



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.12922 of 2017

and

W.M.P. (MD) .No.9997 of 2017

M/s.Loyal Textile Mills Limited,
21/4, Mill Street,
Kovilpatti-628 501,
Tuticorin District, represented by its
Deputy General Manager (HR & Admin)

...Petitioner
Vs.

Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office,
N.G.O. 'B' Colony,
Tirunelveli-627 007.

...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order in No.MD/TNY/188/14B/100/PDC (1)2017, dated 08.05.2017 (received on 16.05.2017) passed by the respondent and quash the same as illegal.

For Petitioner	: Mr.M.E.Ilango
For Respondent	: Mr.K.Murali Shankar
	Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondent.

2. The petitioner is a Company engaged in manufacture and sale of textile goods. The petitioner is an Establishment falling within the purview of Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The workforce of the writ petitioner is around 1000. The petitioner happened to employ two Srilankan Nationals. The petitioner was also remitting the provident fund contribution for those Srilankan nationals. Since the said two workers happened to be Srilankan nationals, the petitioner was under the impression that it was enough if the petitioner pays the contribution on wage ceiling of Rs.15,000/- alone. The petitioner had adopted this approach in view of Paragraph 2 (f) of the Employees' Provident Fund Scheme, 1952, which defines an excluded



employee as an employee whose pay at the time exceeds Rs.15,000/- per month.

3. The petitioner was under the impression that there was Social Security Agreement between the Government of India and the Government of Sri Lanka. The petitioner clearly states that the said two employees have since withdrawn all the benefits due to them and also left the employment and returned to their native place, namely, Srilanka.

4. The respondent brought to the notice of the petitioner that the petitioner ought to have remitted the contribution based on their entire pay and the petitioner erred in remitting contribution on the wage ceiling of Rs.15,000/- alone. The respondent called upon the petitioner to make good the shortfall since there is no Social Security Agreement between the two countries. It is seen that there was correspondence between the petitioner and the respondent in this regard. Finally, when the liability of the petitioner became evident, the petitioner not only made good the shortfall in the matter of contribution, but also the interest portion also. The shortfall in the contribution came to Rs.5,03,562/-. The interest portion came to Rs.2,00,202/-. Even though the liability under the heads of contribution and the interest got cleared, the respondent wanted to penalize the petitioner under Section 14(B) of the Act. In this regard, notice was issued to the petitioner and after hearing the petitioner, the impugned order dated 08.05.2017 was passed calling upon the petitioner to pay damages to the tune of Rs.4,09,794/-. This order is under challenge in this Writ Petition.

5. The respondent has filed a detailed counter affidavit and also a typed set of papers. The learned Standing counsel reiterated all the contentions set out therein.

6. The learned Standing counsel draws my attention to the relevant averments set out in paragraph 4 of the counter affidavit. It is seen there from that Srilanka is not in the list of the countries with which India signed the Social Security Agreement (SSC). Therefore, the two international workers of Establishment from Srilanka could not have been considered as excluded employees. Therefore, the Establishment ought to have paid contribution without any wage ceiling. This position has been clarified vide the Government of India notification bearing No.G.S.R.705 (E) dt.1st October 2008 (as communicated vide Head Office, New Delhi guideline No. Actuarial /7 (9) 2008/75683 dated 07.01.2009. Hence, the stand of the learned Standing counsel appearing for the respondent is that when the petitioner / Establishment has not acted as per the statutory obligation and there was a delay in remitting the full contribution, the authority was justified in levying damages under Section 14 (B) of the Act and he wanted this Court to dismiss this



Writ Petition as devoid of merits.

7. I carefully considered the rival contentions and also went through the materials on record.

8. For levying damages under Section 14 (B) of the Act, the Authority ought to have given a factual finding that the Establishment intentionally and willfully delayed in remitting the contribution. In other words, *mens rea* is an essential ingredient for levy of damages. I carefully went through the contents of the order impugned in the writ petition. Nowhere has the respondent given any finding as regards the existence of the element of *mens rea* on the part of the petitioner / Establishment. This issue is no longer *res integra*. It has been authoritatively laid down by the Hon'ble Supreme Court in the decision reported in **(2014) 15 SCC 263- (McLeod Russel India Limited Vs. Regional Provident Fund Commissioner, Jalpaiguri and others)**.

9. When this Court indicated that the order passed by the Authority is not inconsonance with the parameters laid down by the Hon'ble Supreme Court in the aforesaid decision, the learned Standing counsel submitted that in that event this Court could consider remanding the matter to the file of the respondent to pass orders in accordance with law. In fact, he draws my attention to the order dated 16.12.2019 passed by the Hon'ble First Bench in W.A. (MD).No.516 of 2012. In normal circumstances, I would have remanded the matter straight away after quashing the order impugned in the writ petition. But the case on hand is a little different.

10. The object of levying damages under Section 14 (B) of the Act is to penalize wilful default. Here is an Establishment that employs almost 1000 persons in their workforce. The learned counsel appearing for the petitioner would inform that every month the petitioner is contributing a sum of a Crore of Rupees. They were genuinely under the impression that India and Srilanka being neighboring countries there was Social Security Agreement between them and that it is enough if they pay contribution on the wage ceiling of Rs.15,000/-. It is not as if the petitioner did not remit contribution for the two Srilankan employees; the issue was only regarding the quantum of contribution. The issue was whether contribution was to be paid on the entire pay received by the said Srilankan employees or whether it should be paid only on the wage ceiling of Rs.15,000/-. Therefore, this is a genuine legal doubt. When the facts became clear, the petitioner did not even challenge the stand of the respondent. They immediately made good the shortfall and also paid the interest thereon. Therefore, by no stretch of imagination can any prudent authority come to the conclusion that the petitioner had willfully short paid the contribution in this case. Looked at from any angle, it is not possible to discern the element of *mens rea* in this case.



Therefore, I would stop with quashing the order impugned in the writ petition and refrain from remanding the matter.

11. The writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.K. MURALI SANKAR, Advocate (SR-13307[F] dated 29/07/2020)

ORDER MADE IN
W.P. (MD) .No.12922 of 2017
28.07.2020

SMA/05/08/2020/4P/2C