

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (L) No.3339 of 2011

M/s. Mohanti English Medium School, Through its Secretary, Miss Mohanti's Education Society, Jarhabhata, Bilaspur (C.G.)

---- Petitioner

Versus

1. Employees Provident Fund Appellate Tribunal, Ministry of Labour and Employment, Government of India, Scope Minar, Code II, 4th Floor, Laxmi Nagar, District Centre, Laxmi Nagar, New Delhi – 110 092.
 2. Assistant Provident Fund Commissioner, O/o Employees Provident Fund Organization, Regional Office Near LIC Building, Pandari, Raipur (C.G.)
- Respondents

For Petitioner:	Mr. N.K. Vyas, Advocate.
For Respondent No.2:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/06/2018

1. In exercise of power conferred under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act of 1952'), the Assistant Provident Fund Commissioner imposed damages of ₹ 1,79,800/- against the petitioner which the petitioner questioned by filing appeal under Section 7-I of the said Act before the Employees' Provident Fund Appellate Tribunal, New Delhi. The said Tribunal by its impugned order dismissed the appeal finding no merit. Questioning the same, this writ petition has been preferred.
2. Mr. N.K. Vyas, learned counsel appearing for the petitioner, would submit that neither the Regional Provident Fund Commissioner nor the Employees' Provident Fund Appellate Tribunal has recorded a finding before imposing damages under Section 14-B of the Act of 1952 regarding *mens rea* / *actus reus* on the part of the petitioner / employer, therefore, the impugned order deserves to be set aside.

3. None appeared for respondent No.2, though served.
4. I have heard learned counsel for the petitioner and perused the order impugned and also went through the other documents filed along with the writ petition with utmost circumspection.
5. Undisputedly, the Act of 1952 is a beneficial welfare legislation to ensure health and other benefits to the employees. Section 14-B of the Act of 1952 provides as under:-

“14-B. 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 sub-section (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.”

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 v. S.D. College, Hoshiarpur and others**¹, Their Lordships of the Supreme Court have held that the employer is liable to pay damages under

1 (1997) 1 SCC 241

Section 14-B of the Act of 1952. It was observed as under:-

“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. ...”

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 v. Regional Provident Fund Commissioner and others**², the principle of law laid down by the Supreme Court in **S.D. College's** case (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 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:-

2 (2013) 16 SCC 1

3 AIR 2017 SC 679

4 (2014) 15 SCC 263

“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 been 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.

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 there is no finding 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 employer and as such, in absence of finding with regard to *mens rea* / *actus reus* on the part of the employer / petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained.
11. Accordingly, the order of the Employees Provident Fund Appellate Tribunal, New Delhi directing levy of damages under Section 14-B of the Act of 1952 to the extent of ₹ 1,79,800/- is hereby quashed.
12. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge