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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 225 of 2017

- Regional Provident Fund Commissioner Regional Office, Block 'D' Scheme No.32, Indira Gandhi Vyavasayik Parisar, Pandri, Raipur, District Raipur (CG)

---- Appellant

Versus

- Indian Oil Corporation Limited (IBP- Division) through the Dy. Manager, (Operations) Industrial Explosive Plant Jamnipali, District Korba (CG)

---- Respondent

For Appellant	:	Shri Sunil Pillai, Advocate
For Respondent	:	Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

19/03/2019

1. The Regional Provident Fund Commissioner, Raipur has assailed the decision of learned Single Judge dated 7.4.2017 wherein the challenge made by respondent- Indian Oil Corporation (for short 'IOC') to the decision rendered by the Employees Provident Fund Appellate Tribunal, New Delhi (for short 'the Tribunal') was interfered with and therefore the appeal before the Division Bench.

2. Facts behind the present litigation are in a very narrow matrix. It is alleged by the Provident Fund authorities that IOC delayed making payment of provident fund dues and therefore they made themselves liable for payment of damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (henceforth 'the Act of 1952').

3. Pursuant to an agreement dated 24.3.2001 entered between the employees and the management of erstwhile IBP, a petroleum company,

the respondent company was obliged to deposit arrears of provident fund with the appellant. The agreement indicated that arrears arising out of the settlement after appropriate adjustment against Adhoc Adjustable Advances will be paid within three months from the date of signing of the settlement.

4. The IOC did carry-out its liability but instead of depositing the said arrears with the provident fund authorities by 31.3.2001 or maximum within extended time till 15.4.2001, the same was deposited on 16.7.2001. The Provident Fund authorities therefore treated it to be a case of wilful default of 92 days and invoked the powers under Section 14B of the Act of 1952.

5. The demand was assailed before the Tribunal and the Tribunal did not interfere as such with the decision of the Provident Fund authorities but for the circumstances which they felt were not wilful, reduced the penalty by 30% maintaining liability of 70%. This decision of the Tribunal dated 5.6.2008 became the cause of action for filing writ application by the IOC, which came to be decided in their favour by the learned Single Judge on 7.4.2017.

6. Submission of learned counsel representing the appellant Provident Fund is that the facts speak for themselves. The delay in deposit is not disputed. The requirement to pay is not an issue of debate and therefore if the authorities had created liability upon them for default, such decision ought not to be questioned as erroneous.

7. Stand of IOC before the learned Single Judge was that there was no wilful or deliberate act on the part of IOC to not comply with the law under the Act of 1952. There was lack of *mens rea* or *actus reus* in compliance and this is a good ground to interfere with the decision of the Provident Fund authorities to invoke Section 14B of the Act of 1952.

8. Learned Single Judge accepted the line of argument advanced by learned counsel for IOC because it buttresses their case by precedents and ratios which emerge from various decisions of the Hon'ble Supreme Court. The judgment of learned Single Judge has drawn support and sustenance and this is what he has had to say while deciding the writ application in favour of the IOC;-

> “9. In the matter of Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, 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:-
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>> “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..........”
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> 10. Thereafter, in the matter of Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others, the principle of law laid down by the Supreme Court in S.D. College (supra) has been followed with approval.

> 11. 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 relying upon the earlier judgment rendered in the matter of Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others 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:-
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>> “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.”
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> 12. 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.”

9. We have gone through the decision of learned Single Judge and various decisions which have been rendered in such circumstances by the Hon'ble Supreme Court.

10. Coming to the facts of this case, admittedly an agreement was signed on 24.3.2001 under which the deposit of arrears was required to be made by the IOC after making all adjustments of Adhoc Adjustable Advances and other outstanding settlements of such account. This too related to a

period 1.4.1997 onwards. Obviously, there was large number of employees whose accounts were required to be verified and such accounting would take time. Even otherwise, the IOC was granted three months time to do the compliance in terms of the agreement dated 24.3.2001 itself, which the Tribunal has quoted in the order so passed.

11. These factors are favourable to the IOC and therefore the facts do lean in favour of the reliance on the principles culled out by the learned Single Judge in his impugned order and as such, the view so taken cannot be said to be erroneous. It is not that there was any deliberate effort made by the IOC to not comply but the sheer magnitude of obtaining past record, adjusting the advances taken by various employees before the transfer or deposit could be effected, under the agreement, time was required and that is why the agreement itself fixed a time frame of three months to do so. If that was seen as an opportunity to make more money out of an establishment by the Provident Fund authorities then, in our opinion, it was an uncalled for exercise of powers by them. After all, we are also not unmindful of the fact that IOC authorities had legitimate belief in their mind that the compliance would be required to be done by them in terms of the agreement within a period of three months, which they did.

12. In the above given facts, it was not a case where Section 14B of the Act of 1952 should have been invoked against the respondent company. The judgment under challenge of the learned Single Judge dated 7.4.2017 does not require any inference.

13. The appeal is dismissed.

Sd/-	Sd/-
(Ajay Kumar Tripathi)	(Parth Prateem Sahu)
Chief Justice	Judge

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