

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4633 of 2012

The Assistant Provident Fund Commissioner,
Employee's Provident Fund Organization,
Dr.Balasundaram Road,
Coimbatore.

..Petitioner

vs

1.The Employees Provident Fund
Appellate Tribunal
Ministry of Labour and Employment,
Government of India,
Scope Minor, Core-II, 4th Floor,
Lakshmi Nagar District Center,
Lakshmi Nagar,
New Delhi - 110 092

2.M/s.Sri Rani Laxmi Ginning Spinning
and Weaving Mills Ltd., (TN/3476)
Arasur,
Coimbatore.

..Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records of the 1st respondent in ATA No.723(13)/2008
and quash the order dated 03.08.2009 passed there under and
thereby render justice. सत्यमेव जयते

For Petitioner : Mrs.R.Meenakshi

For Respondents : R1 - Tribunal

R2 - Mr.N.Ishtiaq Ahamed

O R D E R

The order passed by the 1st respondent in ATA No.723(13)/
2008 dated 03.08.2009 is sought to be quashed in the present
writ petition.

2. The petitioner is the Assistant Provident Fund
Commissioner, Employees' Provident Fund Organization. The order

of the Tribunal is sought to be quashed, mainly on the ground that the Tribunal granted waiver of the damages, which is impermissible and the Tribunal has no jurisdiction to grant such a waiver. The petitioner states that the 2nd respondent company is an Establishment and paying contribution under the Employees Provident Fund Act. There was a belated payment of contributions and the interest levied, which was paid by the 2nd respondent company. However, the damages imposed at 17% was questioned by the 2nd respondent. The Tribunal erroneously considered the claim of the 2nd respondent and granted reduction of the damages from 17% to 5%.

3. The learned counsel for the petitioner states that the Tribunal has no jurisdiction to reduce the damages already fixed by the authorities competent under the provisions of the Act. Such a reduction is impermissible in view of the fact that the 2nd respondent had committed a default in making payment and therefore, the Tribunal ought not to have reduced the amount of damages from 17% to 5%.

4. The learned counsel appearing on behalf of the 2nd respondent states that before the Tribunal, they have established that the Unit was sick and not in a position to pay the contribution itself. With great difficulty, they have paid the contribution along with interest and therefore, imposition of damages would cause greater financial burden for running the unit itself and they have approached the Tribunal to reduce the damages and the Tribunal considered the facts and circumstances prevailing in the 2nd respondent unit and reduced the damages from 17% to 5%. Thus, the reasons are recorded in writing by the Tribunal and as per the provisions of the Act, Tribunal is empowered to reduce the damages, if the facts and circumstances warrants, and established.

5. In the present case, the 2nd respondent Management could able to establish the sickness as well as the financial conditions of the 2nd respondent and consequently, the Tribunal passed an order, reducing the damages from 17% to 5%. Thus, there is no infirmity in respect of the order of the Tribunal and the authorities have unnecessarily filed the present writ petition.

6. The learned counsel appearing for the writ petitioner cited the judgment of this Court passed in W.P.No.17518 to 17521 of 2011 and etc., batch dated 21.06.2011, wherein the issues were elaborately adjudicated and following findings were given at Paragraph 27 and the same is as follows:

"27. If it is seen in this context, then the argument made by the learned Standing counsel for the PF Authorities that the Tribunal has no power to modify

the order must necessarily fail. Therefore, it must be held that the Tribunal has the power to go into all aspects of an appeal including the power to modify the orders passed by the authorities in levying damages."

7. Let us now consider the spirit of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act 1952. Undoubtedly, Section 14-B of the Act provides Power to the authorities 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 him, then they are empowered to impose penalty. Such damages not exceeding the amount of arrears, as may be specified in the Scheme.

8. However, Proviso Clause to Section 14-B of the Act enumerates 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.]

9. In the present writ petition on hand, the 2nd respondent Spinning and Weaving Mills Limited is unable to establish that the company was sick and declared as a sick industry under the provisions of the Act. Only, if an application was moved by the 2nd respondent before the Board for Industrial and Financial Reconstruction (BIFR) to declare the company, the 2nd respondent may not be eligible for such a reduction of damages imposed by the competent authority under the provisions of the Employees Provident Fund Act. Therefore, it is not as if, a mere representation of a person should be considered for the purpose of reduction of the quantum of damages. Any such reduction with reference to the Proviso Clause to Section 14-B of the Act, must be done with sufficient reasoning, which is to be recorded in writing. Contrarily, the Tribunal cannot adopt a mechanical approach of reducing the damages merely based on certain blanket statements. Unless there is an adequate proof to establish and there is a reason to believe that the company was declared as sick, then alone, such a discretionary power of reducing the power of damages can be exercised and not otherwise. The Proviso Clause undoubtedly provides power to Tribunal to reduce the damages. However, reduction must be done on exceptional circumstances, where any party filing an application, is able to establish that the reasons are genuine and accordingly, the discretionary power should be exercised by the Tribunal, so as to reduce the quantum of damages.

10. Discretionary powers are to be exercised cautiously and restrictedly. The Power of discretion provided under the Proviso Clause impliedly speaks that the reasons must be recorded. In the absence of any reason, it is to be construed that the exercise would exceed the main provision. The Proviso Clauses are provided to exercise the discretionary power discretely and in order to mitigate the injustice, if any noticed. Thus, any such discretionary powers contemplated in the Proviso Clause of any statute, the authorities competent must be cautious and apply their mind for the purpose of such exercise of discretionary power, so as to reduce the quantum of damages, as such reduction will affect the revenue of the State. Thus, the provision regarding the discretion under the Proviso Clause would not provide any absolute power. Such a discretionary power is an exception to the main clause and therefore, every authority should ensure that the exercise of discretion does not exceed the main provision enacted, empowering the authorities to impose damages in all such cases, where there is a default. The Rule is stipulated in Section 14-B of the Act. Section 14-B of the Act is unambiguous that the authority competent is empowered to impose damages. Thus, the said power provided under the Statute will prevail over. The Proviso Clause providing Power to the authorities to reduce the damages. The Rule must be implemented at the first instance and the discretionary powers provided in the Proviso Clauses are to be exercised as an exception on exceptional circumstances. The exceptions are to be carved out only on genuine circumstances, wherein the parties approaching the Tribunal are unable to establish that they are declared as a sick industry and their financial condition is so much in distress and they are not in a position to pay the damages. Thus, Rule is to be implemented strictly and the power of discretion is to exercise discretely.

11. This being the interpretation to be provided for Section 14-B of the Act. The exercise of discretionary powers should not exceed the scope of the main provision and in such an event, exercise of discretionary power became null and void and in violation of the main provision itself.

12. This being the factum, in the present case on hand, the 2nd respondent Company has not produced any document to show that they were declared as sick union under the BIFR Act and therefore, reduction of damages is in violation of Section 14-B itself. The exercise of discretionary power by the Tribunal became excessive and under these circumstances, there is no reason whatsoever to reduce the damages imposed by the competent authority under the EPF Act.

13. The Tribunal hereafter should follow such guidelines, while exercising the power of discretion and mechanical

reduction of damages cannot be adopted and therefore, this Court is inclined to uphold the order of damages passed by the competent authority. Consequently, the impugned order dated 03.08.2009 passed by the 1st respondent in ATA No.723(13)/2008 is quashed. The 2nd respondent is directed to pay the damages within a period of 12 weeks from the date of receipt of a copy of this order in 3 equal installments and the first installment will commence from 1st November 2019.

14. If the 2nd respondent fails to pay the installment, then the writ petitioner authority is at liberty to proceed against the 2nd respondent by following the procedures as contemplated under the Act and Rules for recovery.

15. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Employees Provident Fund
Appellate Tribunal
Ministry of Labour and Employment,
Government of India,
Scope Minor, Core-II, 4th Floor,
Lakshmi Nagar District Center,
Lakshmi Nagar,
New Delhi - 110 092

+1cc to Mr.R.Meenakshi, Advocate, S.R.No. 83927
+1cc to Mr.Ishtiaq Ahmed, Advocate, S.R.No. 84240

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PA(CO)
GN(12/11/2019)