BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.09.2022

Pronounced on : 13.12.2022

CORAM

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P(MD)Nos.8437 and 8438 of 2014**
**and**
**M.P(MD).Nos.1 and 1 of 2014**

The Thanjavur Co-operative Printing Works Ltd.,
Represented through its Managing Director,
M.C.Road,
Thanjavur -613 004.
Tamil Nadu. ... Petitioner
in W.P(MD).No.8437 of 2014

Idayakottai Primary Agricultural
Cooperative Bank,
Idayakottai Post,
Palani(TK),
Dindigul 624 704. ... Petitioner
in W.P(MD).No.8438 of 2014

Vs.

1.The Employees Provident Fund
Appellate Tribunal,
New Delhi.

2.The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,

Sub-Regional Office, P.B.No.588,
Sree Complex “D” Block, 18, Madurai Road,
Trichy-620 008. Tamil Nadu. ... Respondents in both W.Ps

**PRAYER in W.P(MD).No.8437 of 2014:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award of the EPF Appellate Tribunal in ATA.No. 290(13) 2014 dated 07.04.2014, in so far as deposit of a sum of Rs.2 Lakhs with the second respondent and quash the same.

**PRAYER in W.P(MD).No.8438 of 2014:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award of the EPF Appellate Tribunal in ATA.No. 321(13) 2014 dated 16.04.2014, in so far as deposit of a sum of Rs. 1,00,000/- (Rupees one Lakh only) with the second respondent and quash the same.

For Petitioner (in both W.Ps) : Mr.V.O.S.Kalaiselvam
For Respondents (in both W.Ps) : Tribunal for R1
For R2 in W.P(MD).No.8437 of 2014 : Mr.I.Robert Chandrakumar
For R2 in W.P(MD).No.8438 of 2014 : Mr.K.Murali Shankar

**COMMON ORDER**

The brief facts in W.P(MD).No.8437 of 2014 as follows:-

This Writ Petition has been filed to quash the order of the Tribunal in ATA.No.290(13) 2014 dated 07.04.2014.

2. The petitioner is the Managing Director of Thanjavur Cooperative Printing Works Ltd. The second respondent has passed an order dated 28.02.2013, under Section 14-B of the Employees Provident Fund claiming damages for the period between 02/2012 to 12/13 amounting to a sum of Rs.7,15,560/- for the belated payment of contribution. As against which, the petitioner filed an appeal before EPF Appellate Tribunal in ATA No.290(13) 2014 dated 07.04.2014 seeking an order of interim stay and the same was granted with the precondition to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) within a period of four weeks from the date of receipt of copy of that order. Challenging the same, the present writ petition in W.P(MD).No.8437 of 2014 has been filed.

3.The brief facts in W.P(MD).No.8438 of 2014 as follows:-

This Writ Petition has been filed to quash the order of the Tribunal in ATA.No.290(13) 2014 dated 07.04.2014.

4. The petitioner is the Secretary of the Cooperative Bank/petitioner. The second respondent has passed an order dated 03.03.2014, under Section 14-B of the Employees Provident Fund claiming damages for the period between 03/2004 to 03/2008, 3/2008 to 02/2010 to 02/2011 amounting to Rs.4,00,563/- for the belated payment of contribution. As against which, the petitioner filed an appeal before EPF Appellate Tribunal in ATA No.321(13) 2014 dated 16.04.2014 seeking an order of interim stay and the same was granted with the precondition to deposit a sum of Rs.1,00,000/- (Rupees one Lakh only) within a period of four weeks from the date of receipt of copy of that order. Challenging the same, the present writ petition in W.P.No.8438 of 2014 has been filed.

5. The contention of the petitioners is that due to huge loss suffered by the society, the total net worth of the society eroded, there was imbalance in payment of Apex Bank and hence, there are several deficits. For non-payment of loan, the Central Bank has stopped the payment of loan and hence, they are nil funds, consequently, the employees have not received wages and no wages paid to the employees during the relevant period. The Audit reports for the above said periods was submitted to the respondents, which shows that there are no funds and no wages paid to the employees

and no contribution remitted. Therefore, there is no deliberate intention in non-payment of contribution. Hence, there is bonafide reason for delay in remittance of contribution.

6. He further submitted that the matter of levy of damages under Section 14B of the Act, the authority concerned is duty bound to act in a judicious manner and not in a cursory manner. Moreover, the power is quasi criminal in character, damages is not a compensatory and the section specifically provided that “such damages may be recovered” and it cannot be imposed mechanically without looking into the impending circumstances. The further contention is under Section 14-B the mens rea or actus reus ought to be established.

7. The further contention of the petitioners is that the pre-requisite of deposit of 75% of the demanded amount applicable to an order passed under Section 7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of Section 7(1) to the order passed under Section 7A. The liability to deposit arises in the situation strictly contemplated under the provisions of this Section. There is nothing in the Section so as to extend its application to an order passed

under Section 14-B. He further submits that the provisions of Section 14-B of the Act attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in a category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Once the provisions of Section 7-O does not include an appeal against an order under Section 14-B, then it would be in no way permissible to include such an order by implication or otherwise. The parliament has consciously omitted to include Section 14-B of the Act within the ambit of Section 7-Q of EPF Act. Therefore, the petitioners prays this Court to direct the first respondent/Appellate Tribunal to hear the appeal without insisting for pre-deposit and pass final orders.

8. The learned counsel for the respondents have filed a counter affidavit stating that the employer is legally duty bound to deduct from the wages of the employee for the period, for which he has worked and earned the wages whether wages are paid or payable. The employer provides matching contribution in terms of the contract of employment and the provision under this Act. Thereafter, the employer is duty bound to remit to the Fund and submit statutory returns within prescribed time limit. As such, any effort by the employer to deny the employees their legitimate dues

which they have rightfully entitled or deny contributing in terms of the provision of this Act and schemes framed thereunder, need to be looked upon with suspicion whatsoever the reason is advanced by the employer. After the deposits are made or recovered, the damages are levied depending upon the length of delays under Section 14B as a punitive and deterrent measure and interest under Section 7Q of the Act are levied to compensate the loss of interest incurred to the funds due to the delayed remittance of contribution and consequent delayed investment by EPFO as per Government pattern, because at the time of final settlement of claims the amount accumulated will be refunded with interest to the members or claimants so earned by way of investment. In the instant case, the petitioner establishment is covered under EPF & MP Act 1952 and allotted code No.TN/24294. On verification of the records it is noticed that the petitioner had not remitted the Provident Fund and its allied dues for the period from 03/2004 to 02/2011 within the stipulated time. Hence, the second respondent had initiated inquiry under Section 14B and had issued a show cause notice to the petitioners with a direction to attend the inquiry. Sufficient and ample opportunities were offered to the petitioner on various dates to represent their case. The representative of the petitioners had appeared and stated that due to financial crisis they could not remit PF contribution within the stipulated time. Various High Courts held that financial problem is not a mitigating factor for making belated remittance of PF contribution. Hence, the second respondent has levied the damages under Section 14B of the Act and issued proceedings to the petitioners. Aggrieved by the proceedings, the petitioners have filed an appeal before the first respondent Tribunal in appeal ATA Nos.290(13) 2014 and 321(13) 2014. The first respondent vide its order dated 07.04.2014 and 16.04.2014 has admitted the appeals and granted interim stay with a condition to deposit of Rs.2,00,000/-(Rupees Two Lakhs only) and Rs.1,00,000/-(Rupees One Lakh only) within a period of 4 weeks of the order. The reason of financial crisis as stated by the petitioners for making belated remittance of PF contribution is not a valid reason as held in the case of ***M/s. Sky Machinery Ltd., Vs Regional Provident Fund Commissioner*** reported in ***1998 LLR page 925***. The employer to make the contribution only when he pays wages would stultify the project in the case of ***EPFO Vs. Birlapur Vidyalaya and others reported in 2007(2) LLN 476.*** As such, the second respondent had levied the damages under Section 14B of the Act, on the belated remittance of PF contributions made by the petitioners for the period in question. In the case of ***Dr.Navnilal K.Shah Vs. Union of India,***

***Department of Law, Mumbai & others reported in 2004 I LLJ 632:200(100),*** the Bombay High Court held as follows:-

> *"...every employer of an establishment to which the Act applies is under statutory obligation to comply with the requirements of the said Act in relation to the contributions to be made to the fund...."*
>
> *".....Any default on the part of an employer in performance of such statutory obligation would invite imposition of damages as contemplated under Section 14-B of the said Act..."*

Moreover, in several judgments it has been held that there need not be any enquiry regarding the intention of the dealer and a finding of mens rea is not applicable under Section 14-B. Therefore, the respondents submitted that the petitioners are liable to pay damages as levied under section 14B of the Act.

9. Heard Mr.V.O.S.Kalaiselvam the Leaned Counsel appearing for the petitioner and Mr.I.Robert Chandrakumar and Mr.K.Muruali Shankar, the Learned Counsel appearing for the second respondents and perused the materials available on records.

10. On considering rival contentions this court is of the considered opinion that the contention of “Mens rea” cannot be entertained, since the Hon’ble High Court has held in several judgments that “Mens Rea” is not applicable for section 14-B because the damages under section 14-B has only civil consequences. Hence the plea of “Mens Rea” is rejected.

11. The learned counsel for the petitioners submitted that the pre-deposit of 75% of the demanded amount applicable to an order passed under Section 7-A and not to other provisions. There is nothing in the section so as to extend its application to an order passed under Section 14-B. Once the provisions of Section 7-O does not include an appeal against an order under Section 14-B, then there is no prescription of payment of pre-deposit. On perusal of section 7-O it is seen that the pre-deposit is prescribed only for an appeal under 7-A only. Hence the claim of the petitioners that for order under 14-B pre-deposit has not be prescribed under the Act is absolutely right.

12. The next contention of the petitioners is that during the interregnum period there was steep increase in fixing the damages under

section 14-B which included the damages and interest components. Subsequently, the Act was amended in the year 1996 and under amendment Section 7Q was introduced where interest was imposed for belated payment. Both interest and the damages were separated. Thereafter, payment of interest made compulsory for belated payment under 7-Q, but damages was made discretionary under section 14-B and hence there is no necessity for imposing damages in all cases. After hearing the rival submissions this Court is of the considered opinion that the 7-Q prescribes pre-deposit for the order under 7-A and for the appeal under 14-B, moreover the imposition of damages is only discretionary.

13. Considering the facts and the circumstances of this case, this Court is of the considered view that the pre-deposit is not necessary while considering to pass interim order. Therefore the impugned orders of directing the petitioners to deposit a sum of Rs.2,00,000/-(Rupees Two Lakhs only) and a sum of Rs.1,00,000/-(Rupees one Lakh only) are set aside and the Tribunal is directed to hear pending appeal and pass the order without insisting the petitioners to pre-deposit some amount. The appeals shall be considered within a period of 12 weeks from the date of receipt of copy of this order. With the above directions, this Writ Petitions are

allowed. No Costs. Consequently, the connected miscellaneous petitions are closed.

**13.12.2022**

Index : Yes / No
Internet : Yes

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To,
1.The Employees Provident Fund
Appellate Tribunal,
New Delhi.
2.The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Sub-Regional Office,
P.B.No.588, Sree Complex "D" Block, 18, Madurai Road,
Trichy-620 008. Tamil Nadu.

**S.SRIMATHY, J**

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**and W.M.P(MD).Nos.1 and 1 of 2014**

**13.12.2022**