

\$~46 to 57 (*connected matters*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th July, 2018

- + CRL. M.C. 2322/2016 and Crl.M.A.9714/2016
- + CRL. M.C. 2326/2016 and Crl.M.A.9735/2016
- + CRL. M.C. 2327/2016 and Crl.M.A.9739/2016
- + CRL. M.C. 2328/2016 and Crl.M.A.9743/2016
- + CRL. M.C. 2329/2016 and Crl.M.A.9747/2016
- + CRL. M.C. 2330/2016 and Crl.M.A.9750/2016
- + CRL. M.C. 2331/2016 and Crl.M.A.9753/2016
- + CRL. M.C. 2332/2016 and Crl.M.A.9756/2016
- + CRL. M.C. 2333/2016 and Crl.M.A.9759/2016
- + CRL. M.C. 2334/2016 and Crl.M.A.9762/2016
- + CRL. M.C. 2335/2016 and Crl.M.A.9765/2016
- + CRL. M.C. 2336/2016 and Crl.M.A.9768/2016

M/S AIMIL PHARMACEUTICALS (I) LTD. & ANR.

..... Petitioners

Through: Mr. A.K.Singla, Senior Advocate with
Mr. H.D. Sharma, Adv. & Mr. S.K.
Khanna, Advocates

versus

THE STATE (NCT OF DELHI) & ANR Respondents

Through: Mr. Akshai Malik, Mr. Mukesh &
Mr. Ravi Nayak, Additional Public
Prosecutors for the State
Mr. A.P. Sinha, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T (O R A L)

1. On 19.05.2012 the second respondent filed twelve criminal complaints on almost identical grounds, the difference being on

account of the period for which the default in terms of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Employees' Provident Funds Act") – they having been registered as Criminal Complaint Nos.559/1/2012 to 570/1/2012, each complaint seeking prosecution of the petitioners for the offences statedly committed by them under paragraphs 7 and 8 of the Employees' Deposit Linked Insurance Scheme, 1976 read with Section 6C and 14 (1B) of the Employees' Provident Funds Act. The Metropolitan Magistrate took cognizance and issued process against the petitioners on the said complaints.

2. The present petitions have been filed with prayer that this court, in exercise of its inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), quash the proceedings in the aforesaid criminal complaint cases which are pending in the court of Metropolitan Magistrate-03, North-West District, Rohini, Delhi, the same being in the nature of abuse of the process of law.

3. The petitions are resisted by the respondents, the second respondent having filed counter affidavits with submissions that the cases have been launched because the petitioners had failed to discharge their liabilities in terms of Employees' Provident Fund Act within the period prescribed in the schemes that have the backing of statutory authority and that the metropolitan magistrate has passed the impugned order on the basis of averments made in the complaints supported by requisite evidence and on strength of sanction for

prosecution. It is submitted that there is no error, irregularity or illegality and so this court must not intervene.

4. As per the case of the second respondent (hereinafter, 'the complainant') the first petitioner (company accused) is an establishment within the meaning of the Employees' Provident Funds Act, the provisions of the said Act and the Schemes framed there under, namely, Employee's Provident Funds Scheme, 1952, Employees' Pension Scheme, 1995 and Employees' Deposit Linked Insurance Scheme, 1976 – applicable to it and the second petitioner being the person in-charge of the said establishment responsible for the conduct of its business, obliged to comply with the provisions of the said law and the said schemes. It is alleged in the complaints that the petitioners had failed to make the payment of certain dues under the said schemes and also on account of administrative charges within the prescribed period and consequently had committed aforementioned offences. The complaints have been lodged on the strength of sanction for the prosecution of the petitioners as granted on 15.05.2012 by Mr. Sanjay Bisht, Regional Provident Fund Commissioner-II, Delhi (North) purportedly in exercise of the powers conferred on him by Section 14AC(1) of the Employees' Provident Funds Act.

5. As mentioned earlier, each of these complaints pertains to default on the part of the petitioners in depositing the requisite amounts in terms of the obligations under the law and the schemes referred to above for different periods. The copies of the criminal

complaints, however, bring out one more distinction. The criminal complaint Nos.559/1/2012, 561/1/2012, 563/1/2012, 567/1/2012 and 570/1/2012 – which are subject matter of Crl.M.C. Nos.2333/2016, 2322/2016, 2334/2016, 2330/2016 and 2331/2016 respectively – are based on the allegations that the petitioners had “*failed to pay Employees’ Deposit Linked Insurance Scheme Contributions & Administrative Charges*” (‘EDLI Fund Contribution’, for short). The criminal complaint Nos.560/1/2012, 565/1/2012, 568/1/2012 – relating to Crl.M.C. Nos.2326/2016, 2332/2016 and 2335/2016 respectively, - in contrast, alleged non-payment of employer’s share of Provident Fund Contribution (‘PF contribution’, for short). All the remaining four complaints, i.e. Criminal complaint Nos.562/1/2012, 564/1/2012, 566/1/2012 and 569/1/2012 – pertaining to Crl.M.C. Nos.2329/2016, 2327/2016, 2336/2016 and 2328/2016 – are based on the allegations that the petitioners had failed to pay or deposit the Employers Pension Fund Contribution (‘Pension Fund Contribution’, for short).

6. It is not in dispute that prior to the above mentioned prosecutions being launched, the sanctioning authority itself had passed an assessment order dated 16.11.2011, holding the petitioners liable to pay amount of Rs.25,17,413/- for the period December, 2010 to April, 2011. The operative part of said order reads as under:-

“... Now, in view of above, I, SANJAY BISHT, Regional Provident Fund Commissioner (C&R), Delhi (North) after applying my mind and having examined the facts and circumstances of the case in light of the law and in

exercise of the powers vested in me under Section 7A of the Act determine the dues as under:

	<i>A/c-1 EE</i>	<i>A/c-1 ER</i>	<i>A/c-10</i>	<i>A/c-2</i>	<i>A/c-21</i>	<i>A/c-22</i>	<i>Total</i>
<i>Dues</i>	--	665137	1534478	203465	92484	1849	2517413

(Rs.Twenty five lakhs seventeen thousand four hundred thirteen only)

The establishment is directed to deposit the Provident Fund dues amounting to Rs.25,17,413/- (Rs.Twenty five lakhs seventeen thousand found hundred thirteen only) within 15 days of receipt of this order under the respective heads of the account and followed challans with respective Provident Fund returns, failing which the amount shall be recovered in accordance with the provisions contained in Section 8B to 8G of the EPF Act. The above assessment is however without any prejudice to provisions of section 14B and Section 7Q of the EPF & MP Act, 1952 and the establishment in addition to above dues is liable to pay the penal damages under section 14B and interest thereon under section 7Q at the applicable rate of this Act.

It is further ordered that in the event it is revealed at any stage that the establishment has concealed any fact which subsequently comes to the notice of the authorities, the appropriate authority shall be at liberty to initiate fresh enquiry under section 7A or section 7C of the Act for the said period and establishment will be liable to such liability as may be determined by the authorities under section 7A or section 7C of the EPF & MP Act, 1952."

7. The abovesaid order dated 16.11.2011 was sent to the first petitioner under the cover of letter dated 17.11.2011.

8. It is further not in dispute that on 29.03.2012, the said very authority had passed another order holding the petitioners liable to pay

Rs.30,47,244/- for the period May, 2011 to October, 2011, the operative part of the order reads as under:-

“Now, in view of above, I, SANJAY BISHT, Regional Provident Fund Commissioner (C&R), Delhi (North) after applying my mind and having examined the facts and circumstances of the case in light of the law and in exercise of the powers vested in me under Section 7A of the Act, determine the dues as under:

	A/c-1 EE	A/c-1 ER	A/c-10	A/c-2	A/c-21	A/c-22	Total
Dues	--	828947	1858785	246379	111992	2241	3047244

(Rs. Thirty Lakhs Forty Seven Thousand Two Hundred and Forty Four only)

It is also ordered that the establishment shall deposit the Provident Fund dues amounting to Rs.30,47,244/- (Rs.Thirty Lakhs Forty Seven Thousand Two Hundred and Forty Four Only) within 15 days of receipt of this order under the respective heads of the account and through challans failing which the amount shall be recovered in accordance with the provisions contained in Section 8B to 8G of the EPF Act. The above assessment is however without any prejudice to provisions of section 14B and section 7Q of the EPF & MP Act, 1952 and the establishment in addition to above dues is liable to pay the penal damages under section 14B and interest thereon under section 7Q at the applicable rate under the Act.

It is further ordered that in the event it is revealed at any stage that the establishment has concealed any fact which subsequently comes to the notice of the authorities, the appropriate authority shall be at liberty to initiate fresh enquiry under section 7A or section 7C of the Act for the said period and establishment will be liable to meet such liability as may be determined by the authorities under section 7A or section 7C of the EPF & MP Act, 1952.”

9. The aforesaid order dated 29.03.2012 was communicated to the first petitioner under the cover of letter dated 30.03.2012.

10. It is further not in dispute that the order dated 29.03.2012, quoted above was modified, clerical mistakes having been rectified by issuance of a corrigendum on 03.05.2012, the said corrigendum having been sent to the first petitioner on 04.05.2012.

11. It is further not disputed that the petitioners paid the outstanding amounts in terms of the aforementioned orders by various deposits during the period 19.06.2012 to 20.07.2012, the demand thus raised having been certified to have been duly satisfied by a formal communication dated 29.08.2013 addressed to the first petitioner.

12. One of the grounds raised by the petitioners is that since the outstanding dues had been deposited in June-July, 2012, the continuance of the prosecution through the aforementioned complaints preferred on 19.05.2012 would be unjust and unfair and that this court must put an end to the process. This submission is kept aside for the reason that offence, if committed, cannot get effaced by subsequent amends made by the accused. There are, however, other grounds raised which, this court finds, justify the prayer made in these petitions for the court to intervene to prevent the abuse of the process of the court and to secure ends of justice, the same relating to the order of sanction for prosecution on the strength on which the complaint cases were preferred.

13. It was fairly conceded by the counsel for the complainant that valid sanction is pre-requisite to taking cognizance by the criminal court and in this regard the provision contained in Section 14AC(1) of

the Employees' Provident Fund Act may be noted, it reading as under:-

“(1) No court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, except on a report in writing of the facts constituting such offence made with the previous sanction of 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, by an Inspector appointed under section 13.”

14. As is clear from the plain reading of the above mentioned clause the Central Provident Fund Commissioner is generally the appropriate authority who would grant “*sanction*” before a complaint in writing may be made by the authorized Inspector. But, the law permits the Central Government to authorize, by notification in the official gazette, any other officer to exercise said power to grant “*previous sanction*”. The second respondent placed reliance on notification issued and published on 17.10.1973 by the Central Government, which, to the extent relevant here, reads thus:-

“Notification under Sect.14AC

“S.O.549(E). – In exercise of the powers conferred by section 14AC of the Employees' Provident Funds and Family Pension Fund Act, 1952 and in super-session of all previous notifications on the subject, the Central Government hereby authorizes that the powers vested in the Central Provident Fund Commissioner under the provisions of the abovesaid section shall also be exercisable within each of the regions specified in the Schedule by the respective Regional Provident Fund

Commissioners in whose region the establishment is covered or has its Head Office.

This notification shall come into force on the first day of November, 1973.

SCHEDULE

1. The National Capital Territory of Delhi.”

15. It is not in dispute that each of these twelve complaints were filed on the basis of one common sanction for prosecution issued on 15.05.2012, it reading thus:-

**“EMPLOYEES’ PROVIDENT FUND ORGANISATION
REGIONAL OFFICE, DELHI (NORTH)
BHAVISHYA NIDHI BHAWAN, 28, COMMUNITY CENTRE,
WAZIRPUR INDUSTRIAL AREA, DELHI-110052.**

In exercise of powers conferred on me by sub-Section (1) of Section 14AC of the Employees’ Provident Funds & Miscellaneous Provisions Act, 1952 (Act 19 of 1952) (hereinafter referred to as the Act) Act read with Government of India, Department of Labour and Employment Notification No.S.O.549(e) dated 16th October, 1973, I, Shri Sanjay Bisht, Regional Provident Fund Commissioner-II, Delhi (North), am satisfied, after going through the records of M/s. Aimil Pharmaceuticals (I) Limited, A-13/2, Naraina Inds. Area, Phase-I, New Delhi-110028, that they have failed to submit, within the stipulated time, the Employees’ Deposit Linked Insurance Contributions and the Administrative Charges thereof, in contravention of Section 6C of the Act read with Para 8 of the Employees’ Deposit Linked Scheme, 1976, which is punishable under Section 14 (1B) of the Act.

I, therefore, on application of my mind and in public interest, hereby accord my sanction for the prosecution of:

**M/s. Aimil Pharmaceuticals (I) Limited,
A-13/2, Naraina Inds. Area, Phase-I,**

New Delhi-110028

*Shri K.K. Sharma,
Managing Director,
B-34, Surya Enclave,
New Delhi-110056*

*Sd/-
[SANJAY BISHT]
REGIONAL PROVIDENT FUND COMMISSIONER-II
(followed by rubber stamp) ”*

16. It is pointed out that the authority which has granted the sanction for prosecution is not the Regional Provident Fund Commissioner, In-charge of the region but an officer inferior in rank and status in hierarchy, *i.e.* Regional Provident Fund Commissioner-II. It is also pointed out that the sanction order is passed under the impression that the company to be prosecuted had failed to submit “*within the stipulated time*” the “Employees’ Deposit Linked Insurance Contributions and the Administrative Charges” which, it is argued, is factually wrong.

17. The petitioners pointed out, and the counsel for the complainant was unable to refute, that the allegations in these complaints, excluding the complaint Nos.561/1/2012 and 565/1/2012 are covered by the assessment order dated 29.03.2012, as rectified on 04.05.2012. It was argued that since by order dated 29.03.2012 the competent authority itself had granted the time of fifteen days from the receipt of the said order, for the deposit to be made, such time deemed to have been extended correspondingly by another fifteen days on account of corrigendum issued on 04.05.2012, “*the stipulated time*” had not yet

lapsed when the prosecutions were sanctioned by the order dated 15.05.2012.

18. It is also the argument of the petitioners that only five of these twelve complaints being in the context of alleged default in payment of EDLI fund contribution, the sanction for prosecution in the other cases had been mechanically accorded on 15.05.2012 without application of mind, the process in the said other seven complaints being incompetent on that additional ground.

19. This court finds force in all the above submissions meriting the prosecution of the twelve complaints to be quashed. The reasons for this conclusion are set out hereinafter.

20. The petitioners have brought out, through their submissions, on the basis of Office Manual issued by Employees Provident Fund Organization that the regional office is headed by Regional Provident Fund Commissioner-I, he being assisted by other officers also designated as Regional Provident Fund Commissioners, each of them entrusted with various responsibilities including recovery of the dues. It was also shown through the copies of two different Gazette notifications – GSR 283 and GSR 284 – both dated 30.08.1999 that the Employees Provident Fund Establishment is manned by officers appointed under section 5-D of the Employees Provident Fund Act, they including officers holding positions of Regional Provident Fund Commissioner Grade-I and Regional Provident Fund Commissioner Grade-II, the latter being the feeder cadre for officers of the former rank and consequently the former being superior in hierarchy. As is clear from the Office Manual of Employees Provident Fund

Organization, the regional office is headed by an officer in the rank of Regional Provident Fund Commissioner Grade-I.

21. In above state of hierarchy, the petitioners are right in their submission, that the notification dated 17.10.1973 issued in exercise of power under Section 14AC of the Employees' Provident Fund Act can be construed as delegating the power to sanction prosecution vested in the Central Provident Fund Commissioner only unto the Regional Provident Fund Commissioner, in-charge of the regional office and not the Regional Provident Fund Commissioners of the lower grade or rank. Since the Regional Provident Fund Commissioner-II was also the assessing authority in this case, the same officer himself could not, even otherwise, have been also the authority to grant sanction for prosecution on account of disobedience (if any) of his own order. At any rate, no order or notification further delegating the power to the Regional Provident Fund Commissioners of the lower grade was shown at the hearing.

22. In above view, this court finds that the sanction for prosecution in these twelve cases has been granted by an officer who did not have the requisite authority of law. As noted earlier, it is fairly conceded by counsel for complainant that valid sanction is *sine qua non* for a valid order of cognizance. The lack of competence in the authority that accorded sanction in these cases knocks the bottom out of the prosecutions in the twelve cases. This itself is a good ground for this court to interdict under Section 482 Cr.P.C.

23. It is the argument of the complainant that the petitioners had committed defaults in deposits within the period prescribed in the

scheme and so the offences stood committed soon as each default occurred. The issue raised by the petitioners, however, cannot be approached from such simplistic stand point. It may be assumed that the petitioners had made defaults in deposits within the period prescribed in the schemes and instructions. But, as is clear from above facts, questions arose which required the assessing authority to “determine” the liability by the orders quoted above. While so determining, the assessing authority specified the period of fifteen days for compliance. The default earlier made not having been pressed at that stage for penal action, it is the default, if any, pursuant to assessment orders that would control criminal liability.

24. The contention of the petitioners that the sanction for prosecution granted on 15.05.2012 was premature at least in ten out of twelve cases is found to be correct. The said ten cases, as noted above, relate to the assessment order dated 29.03.2012 whereby the first petitioner had been directed to make deposit “*within 15 days of receipt of the said order*”. Since the said order was corrected by corrigendum issued on 04.05.2012, the stipulated period within which complaints could be made would naturally stand extended and, therefore, the period and the last date by which deposit could be made will have to be read as 19.05.2012. The sanction for prosecution, however, was granted on 15.05.2012 on the assumption – a wrong one – that the company had failed to deposit the amount “*within the stipulated time*”. This was a conclusion which could not have been reached by the sanctioning authority on 15.05.2012. This reflects a mechanical approach.

25. Further submission of the petitioners that the sanction order cannot hold good in the seven cases where EDLI contribution is not even alleged to be in default also holds merits. The sanction order, even if assumed to be issued by competent authority, cannot justify the prosecution in said seven cases where EDLI contribution is not even an issue.

26. For the foregoing reasons, this court is of the considered opinion that continuation of the proceedings in the twelve criminal complaint cases against the petitioners would be an abuse of the process of law. This court, in this fact situation, is duty bound to step in by exercising its inherent powers under Section 482 Cr.P.C. to render justice.

27. The petitions are, thus, allowed. The prosecution in the aforementioned criminal complaints against the petitioners is hereby quashed.

28. The pending applications also stand disposed of.

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R.K.GAUBA, J.

JULY 12, 2018

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