IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-18952 of 2016
Date of Decision: August 07, 2018

M/s Arun Bhatta Company ....Petitioner.

Versus

The Presiding Officer, Employees Provident Fund Appellate Tribunal, Delhi and another
...Respondents.

2. CWP-14078 of 2016

Central Board of Trustees ....Petitioner.

Versus

M/s Arun Bhatta Company ...Respondent.

3. CWP-13935 of 2009 (O&M)

Regional Provident Fund Commissioner ....Petitioner.

Versus

M/s Philadelphia Hospital and another ...Respondents.

4. CWP-23801 of 2012

M/s Philadelphia Hospital ....Petitioner.

Versus

Regional Provident Fund Commissioner and another.
...Respondents.

5. CWP-19359 of 2017

M/s Philadelphia Hospital ....Petitioner.

Versus

Central Board of Trustees and another ...Respondents.

6. CWP-8627 of 2017

Central Board of Trustees ....Petitioner.

Versus

M/s Philadelphia Hospital ...Respondent.

7. CWP-8628 of 2017

Central Board of Trustees ....Petitioner.

Versus

The Shahbad Coop. Sugar Mills Ltd. ...Respondent.

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CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Jatinder Nagpal, Advocate, for the petitioner
(in CWP-18952-2016), and
for the respondent (in CWP-14078-2016).

Mr. Rajesh Hooda, Advocate, for the petitioner
(in CWP-14078-2016, 13935-2009, 8627, 8628-2017) and
for the respondents (in CWP-23801-2012, 18952-2016,
19359-2017).

Mr. Ajay Kumar, Advocate, for
Mr. Hemant Bassi, Advocate, for the petitioner
(in CWP-23801-2012, 19359-2017) and
for respondent No.1 (in CWP-13935-2009, 8627-2017).

Mr. Sanjeev Kumar, Advocate, for
Mr. Saurabh Goel, Advocate for the respondent
(in CWP-8628-2017).

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SHEKHER DHAWAN, J.

As common questions of law and facts are involved in the above titled seven writ petitions, therefore, with the consent of learned counsel for the parties, all these writ petitions are taken up collectively for disposal. Civil Writ Petitions bearing No. 18952 of 2016, 23801 of 2012 and 19359 of 2017 have been filed by the Employer-Companies and CWP Nos. 14078 of 2016, 13935 of 2009, 8627 of 2017, 8628 of 2017 have been filed by Regional Provident Fund department.

2. For facility of reference, facts are being taken from CWP No.18952 of 2016 - M/s Arun Bhatta Company vs. The Presiding Officer, Employees Provident Fund Appellate Tribunal, Delhi and another.

3. Present writ petition is for quashing impugned order dated 09.05.2016 (Annexure-P/3) passed by Employees Provident Fund Appellate Tribunal, Delhi (hereinafter referred to as **'the Appellate Tribunal'**), whereby the Appellate Tribunal ordered M/s Arun Bhatta Company (for short, 'the petitioner company') to deposit 20% of the assessed damages alongwith assessed interest before the respondent authority, on the ground that the same is totally illegal, arbitrary and against the principle of natural justice. The petitioner-company has also sought quashing of demand notice/orders Annexure P/1 and P/2 as also the letter dated 28.06.2016 (Annexure-P/5).

4. Facts as detailed in the present writ petition are that he petitioner company is running a micro brick kiln manufacturing unit and carrying on the activities which are seasonal in character. Unfortunately, due to recession in the market and the poor health of the proprietor of the petitioner company, as he suffered heart attack in the past and there was no one to look after the company, the petitioner company was running

through financial crises. In the month of February, 2015, the petitioner restarted the manufacturing unit and was astonished to receive demand notice dated 11.09.2014 vide which a sum of Rs.19,63,112/- towards interest from 09/1998 to 2013 and a sum of Rs.13,45,760/- as damages and the same is totally illegal and arbitrary because the same was issued without examining the financial status and position of the company. The petitioner-company approached the Appellate Tribunal by way of filing appeal, which was dismissed being time barred vide order dated 01.06.2015. The petitioner filed CWP No.12973 of 2015 and the said writ petition was allowed by this Court vide order dated 29.07.2015 and the Appellate Tribunal was directed to decide the appeal afresh on merits. Finally, the appeal was decided by the Tribunal vide order dated 09.05.2016 (Annexure P/3) directing the petitioner-company to deposit 20% of the assessed damages alongwith assessed interest before respondent No.2. In compliance of the said order, the petitioner deposited an amount of Rs.2,69,152/- of the assessed damages by way of demand draft vide letter dated 21.06.2016. However, respondent No.2 returned the said draft on the ground that the writ petition was being filed before this Court. Subsequently, the petitioner thought that the matter in litigation had been closed, but he was astonished to receive order dated 11.09.2014 vide which the petitioner was directed to pay Rs.13,45,760/- as damages and Rs.19,63,112/- towards interest for the said period. As per the petitioner, the financial position of the petitioner company is oblique. The delay has occurred due to poor financial position of the petitioner company. Moreso, the petitioner company was not in possession of the old record. As such, the present writ petition before this Court.

5. In reply filed by respondent No.2, plea was taken that the respondent-department had already challenged the order dated 09.05.2016 (Annexure-P/3) by way of CWP No.14078 of 2016 titled 'Central Board of Trustees vs. M/s Arun Bhatta Company. The respondent also took the plea that as per Section 6 of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, '**the Act**'), an employer is duty bound to deduct 12% of the basic wages of an employee and contribute 12% of the basic wages from his own and deposit the same within 15 days from the close of every month with the Provident Fund Commissioner. In case there is a delay in depositing the above mentioned deducted amount, the office of Employees' Provident Fund Organization is empowered to levy damages under Section 14-B of the Act. Section 14-B of the Act empowers the concerned authority to recover damages by way of penalty. The petitioner did not deposit provident fund dues of its employees for the period from September, 1998 to March, 2006. Accordingly, an order under Section 7-A was passed in the year 2006, assessing an amount of Rs.12,83,724/-. The petitioner herein filed appeal and the appeal was dismissed. Thereafter, the petitioner deposited the assessed amount under Section 7-A of the Act in June, 2012. As the amount was not deposited in time and the same was deposited after delay of more than six years after deducting the same from the wages of the employees, a show cause notice dated 13.03.2014 was issued by the respondent department to show cause as to why the damages and interest may not be levied on the petitioner for late deposit of provident fund dues of the employees. The matter was before this Court by

way of CWP No.12973 of 2015 and the Appellate Tribunal reduced the damages to 20% of the entire assessed damages without there being any ground to reduce the same. It was prayed that the writ petition filed by the petitioner company be dismissed and the writ petition filed by the respondent-department i.e. CWP No.14078 of 2016 be accepted.

6. Learned counsel for the parties advanced arguments on the lines of pleas taken in their pleadings. In support of his contention, learned counsel representing the Provident Fund department placed reliance on the decision of Hon`ble Supreme Court in **M/s Hindustan Times Ltd. Vs. Union of India and others, AIR 1998 SC 688** and decisions of Hon`ble Co-ordinate Benches this Court in **Regional Provident Fund Commissioner Vs. M/s Nijjar Agro Foods Limited and another, CWP No. 9048 of 2011, decided on 03.11.2017; Patiala Co-operative Sugar Mills Ltd. Vs. The Employees Provident Fund Appellate Tribunal and others, CWP No. 16067 of 2011, decided on 22.11.2016; The Regional Provident Fund Commissioner Vs. M/s Shivon International and another, CWP No. 22297 of 2012,** decided on **30.07.2015.**

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the basic facts are not disputed that the petitioner-Companies are liable to deposit the amount of provident fund timely with the authorities under the Act and there was long delay on account of deposit of the amount. As such, notices were issued to the employer to show cause within 15 days as to why damages as envisaged under Section 14B of the Act be not levied from it and thereafter due opportunity of hearing was

given to them. The only ground taken before the Appellate Tribunal was that the petitioner companies were suffering from financial constraint and as such, there was some delay in deposit of the amount. This Court has considered the matter in its entirety and is of the view that the Appellate Tribunal has considered those facts, which were not material for reversing or modifying the orders passed by the Assessing Authority under Sections 7A and 14-B the Act.

8. In **M/s Hindustan Times Ltd.'s case (supra)**, Hon`ble Apex Court discussed the ambit and scope of Section 14B of the Act as well as the nature of liability of the employer in case of timely deposit of amount with the Provident Fund authorities and observed as under:-

> "28. From the aforesaid decisions, the following principles can be summarised: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts cannot be justifiable grounds for the employer to escape liability;..."

9. In **Organo Chemical Industries & Another vs. Union of India & Others 1980 (1) SCR 61**, upheld the vires of the Act and held as under:-

> " this Court laid down that while passing orders under section 14-B, the authority was acting in a 'quasi-judicial' capacity and

was bound to give reasons for its orders. The levy was not necessarily proportionate to the loss incurred by the employee inasmuch as it was partly compensatory and partly penal."

10. Hon`ble Apex Court also observed in **Organo Chemical Industries's case (supra)** that if the deposit was delayed due to difficulties which were beyond the control of the Management or there were disputes between the partners of the firm or there was power-cut of 60% or there was huge amounts of loan payable to the financial institution, such explanations of the Management are not acceptable. The default could not be linked with the financial problems facing by the establishment especially because 50% of the employees contribution was trust money with the employer for deposit in the statutory fund. The delay in deposit of his part of the contributions amounted to breach of trust.

11. Identical view was taken by Hon`ble Co-ordinate Benches of this Court in **M/s Nijjar Agro Foods Limited; Patiala Co-operative Sugar Mills Ltd.; and M/s Shivon International's cases (supra).**

12. As per view taken by Hon`ble Apex Court in **M/s Hindustan Times Ltd.'s case (supra)** and **Organo Chemical Industries' case (supra)**, the plea taken by the petitioner-Companies, that there were financial constraints with them to deposit the amount, is not a justified ground at all to delay the deposit of amount with the Provident Fund authorities, the same being "trust money". Learned Appellate Tribunal has completely ignored this fact while passing the impugned orders thereby reducing the liability to deposit the assessed amount.

13. In **Employees Provident Fund Organisation Vs. M/s Pargati Silicones Ltd. and another,** **CWP-2247-2013**, decided on

25.07.2018, this Court has held that the plea of financial constraints to delay the deposit of amount with the Provident Fund authorities is not justified.

14. As per view taken by Hon`ble Apex Court and Coordinate Benches of this Court, Civil Writ Petitions bearing No. 18952 of 2016 filed by M/s Arun Bhatta Company and CWP Nos. 23801 of 2012 and 19359 of 2017 filed by M/s Philadelphia Hospital are dismissed and CWP Nos. 14078 of 2016, 8627 of 2017 and 8628 of 2017 filed by Central Board of Trustees and CWP No. 13935 of 2009 filed by Regional Provident Fund Commissioner, are allowed and the impugned orders passed by the Appellate Tribunal are set-aside.

(SHEKHER DHAWAN)
JUDGE

August 07, 2018.
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes