

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.38865 of 2017

ORDER:

The prayer in the writ petition is as under:

“to issue an appropriate Writ, order or direction, more particularly one in the nature of the Writ of mandamus declaring

- a) the action of respondent No.2 in passing Order No.TS/ HYD/ 22120/ C-519/ T-1/ Damages/ 2017 dated 08.11.2017, under Section 8F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, directing State Bank of India to remit from the bank account of the petitioner, the statutory dues payable by the petitioner to the tune of Rs.9,12,19,108/- comprising of penal damages of Rs.6,09,69,108/- and simple interest dues of Rs.3,33,43,379/- levied under orders dated 02.05.2017 passed by respondent No.2 under Sections 14B and 7Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, even though Appeal No.A/ TS/ 21/ 2017 filed by the petitioner challenging the validity of the aforesaid order dated 02.05.2017 passed by respondent No.2 under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the interlocutory application seeking stay filed therein is yet to be heard and adjudicated by respondent No.3.
- b) the action of respondent No.2 in including the simple interest dues of Rs.3,33,43,379/- in the aforesaid order dated 08.11.2017 passed under Section 8F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, in utter contravention of his letter No.TS/ RO/ HYD/ 22120/ P D Cell-19/ T-1/ 2017/ 279 dated 31.08.2017, permitting the petitioner to pay the said dues in instalments on submission of a revolving bank guarantee equivalent to six months instalments, and

accepting the revolving bank guarantees dated 24.05.2017 and 26.09.2017 furnished by the petitioner for the said amount in pursuance thereof; and

- c) the action of respondent No.3 in not taking up Appeal No.A/ TS/ 21/ 2017 filed by the petitioner questioning the aforesaid order dated 02.05.2017 passed by respondent No.2 under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the interlocutory application filed therein seeking interim suspension of the aforesaid order dated 02.05.2017 as well as stay of all coercive steps.

as arbitrary, illegal, unjust, violative of the fundamental rights guaranteed under the Constitution of India, violative of the principles of natural justice, and contrary to the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and consequently set aside the aforesaid order dated 08.11.2017 and direct respondent No.3 to forthwith take up Appeal No.A/ TS/ 21/ 2017 filed by the petitioner questioning the aforesaid order dated 02.05.2017 passed by respondent No.2 under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, for hearing and pass appropriate orders in the Interlocutory Application filed therein and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

2. Undisputedly, against the order dated 02.05.2017, for the so-called statutory dues a direction to pay Rs.9,12,19,108/- which includes penal damages, the very levy is in impugn of Rs.6,09,69,108/- besides simple interest dues of Rs.3,33,43,379/- under Sections 14B and 7Q read with 8F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, ‘the Act’), once the appeal is filed under Section 7-I of the Act and it is pending even from the change

of jurisdiction from the Tribunal at Bangalore to the newly constituted Tribunal at Hyderabad, what is now stating to entertain the writ petition despite the above is the Tribunal is not choosing to take up any matters by tracing the records by constitution of Benches. This is untenable as the Tribunal is bound to take up the matters once duly constituted for their internal constitution of the Benches.

Having regard to the above, while continuing the interim order dated 05.12.2017 for a period of two (2) months from today, this Writ Petition is disposed of directing respondent No.3-The Central Government Industrial Tribunal, Hyderabad, to decide the appeal, pending with it, meantime on merits. Any permission to withdrawal is left open to approach the appellate Tribunal by the respondents to the appeal to decide on own merits.

No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.04.2018
MVA