltd. Vs. Regional Provident Fund Commissioner, (2013) 16 SCC 1. In this case, it was held that an appeal is not provided in the Act against orders passed under Section 7-Q, but still that does not mean aggrieved person is remediless in questioning the computation of interest etc. and can file objections before the authority itself as to the correctness of calculation of interest or in appeal when the order passed by the authorities is composite with respect to damages and penalty under Section 14-B and interest under 7-Q by the same order. The Supreme Court in paragraphs 28 to 30 observed as follows:

“28. The issue that falls for consideration in this case is when the employer volunteers may be after long delay to pay the dues, can he claim any right to object pertaining to the interest component. On certain occasions the authority on its

own may issue a demand notice under Section 7-Q after a long lapse of time by computing the delay committed by the employer in payment of the dues. We repeat at the cost of repetition that it is a matter of computation but sometimes computation is done when the main order is passed and at times an interest component is demanded separately by the competent authority. To say that there cannot be any error at any point of time will be an absolute proposition. There can be errors in computation. It is difficult to hold that when a demand of this nature is made in a unilateral manner and the affected person is visited with some adverse consequences no prejudice is caused.

29. The learned counsel for the respondent would contend that the natural justice has been impliedly excluded and for the said purpose she ¹⁴ would emphasise upon the scheme and the purpose of the Act. There is no cavil for the fact that it is a social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty. It is contended that it is luminous that the legislature always intended that when hearing takes place for determination of the money due, the component of interest would be computed and in that backdrop the affected person will have opportunity of hearing. But in reality when an independent order is passed under Section 7-Q which can also be done as has been done in the present case the affected person, we are inclined to think, should have the right to file an objection if he intends to do. We are disposed to think so, when a demand of this nature is made, it cannot be said that no prejudice is caused.

30. It is highlighted by the respondents that once the amount due is determined the levy of interest is automatic. The rate of interest is stipulated at 12% or at a higher rate if so is provided in the scheme. Despite this, there can be errors with regard to the period and the calculation. It is a statutory power which is exercised by the competent authority under the Act. Once the said authority takes recourse to the measure for computation and sends a bald order definitely the affected person can ask for clarification and when the computation

sheet is provided to him he can file an objection. Though, the area of delineation would be extremely limited yet the said opportunity cannot be denied to the affected person.”

Though an appeal is not provided against levy of interest under Section 7-Q but an exception has been carved out by introducing principles of fair play and modicum of rules of natural justice and it is only when the order in appeal is composite on penalty and interest, then hearing in appeal and objections would lie in the limited scope indicated by the Supreme Court. There is no doubt left on proposition of law. Nevertheless the Tribunal being a quasi judicial authority is required to assign reasons, however brief, in its interim orders granting or refusing stay pending appeal. The interim order in appeal reads thus:

- “1. Present appeal filed by appellant under Section 7-I of the Employees’ Provident Fund & Miscellaneous Provision Act, 1952 (here-in-after shall be referred as ‘the Act’) against the order dated 23.01.2017 (in short impugned order) passed by the respondent u/s 14-B & 7-Q of the Act.
2. Now come up on 22.05.2017 for filing counter reply on behalf of respondent. Respondent is restrained from recovery amount assessed u/s 14-B of the Act only till further order.”

In the order, no reasons have been assigned as to why the stay order has been restricted to Section 14-B alone, when the order in appeal was composite and not independent of each other. Since there are no reasons assigned judicial review even against an interlocutory order would not be possible in a meaningful manner.

The amount being substantial, the Liquidator ought to have been informed the reason for continuing the operation of the portion of the order which levies interest on delayed payments of contributions during the period of winding up.

Thus, the amount being substantial, the EPFAT may reconsider its decision on an objection application presented by the petitioner for consideration of grant of interim measures as was resorted to by the Supreme Court in *Arcot* case. The petitioner would be at liberty to present an application for stay of interest element in whole or in part upon which the Presiding Officer, EPFAT, New Delhi would pass orders in accordance with law by assigning reasons in writing. However, till then no coercive steps be taken against the petitioner – company.

With these observations and directions, the petition stands disposed of.

If the application is not filed within a period of eight weeks from the receipt of certified copy of this order, the interlocutory order passed by the learned EPFAT on 28.02.2017 shall stand revived automatically.

18.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>