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W.A.No.165 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2022

CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.A.No.165 of 2020 and CMP.No.2399/2020

Coimbatore Popular Spinning Milis Limited
rep. by its Managing Director
Sri G.Venkataramachandran,
SF.No.303, Pongalur Post,
Trichy Main Road,
Palladam Taluk,
Tiruppur District-641 667.
Appellant

...

-VS-

1. The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
Dr.Balasundaram Road,
Coimbatore-641 018.
2. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi-110 092.

...

Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the
order dated 18.10.2019 passed in W.P.No.11079 of 2014 by a learned
Single Judge.



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For Appellant : Mr.S.Ravi
for Mr.S.Gunalan

For 1st Respondent : Mrs.R.Meenakshi

JUDGMENT

(Judgment of the Court was pronounce by **T.RAJA, J.**)

This Writ Appeal has been directed against the impugned order dated 18.10.2019 passed in W.P.No.11079 of 2014 in which it has been held by the learned Single Judge of this Court that the writ petitioner/appellant company has not produced any document to show that it was declared as 'Sick Industrial Unit' under the Board for Industrial and Financial Reconstruction (BIFR), when the paragraph 2 of order passed by the 2nd respondent herein in ATA.No.45 (13) 2013 dated 13.09.2013 clearly shows that after giving the background facts of the appellant company facing the circumstances that lead to a reference before the BIFR, New Delhi, it subsequently came to be declared as a "Sick Industrial Company" by an order dated 22.02.2006, it is not known how the learned Single Judge has come to a conclusion that the writ petitioner/appellant has not produced any document.



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2. Mr.S.Ravi, learned Counsel appearing for the appellant would submit that when the appellant company was covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, they were remitting Employees' Provident Fund contributions regularly without any default or delay. But due to sharp and abnormal rise in the cotton price, power tariff, plant, machineries and spare parts as well as substantial increase in basic wages and Dearness Allowances of workman, the appellant company began to incur unprecedented loss because the prevailing conditions in the cotton textile industry and the yarn market would heavily impact the financial position of the appellant company. Therefore, when the appellant company has not able to function smoothly from the year 1997, accumulated losses of the company went to Rs.27.45 Crores exceeding the net worth of the company due to the financial loss, the appellant company became a Sick Industrial Unit. Therefore, a reference was made before the BIFR, New Delhi and the company was also declared as a Sick Industrial Unit by an order dated 22.02.2006. After the appellant company became non-functional and was under closure, the management also generated funds by selling its personal properties for remitting EPF contributions. It is, at this stage, the 1st respondent issued a Show Cause Notice dated 16.10.2012 proposing to levy damages under Section 14-B of the Act



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calling upon the appellant to pay a sum of Rs.11,39,381/- towards damages by an order dated 24.08.1999 and Rs.1,42,880/- by yet another order dated 21.09.1999 and Rs.11,154/- by subsequent order dated 11.01.2000 and also directed to pay the interest of Rs.7,59,758/- towards damages. Therefore, the appellant made a representation on 13.09.2011 to the 1st respondent making a request to waive the damages, but the 1st respondent without considering the same passed the impugned order dated 28.12.2012 under Section 14-B of the Act thereby directing the appellant to pay a sum of Rs.11,39,381/- with interest at Rs.7,59,758/-.

3. Learned Counsel for the appellant would further submit that admittedly, the appellant company became Sick Industrial Unit due to the accumulated loss of the company and the BIFR, New Delhi has given a finding declaring the appellant company as a Sick Industrial Unit and the fact remains that the appellant company has prima facie made the contributions towards employees' provident fund but with delay, however, for the said delay also, interest amount was admittedly paid without leaving any amount as arrears. Therefore, now the question that arises for consideration is whether the Sick Industrial Unit which has been declared by the BIFR is liable to pay damages.



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4. Learned Counsel for the appellant would also submit that when the impugned order dated 28.12.2012 has been passed by the Assistant Provident Fund Commissioner under Section 14-B of the Act calling upon the appellant to pay a sum of Rs.11,39,381/- towards damages along with interest at Rs.7,59,758/-, aggrieved thereby, the appellant company filed an appeal before the 2nd respondent herein, namely, Employees' Provident Fund Appellate Tribunal, New Delhi. The learned Employees' Provident Fund Appellate Tribunal, thereafter referring to Section-14-B of the Act empowering the Provident Fund Commissioner to impose damages in the case of failure to pay damages, and taking into account the circumstances led to the appellant company to face sickness and also the order dated 22.02.2006 passed by the BIFR declaring the appellant company as a Sick Industrial Unit came to the conclusion that the appellant company deserves the benefit of Section 32-B (b) of the Act, finally set aside the order, thereby directing the appellant to pay the damages. Aggrieved thereby, the 1st respondent herein went before the learned Single Judge of this Court. Surprisingly, learned Single Judge, when there were numerous findings given by the learned Employees' Provident Fund Tribunal in its order dated 13.09.2013 that the appellant company was declared as a Sick Industrial Company by an order dated 22.12.2006 and thereafter, they were not



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liable to pay the damages, in paragraph 12 of the order dated 18.10.2019 has stated that no document whatsoever was placed before it to prove that the appellant company was declared as a Sick Industrial Company under the BIFR and therefore, the reduction of damages was in violation of Section 14-B of the Act.

5. Mrs.Meenakshi, learned Counsel appearing for the 1st respondent would submit that although the appellant went before the BIFR challenging the order passed by the Regional Provident Fund Commissioner dated 28.12.2012 calling upon him to pay the damages and also interest at the rate of 12% p.a., instead of filing the appeal within 120 days as per Rule 7(2) of the Tribunal (Procedure) Rules, 1997, approached the 2nd respondent with a huge delay.

6. In reply, learned Counsel for the the appellant would submit that the argument advanced on the point of delay is liable to be repealed since challenging the order dated 28.12.2012 passed by the learned Assistant Provident Fund Commissioner calling upon the appellant to pay a sum of Rs.11,39,381/- towards damages with interest at Rs.7,59,758/-, the appellant has filed an appeal before the Employees' Provident Fund Appellate Tribunal, the 2nd respondent herein.



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7. Therefore, when an appeal was filed before the 2nd respondent against the order dated 28.12.2012 passed by the Regional Provident Fund Commissioner, we are unable to find how such an argument can be advanced before us that there was a huge delay. Secondly, it is an admitted case that the appellant company having suffered the financial crunch approached the BIFR, New Delhi. The BIFR in its order dated 22.02.2006 has declared the appellant company as a Sick Industrial Company stating that in view of the continuous losses and consequent constraints on finance, there were delays in remitting the contributions. Therefore, when the appellant company was declared as a Sick Industrial Company by an order dated 22.02.2006 of the BIFR, the crux of the issue is whether the appellant company was liable to pay the damages is to be answered in the light of Para 32-B (b) of the Employees' Provident Funds Scheme, 1952 which is given as under:

"32-B. Terms and conditions for reduction or waiver of damages:- The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to Section 14-B, subject to the following terms and conditions, namely, -



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(a)....

(b) in cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf, recommends, waiver of damages up to 100 per cent, may be allowed."

A perusal of para 32-B clearly says that the Central Board may reduce or waive the damages levied under Section 14-B of the Act in a case where the Board for the reasons to be recorded recommends waiver of damages up to 100%. Therefore, when the appellant company admittedly suffered financial sickness and this has been approved by the BIFR, New Delhi in its order dated 22.02.2006, declaring the appellant company as a Sick Industrial Company, the case of the appellant squarely falls in para 32-B(b) of the Employees' Provident Funds Scheme, 1952. Therefore, we are of the view that setting aside the well speaking order passed by the learned Employees' Provident Fund Tribunal, the 2nd respondent herein by the learned Single Judge of this Court is liable to go on the ground that it suffers from material irregularity.



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8. In view of all the above, the Writ Appeal is allowed with a costs of Rs.15,000/- (Rupees Fifteen Thousand Only) to be payable to the appellant by the 1st respondent herein. No costs. Consequently, connected Miscellaneous Petition is closed.

(T.R.J.,)

(K.B.J.,)

02.09.2022

tsi

To

1. The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
Dr.Balasundaram Road,
Coimbatore-641 018.
2. The Presiding Officer,
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