



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2022

CORAM:

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

WP No.6627 of 2014
and M.P.No.1 of 2014

The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore - 641 018.

... Petitioner

Vs

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092.

2.M/s.PGC Textile Corporation (P) Ltd.,
Unit-III,
(Formerly M/s.PV Apparels),
Eeeti Veerampalayam,
New Tirupur- 641 602.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the proceedings of 1st respondent dt. 14.06.2013 in Ref.No.ATA No.986 (13) 2012, and quash the order passed therein.

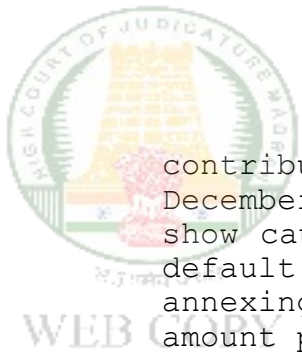
For Petitioner : Mrs.R.Meenakshi

For Respondents: R1 - Tribunal
Mr.R.Gokulakrishnan (for R2)

O R D E R

The writ petition has been filed questioning the validity of the order passed by the 1st respondent in Proceedings dated 14.06.2013.

2. The petitioner is Regional Provident Fund Commissioner and the 2nd respondent defaulted in payment of Provident Fund



contributions and other statutory charges for the period from December 2008 to October 2011. The employer was issued with a show cause notice informing the proposed levy of damages for the default committed by the 2nd respondent Establishment duly annexing the statement showing the wage month, due date and amount payable in the respective Accounts.

3. The 2nd respondent preferred an appeal to the Employees Provident Fund Appellate Tribunal and the tribunal passed a final order setting aside the order issued by the original authority. Challenging the said order, the present writ petition has been filed.

4. The issues raised by the writ petitioner with reference to the impugned order is no more res integra and this Court has considered the similar issue in W.P.No.6643 of 2014 and passed an order on 18.10.2019 and the said writ petition was also filed by the Regional Provident Fund Commissioner, Coimbatore, who is the petitioner in the present writ petition.

5. The said order passed by this Court in W.P.No.6643 of 2014 was taken by way of an appeal before the Hon'ble Division Bench in W.A.No.101 of 2020 and the Division Bench also confirmed the order on 12.02.2020. The said order was challenged before the Hon'ble Supreme Court of India and the said Special Leave to Appeal was also disposed of by the Hon'ble three Judges Bench of the Supreme Court of India.

6. This Court has passed an order in W.P.No.6643 of 2014, as under

"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



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1986), subject to such terms and conditions as may be specified in the Scheme.

9. In the present writ petition on hand, the second respondent-Textile Corporation 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 second respondent before the Board for Industrial and Financial Reconstruction (BIFR) to declare the company, the second 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



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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 second 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 14.06.2013 passed by the first respondent in ATA No.987(13)/2012 is quashed. The second 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



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installment will commence from 1st November 2019.

14. If the second respondent fails to pay the installment, then the writ petitioner authority is at liberty to proceed against the second 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. Consequently, connected miscellaneous petition is closed."

7. In fact, the parties in the said writ petition and the present writ petition are also one and the same. This being the factum, the order impugned passed by the 1st respondent dated 14.06.2013 in Ref.No.ATA No.986 (13) 2012, is quashed and the Writ Petition stands allowed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1.The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
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2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092.

+1cc to Mr.R.Gokulakrishnan, Advocate, S.R.No.33883
+1cc to M/s.R.Meenakshi, Advocate, S.R.No.32895

WP No.6627 of 2014

NK(CO)
SB(17/06/2022)