NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.7054 of 2010

1. M/s. Gramin Kalyan Audyogic Prashikshan Kendra, Kalyan Nagar, Aheri, Durg (Cg) run by the Chhattisgarh Kalyan Samiti, Bhilai Nagar, Durg (CG) (Through Secretary, Chhattisgarh Kalyan Samiti)
2. Chhattisgarh Kalyan Samiti, Kalyan College, Sector-7, Bhilai Nagar, Durg (CG) Through President

---Petitioners

Versus

1. Union of India, Through Secretary, Govt. of India, Ministry of Labour, Shashtri Bhavan, New Delhi
2. Employees Provident Fund Organisation, Through Regional Provident Fund Commissioner, Indira Gandhi Vyavasayik Parisar, Pandri, Raipur (CG)
3. Recovery Officer & Regional Provident Fund Commissioner, Indira Gandhi Vyavashayik Parisar, Pandri, Raipur (CG)
4. Regional Provident Fund Commissioner-II, E.P.F. Organisation, Indira Vyavasayik Parisar, Pandri, Raipur (CG)
5. Employees Provident Fund Appellate Tribunal, Scope Minar, Core-II, 4th Floor Laxmi Nagar, District Centre, Laxminagar, New Delhi-110092, Through Registrar

---Respondents

For Petitioners	:	Mr.Manoj Dubey, Advocate
For Respondent No.1 to 4	:	Mr.Sunil Pillai, Advocate

Hon’ble Shri Justice Sanjay K. Agrawal

Order on Board

21/03/2018

1. The petitioners herein call in question the order dated 1st September, 2010 (Annexure P/1) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, whereby the Employees' Provident Fund Appellate Tribunal

has dismissed the appeal filed by the petitioners and affirmed the order dated 27.6.2003 (Annexure P/13) passed by the Regional Provident Fund Commissioner levying damages to the extent of ₹ 129169/- and interest of ₹ 42575/-. Feeling aggrieved against that order, this writ petition has been filed by the petitioners herein.

2. Mr.Manoj Dubey, learned counsel appearing for the petitioners, would submit that neither the Regional Provident Fund Commissioner nor the Employees Provident Fund Appellate Tribunal has recorded the finding before imposing damages under Section 14-B of the Employees' Provident Funds & Misc. Provisions Act, 1952 (hereinafter called as "the Act of 1952") regarding mens rea/actus reus on the part of the petitioners, therefore, the impugned order deserves to be set aside.

3. On the other hand, Mr.Sunil Pillai, learned counsel appearing for respondents No.1 to 4, would oppose the writ petition and support the impugned order.

4. I have heard learned counsel appearing for the parties and perused the order impugned and other documents filed along with the writ petition with utmost circumspection.

5. Undisputedly, the Act of 1952 is beneficial welfare legislation to ensure health and other benefit to the employees. Section 14B of the Act of 1952 provides as under:-

> "**14B. Power to recover damages**.—Where an employer makes default in the payment of any contribution to the Fund 46 [, the 47 [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 4[or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 6[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 7[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:
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> Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:
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> 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."

6. The issue raised herein is no longer res-integra and it is settled that in absence of finding regarding mens rea/actus reus on the part of the employer, action under Section 14-B of the Act of 1952 is not maintainable.

7. In the matter of **Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others**[1], Their Lordships of the Supreme Court have held that the employer is liable to pay damages under Section 14B of the Act of 1952. It was observed as under:-

1 (1997) 1 SCC 241

> "10. A reading Section 14-B of the Act would indicate that the employer is under an obligation under the statute to comply with the payment of the amount, In the event of his committing default in the payment of the contribution to the fund or in the payment of any charges payable under any other provisions of the Act or any scheme or insurance scheme or any of the conditions specified in Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government may, by notification in the official Gazette in this behalf, recover from the employer by way of penalty, such damages, not exceeding the amount of arrears, as may be specified in the scheme. The second proviso only lifts the embargo in the event of the industry becoming sick and it was reconstructed under the provisions of Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 subject to such terms and conditions as may be specified in the scheme of rehabilitation........"
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> 11. Thereby the employer is under a statutory obligation to deposit the amount to the credit of the Fund every month. In the event of any default committed in that behalf, Section 14-B steps in and calls upon the employer to pay damages by way of penalty the maximum of which is the accumulated arrears. The Regional Provident Fund Commissioner is given discretion only to reduce a percentage of damages and he has no power to waive penalty altogether.........."

8. Thereafter, in the matter of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others**[2], the principle of law laid down by the Supreme Court in **S.D. College** (supra) has been followed with approval.

9. Very recently, the Supreme Court in the matter of **Assistant Provident Fund Commissioner, EPFO and another Vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director**[3] relying upon the earlier judgment rendered in the

2 (2013) 16 SCC 1
3 AIR 2017 SC 679

matter of **Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others**[4] has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable. It was observed as under:-

> "3. The issue is now wholly covered against the appellants in the decision rendered by this Court in Mecleod Russel India Limited v. Regional Provident Fund Commissioner, Jalpaiguri and others, reported in (2014) 15 SCC 263 : (AIR 2014 SC 2573), wherein it has bee held in paragraph 11 that "......the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100 per cent of the arrears have to be imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B, it will be only logical that mens rea and/or actus reus was prevailing at the relevant time.
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> 4. In the impugned Judgment, at paragraph 23, it has been specifically held by the High Court that "In this case, there is no finding rendered by the original authority or the appellate authority with regard to mens rea or actus reus, except saying financial crises cannot be a reason to escape."

10. Applying the principle of law laid down by the Supreme Court in the above-stated judgments to the facts of the present case, it is quite vivid that no finding has been recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the petitioners and as such, in absence of finding with regard to mens rea/actus reus on the part of the petitioners, action under Section 14-B of the Act of 1952 against them cannot

4 (2014) 15 SCC 263

be sustained.

11. Accordingly, the impugned order dated 1st September, 2010 (Annexure P/1) passed by the Employees Provident Fund Appellate Tribunal, New Delhi and the order dated 27.6.2003 (Annexure P/13) passed by the Regional Provident Fund Commissioner directing levy of damages under Section 14-B of the Act of 1952 to the extent of ₹ 129169/- are hereby quashed.

12. So far as the interest part is concerned, learned counsel for the petitioners would submit that ₹ 40000/- has already been deposited by the petitioners that can be adjusted towards the entire amount of interest levied i.e. ₹ 42575/- by the Regional Provident Fund Commissioner.

13. Prayer appears to be fair and reasonable. It is accordingly directed that no further amount shall be recoverable from the petitioners.

14. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-