



2024:DHC:2853



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 9th April, 2024**

+ **W.P.(C) 5531/2020**

VODAFONE IDEA LIMITED

..... Petitioner

Through: **Mr. S. K. Gupta, Advocate**
(Through VC)

versus

REGIONAL PROVIDENT FUND COMMISSIONER-II

..... Respondent

Through: **Mr. Shivanath Mahanta, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition was filed under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

“i. That, the present writ petition is being filed under Article 226 and 227 of the Constitution of India to challenge the following impugned order(s) :

(i) The Order dated 31.07.2020 in the Appeal No.(ii)D 1129/2020 passed by the Learned Presiding Officer Central Government Industrial Tribunal/Employees' Provident Funds Appellate Tribunal, Delhi which is annexed as ANNEXURE Pl for identification.

ii. The original orders i.e. Order No. DSSID/17351/Damages-20/14-B/785 & Order No. DSSID/17351/Damages-20/7Q/786 under section 14-B and 7Q respectively, both dated 28.05.2020 passed by the Regional Provident Fund Commissioner Employees'

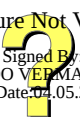


Provident Fund Organisation, Delhi East which is annexed as ANNEXURE P2 (colly) for identification.

*iii.Recovery Certificate no
DSSJD/0017351/09/07/2020/2530 dated 10.07.2020, under
Section 8-F of the Act, 1952 passed by the Assessing
Officer, Employees' Provident Fund Organisation, Delhi
East (Recovery Certificate) which IS annexed as
ANNEXURE P3 for identification.”*

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a) M/s Vodafone Mobile Service Limited (hereinafter “VMSL”) was an independent entity which was amalgamated with IDEA Cellular limited w.e.f. 31st August 2018 pursuant to a composite scheme of amalgamation approved by the National Company Law Tribunal Bench, Ahmedabad and Mumbai and was ultimately renamed as M/s Vodafone Idea Limited/petitioner.
- b) Thereafter, the petitioner company shifted its operation from Delhi to Mumbai and obtained a single Provident Fund Code bearing no. MH/BAN/31854 in the name of the newly merged entity from the Regional Provident Fund Commissioner, (hereinafter “RPFC”) in Bandra, Mumbai.
- c) The petitioner informed the RPFC, Delhi/respondent regarding the aforesaid merger and that the erstwhile VMSL has ceased to exist on 31st August 2018. The petitioner further informed the respondent that all the contributions for provident fund (hereinafter “PF”) in accordance with





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Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter “the Act”), with the respondent after 1st September 2018, shall be made in the consolidated single PF bearing no. MH/BAN/31854.

d) Subsequently, the respondent issued two summon/letters in the name of erstwhile VMSL, post-amalgamation with the petitioner on 23rd May 2019. The details of the aforesaid letters are as follows:

i. Summon/Letter no.DS/NHP/0017351/000/Enf. 501/Damages/3107 dated 23rd May 2019 for the period from November 1996 to January 2010, proposed to impose the damages of Rs.14,07,026/- and interest of Rs.4,66,424/-, thereby, total amount of Rs.18,73,450/-.

ii. Summon/Letter no. DSINHP/0017351/000/Enf. 501/Damages/3106 dated 23rd May 2019 for the period from July 2009 to February 2019, proposed to impose the damages of Rs.21,57,498/- and interest of Rs.11,06,651/-, thereby, total amount of Rs.32,64,149/-.

e) Pursuant to issuance of the above said summons, the respondent fixed the matter for hearing on 6th June 2019 and thereafter, the matter was fixed for hearing on 20th June 2019, wherein, the petitioner’s Authorized Representative namely Mr. Rajesh Sharma appeared and submitted its



response to the summons along with a comprehensive list pointing out the discrepancies of the challans mentioned in summons as against the actual challans generated by erstwhile VMSL.

- f) The petitioner's representative appeared before the respondent and filed a written representation dated 17th September 2019 and 18th September 2019 asserting that the factual documentary evidence relied upon by the respondent suffers from errors and there are considerable discrepancies in the same.
- g) Thereafter, a few more proceedings were conducted by the respondent and eventually the respondent passed two separate orders dated 28th May 2020, directing the petitioner to deposit Rs. 15,16,266/- as damages and Rs. 34,66,254/- as interests under Section 14- B and Section 7- Q of the Act respectively.
- h) Pursuant to the above, the respondent issued a recovery certificate dated 10th July, 2020 under Section 8-B(2) of the Act to the Recovery Officer, directing it to recover Rs. 49,82,520/- from the erstwhile VMSL.
- i) The petitioner aggrieved by the orders of the respondent, filed an appeal before Central Government Industrial Tribunal – I/ Employee's Provident Fund Appellate Tribunal, Delhi (hereinafter "Appellate Tribunal") under Section 7-I of the Act.



- j) On 24th July, 2020, the learned Appellate Tribunal heard arguments on the aspect of whether a stay shall be granted against the orders dated 28th May, 2020 and while reserving the order for pronouncement on 31st July 2020, it further directed the respondent not to take any coercive action for recovery against the petitioner until pronouncement.
- k) On 31st July 2020, the learned Appellate Tribunal observed that if stay is not granted on the execution of the orders dated 28th May 2020, it would cause undue hardship to the petitioner. Accordingly, the learned Appellate Tribunal granted stay on the operation of the above said order subject to the petitioner depositing 10% of the assessed damages within three weeks.
- l) It was further observed by the learned Appellate Tribunal that the petitioner's appeal is admitted only with respect to the order dated 28th May 2020 passed under Section 14B of the Act and appeal against the order dated 28th May 2020 under 7-Q of the Act was not admitted, and no stay was granted against the same.
- m) Aggrieved by the orders dated 28th May 2020 passed under Section 14-B and Section 7Q of the Act, Recovery Certificate dated 10th July 2020 issued under Section 8 of the Act and order dated 31st July 2020 passed by the learned Appellate Tribunal under Section 7-I of the Act, the petitioner has filed the instant petition seeking quashing of



the same.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had informed the respondent's office about the merger process and the fact that the erstwhile VMSL has ceased to exist from 31st August 2018. Therefore, the jurisdiction to initiate any proceedings under the Act is now with RPFC, Mumbai, thus, all the notices and impugned orders issued against the non-existing entity are legally invalid.

4. It is submitted that the respondent issued guidelines under Section 14-B of the Act, pertaining to issuance of a show cause notices within three years from the first default, however, the respondent itself acted in violation of the said guidelines since the summons were issued after the lapse of three-year period.

5. It is contended that the proceedings were wrongly conducted jointly under Section 7Q of the Act, disregarding the fact that order under Section 14B is appealable and order under Section 7Q is non-appealable.

6. It is submitted that the impugned orders were issued through a process akin to a "copy-paste" method, thereby lacking an individualized consideration for each order and the same is bad in law.

7. It is submitted that the respondents' Assessing Officer erred in issuing the impugned Recovery Certificate within a period of 60 days of filing the appeal since the same is in violation of the statutory mandates of Act.

8. It is contended that there is a discrepancy with regards to the



challans which the respondent has taken into consideration for the purpose of computing the damages and interests under Section 14B and 7Q of the Act.

9. It is submitted that the learned Appellate Tribunal has passed the impugned orders without application of judicial mind since it ignored the averments of the petitioner pertaining to the composite orders passed under Section 14B and Section 7Q of the Act.

10. It is further submitted that the learned Tribunal erred in passing the impugned orders by not granting a stay *qua* order under Section 7 Q of the Act since the learned Appellate Tribunal had itself held that the alleged period of default spreads over 24 years and the damages and interests levied on the petitioner is of huge amount.

11. It is submitted that the respondent failed to adhere to the instructions of its department and disregarded the established legal precedents. Consequently, the impugned orders are unlawful and against the fundamental judicial principles.

12. In view of the aforesaid submissions, the learned counsel for the petitioner prayed that the instant petition may be allowed and the reliefs as sought may be granted.

13. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that there is no legal infirmity in the impugned orders which merits the interference of this Court.

14. It is submitted that the impugned orders have been passed in accordance with the statutory provisions of the Act and the same does



not merit interference of this writ Court.

15. It is contended that the respondent has the territorial jurisdiction to pass an order under Section 7 Q and Section 14 B of the Act since the period of default pertains to the period during which the petitioner was functioning from Delhi.

16. It is submitted that the petitioner failed to file certified bank statement/original challans and certified copies of Form 3A/6A to substantiate its claim that the challan in Annexure- A, for the month of July 2009 does not belong to it.

17. It is further submitted that on 17th March, 2020, the petitioner submitted before the inquiry officer that it has no more averments regarding the computation of PFs and accordingly, the respondent computed the damages and interests in accordance with the provisions of the Act.

18. It is contended that the petitioner is a habitual defaulter in making payment of PF dues and they never paid their dues on time as well as misused the money deducted from the salary of employees for earning profit at the cost of interest to be earned by its employees who are PF beneficiaries.

19. It is submitted that the scope of conducting enquiry under Section 7 Q of the Act is limited and restricted to merely computing the amount of interests on delayed payment at the rate of interest prescribed under the Act. Hence, the respondent has no discretion to levy interests under the aforesaid provision.

20. It is further submitted that the Act is a beneficial social legislation



to ensure health and other benefits of the employees and the employer under the Act is statutorily obligated to make the deposit that is due from him. In case there is a default committed by the employer under Section 14B, Section 7Q of the Act provides for a provision to levy interest on account of the belated payment, i.e., the default and the same acts as a compensation for payment of interest to the affected employees.

21. In view of the aforesaid submissions, the learned counsel for the respondent prayed that the instant petition being devoid of any merit may be dismissed.

22. Heard learned counsel for parties as well as perused the material on record.

23. It is the case of the petitioner that the petitioner had duly informed the respondent about the merger process stating to the effect that the erstwhile VMSL ceased to exist w.e.f 31st August 2018 and the petitioner had transferred its operation to RPFC, Mumbai, with a single PF code bearing no. MH/BAN/31854. The summons issued by the respondent lacks legal validity because it is RPFC, Mumbai who has the jurisdiction over their establishment where contributions are currently deposited under the Act, 1952. Moreover, Employees Provident Fund Office guidelines mandates that a show cause notice has to be issued within three years from the date of first default, however, the summons in question were issued well beyond this period, spanning from November 1996 to January 2019, thus, violating EPFO guidelines.

24. It has been submitted that the impugned orders passed under Section 7Q and Section 14B of the Act has been wrongly passed as a



composite order and the orders under both the provisions ought to be passed separately since an order under Section 7 Q is non- appealable while the order under Section 14 B is appealable. Moreover, the impugned Recovery Certificate had been passed within the period of 60 days of filing the appeal which is in violation of the statutory mandates provided under the Act.

25. It has been also contended that the learned Tribunal erred in not granting stay on the recovery under Section 7 Q of the Act since the aforesaid recovery of interest is based on recovery under Section 14 B of the principal amount.

26. In rival submissions, it has been submitted that the instant petition is devoid of any merit since the impugned orders have been passed in accordance with the statutory rules. It has also been submitted that the respondent has the territorial jurisdiction to pass orders under Section 7 Q and Section 14 B of the Act since the period of default pertains to the period during which the petitioner was functioning from Delhi. Moreover, the petitioner is a habitual defaulter in making payment of PF dues and they never paid their dues on time as well as misused the money deducted from the salary of employees.

27. It has been further submitted that the petitioner himself failed to file the certified bank statement/original challans and certified copies of Form 3A/6A to substantiate its claim that the challan in Annexure- A, for the month of July 2009 does not belong to it. Hence, at this stage, the petitioner cannot contend that there is a discrepancy in the challans considered by the respondent.



28. It is pertinent to note that the petitioner has challenged the orders dated 28th May 2020 which is a composite proceeding order under Section 14- B and Section 7-Q of the Act. The appeal against the aforesaid orders are pending for adjudication before the learned Appellate Tribunal. Therefore, this Court shall not adjudicate upon the same.

29. Moreover, the learned Appellate Tribunal has granted stay on the operation of the aforesaid order pertaining to Section 14- B of the Act. Therefore, this Court finds it apposite to not comment upon the same.

30. This Court shall delve into adjudication of the impugned order dated 31st July 2020 passed by the learned Appellate Tribunal as well the Recovery Certificate dated 10th July 2020 issued by the Assessing Officer, EPFO as well as consider the aspect whether an order passed under Section 7-Q of the Act can be challenged before the learned Appellate Tribunal.

31. The question which now falls for adjudication before this Court is whether the impugned appeal order dated 31st July 2020 merits interference of this Court. The relevant extract of the said order is reproduced herein below:

“..In this case the period of default as seen from the impugned order spreads over 24 years and the damage and interest levied is huge. Moreover, the appellant has disputed the same on the ground that Challan referred to during the inquiry was never deposited by him. All these aspects no doubt make out a strong arguable case for the appellant. If there would not be a stay on the execution of the impugned order certainly that would cause undue hardship to the appellant. But at the same time it is held



that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit a nominal amount i.e. 10% of the assessed damage as a pre-condition for grant of stay within 3 weeks from the date of communication of the order failing which there would be no stay on the impugned order. The said amount shall be deposited by the appellant by way of Challan with the Respondent. It is made clear that the order passed separately u/s 7Q of the Act not being appealable shall not be affected by this interim order of stay. Call the matter 24.08.2020 for compliance of this direction. The respondent is directed not to take any coercive action against the appellant in respect of the 14B order till the compliance is made...”

32. Upon perusal of the above extracts, it is made out that the learned Presiding Officer had stated that the period of default in this case spans over a period of 24 years and the levied damage and the interest amount is huge. In case stay is not granted on the execution of the impugned order dated 31st July 2020, it would cause undue hardship to the petitioner and hence, the petitioner is entitled to the interim relief of stay.

33. It further directed that the petitioner shall deposit a nominal amount of 10% of the assessed damage as a pre-condition for the grant of stay and the separate order passed under Section 7Q of the Act, being not appealable, hence, stay shall not be granted on the same.

34. At this stage, it is imperative to understand whether an appeal is maintainable against an order passed under Section 7Q of the Act.

35. Section 7-I of the Act provides for appeals to the learned Appellate Tribunal. The aforesaid provision reads as follows:

“7-I.Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order



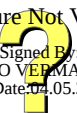
passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

36. Upon perusal of the aforesaid provision, it is evident that Section 7-I of the Act provides for appeal against certain provisions only i.e., the proviso to sub-section (3) of Section 1, Section 1(4), or Section 3, Section 7-A(1), Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], Section 7-C and Section 14-B. Therefore, Section 7 Q does not come within the ambit of an appealable order as per the aforesaid Section.

37. In light of the aforesaid discussions, this Court will now refer to the judgment of the Hon’ble Supreme Court in the case of ***Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr. (2013) 16 SCC 1***, which dealt with the aspect of maintainability of an appeal against an order passed under Section 7Q of the Act. The relevant paragraphs of the said judgement have been reproduced below:

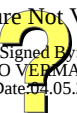
“20. On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision





providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] , Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] , State of Haryana v. Maruti Udyog Ltd. [(2000) 7 SCC 348] , Super Cassettes Industries Ltd. v. State of U.P. [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280] , Raj Kumar Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] , Competition Commission of India v. SAIL [(2010) 10 SCC 744] .)

21. At this stage, it is necessary to clarify the position of law which does arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the establishment concerned. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Sections 7-A and 7-Q together. Such an order shall be amenable to appeal under Section 7-I. The same is true of any composite order a facet of which is amenable to appeal and Section 7-I of the Act. But, if for some reason when the authority chooses to pass an



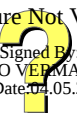


independent order under Section 7-Q the same is not appealable.

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27. Presently we shall address to the nature of the lis that can arise under this provision. There cannot be any dispute that the Act in question is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under statutory obligation to make the deposit that is due from him. In the event of default committed by the employer Section 14-B steps in and calls upon the employer to pay the damages. (See Regl. Provident Fund Commr. v. S.D. College [(1997) 1 SCC 241 : 1997 SCC (L&S) 449] .) Section 7-Q which provides for interest for belated payment is basically a compensation for payment of interest to the affected employees. This provision has been made to secure just and humane conditions of work as has been opined in Regl. Provident Fund Commr. v. Hooghly Mills Co. Ltd. [(2012) 2 SCC 489 : (2012) 1 SCC (L&S) 449] The language employed in Section 7-Q provides for levy of interest on delayed payment and the rates have been stipulated. When a composite order is passed or order imposing interest becomes a part of the order or levy in any of the provisions of the Act the authority grants a reasonable opportunity of hearing to the employer/affected party.

28. The issue that falls for consideration in this case is when the employer volunteers may be after long delay to pay the dues, can he claim any right to object pertaining to the interest component. On certain occasions the authority on its own may issue a demand notice under Section 7-Q after a long lapse of time by computing the delay committed by the employer in payment of the dues. We repeat at the cost of repetition that it is a matter of computation but sometimes computation is done when the main order is passed and at times an interest component is demanded separately by the competent authority. To say that there cannot be any error at any point of time will be an absolute proposition. There can be errors in computation. It is



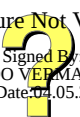


difficult to hold that when a demand of this nature is made in a unilateral manner and the affected person is visited with some adverse consequences no prejudice is caused.

29. The learned counsel for the respondent would contend that the natural justice has been impliedly excluded and for the said purpose she would emphasise upon the scheme and the purpose of the Act. There is no cavil for the fact that it is a social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty. It is contended that it is luminous that the legislature always intended that when hearing takes place for determination of the money due, the component of interest would be computed and in that backdrop the affected person will have opportunity of hearing. But in reality when an independent order is passed under Section 7-Q which can also be done as has been done in the present case the affected person, we are inclined to think, should have the right to file an objection if he intends to do. We are disposed to think so, when a demand of this nature is made, it cannot be said that no prejudice is caused.

30. It is highlighted by the respondents that once the amount due is determined the levy of interest is automatic. The rate of interest is stipulated at 12% or at a higher rate if so is provided in the scheme. Despite this, there can be errors with regard to the period and the calculation. It is a statutory power which is exercised by the competent authority under the Act. Once the said authority takes recourse to the measure for computation and sends a bald order definitely the affected person can ask for clarification and when the computation sheet is provided to him he can file an objection. Though, the area of delineation would be extremely limited yet the said opportunity cannot be denied to the affected person.

31. We may state with profit that principles of natural justice should neither be treated with absolute rigidity nor should they be imprisoned in a straitjacket. It has been held in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [(2005) 7 SCC





764 : 2005 SCC (L&S) 1020] that : (SCC p. 781, para 30)

“30. ... The maxim audi alteram partem cannot be invoked if [the] import of such maxim would have the effect of paralysing the administrative process or where the need for promptitude or the urgency so demands.”

It has been stated therein that the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential. The concept of natural justice sometimes requires flexibility in the application of the rule. What is required to be seen is the ultimate weighing on the balance of fairness. The requirements of natural justice depend upon the circumstances of the case.

32. *In Natwar Singh v. Director of Enforcement [(2010) 13 SCC 255]* this Court while discussing about the applicability of the rule had reproduced the following passage : (SCC p. 268, para 25)

“25. ... ‘It is not possible to lay down rigid rules as to when the principles of natural justice are to apply : nor as to their scope and extent. Everything depends on the subject-matter:’ [see R. v. Gaming Board for Great Britain, ex p Benaim and Khaida [(1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)] at QB p. 430 C], observed Lord Denning, M.R.

‘... Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case.’ [Ed. : See Administrative Law by Wade & Forsyth, 8th Edn. at p. 491, Line 4 from the bottom.] ”

34. *Regard being had to the discussions made and the law*



stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the competent authority."

38. The Hon'ble Supreme Court in the above said judgment held that in case an order under Section 14- B of the Act is passed then there is an automatic imposition of interest under Section 7- Q of the Act without affording an opportunity to the affected party to file an appeal against the order passed Section 7- Q of the Act. Accordingly, the Hon'ble Court held that the same amounts to violation of principles of natural justice. The Hon'ble Court further held that under Section 7-Q of the Act, the affected party shall have the liberty to challenge the amount of interest as computed by the Authority and the same shall be dealt in a summary manner by the Competent Authority.

39. Furthermore, the Division Bench of this Court in the judgment of ***Net 4 India Limited v. Union of India, W.P.(C) 6673/2016, decided on 2nd August, 2016*** placing reliance upon the judgment of ***Arcot Textile Mills Limited (Supra)*** held that in case a composite order is passed by the Assessing Officer under the Act wherein interest under Section 7Q is included in an order passed under Section 14B, the same is appealable



under Section 7I. The relevant extracts of the said judgment of the Division Bench are reproduced herein below:

“14. The Supreme Court in Arcot Textile Mills Limited (supra) had examined the scope and ambit of an order u/s 7Q and 7-I. After exhaustively examining the said provisions it was held that an appeal would not be maintainable against an order passed under Section 7Q, but when interest under Section 7Q is included in the order passed under Section 7A, 7B or Section 14B, the same could be made subject matter of challenge in the appeal, when an appeal is preferred against an order passed under the said sections.”

40. In view of the aforesaid discussions, it is a settled position of law that in order to ensure that the affected party is granted an opportunity to be heard with respect to the levying of interests under Section 7Q of the Act where damages under Section 14B of the Act are imposed, an appeal under Section 7 I of the Act is maintainable against the order passed under Section 7Q.

41. Now advertng to the adjudication of the instant petition.

42. The petitioner has contended that upon imposition of damages under Section 14-B of the Act, the interest under Section 7Q of the Act is levied automatically. Moreover, as per the impugned appeal order, the learned Appellate Tribunal granted stay on the impugned recovery certificate with respect to the damages levied under Section 14-B of the Act and not against the interest levied as per Section 7Q of the Act, thereby, rendering the petitioner remediless.

43. This Court is of the view that in light of the settled position of law, since the affected party does not have a legal recourse against the



interests levied under Section 7Q of the Act, therefore, to ensure that the affected party is granted an opportunity to challenge the order passed under Section 7Q of the Act, the petitioner must be given liberty to challenge the impugned orders dated 28th May 2020 *qua* Section 7- Q of the Act.

44. It is further observed that after determination of the amount under Section 7Q and Section 14B, the affected party may then approach the learned Appellate Tribunal to challenge the order passed under Section 14-B. Moreover, for the purpose of challenging order under Section 7Q, the affected party has to approach the High Court, by way of a writ petition.

45. Such a practice only leads to multiplicity of proceedings before the learned Appellate Tribunal and the High Courts. In case the decision of the High Court is rendered earlier, it may influence the decision of the learned Appellate Tribunal under Section 14B and in case the learned Appellate Tribunal adjudicates on the demand under Section 14B before the High Court, then it may lead to prejudice the case pending before the High Court.

46. When the learned Appellate Tribunal adjudicates upon the validity and legality of the demand under Section 14B, the affected party can again challenge the said order under Article 226, thereby, leading to multiple proceedings, inconvenience, etc.

47. In view of the aforesaid discussions, it is held that the learned Appellate Tribunal erred in passing the impugned appeal order under Section 7Q of the Act since the same is not appealable. This Court is of



the view that the petitioner has a right to challenge the impugned orders dated 28th May 2020 *qua* Section 7Q of the Act before the Appellate Tribunal .

48. Accordingly, this Court upholds the impugned appeal order pertaining to the grant of stay on the orders dated 28th May 2020 passed under Section 14- B of the Act and this Court partially set asides the order wherein the learned Appellate Tribunal held that the impugned orders dated 28th May 2020 under Section 7-Q of the Act are not appealable.

49. Now adverting to the perusal of the impugned Recovery Certificate dated 10th July 2020 issued by the Assessing Officer, EPFO, the relevant extracts of which are as under::

“..This is to certify that a sum of rs.4982520/- which is due from M/s Vodafone mobile service limited DSNHP0017351 against assessment of dues u/s 7A/interest on account of E.P.S,E.P.S,E.D.L.I. Dues (as per the details in annexure-a) is in arrears. With reference to the provision of the section 8b (2) of the EPF & MP ACT, 1952 (amendment -1988), you are hereby requested to recover the same in accordance with the provisions of the said act...”

50. Upon perusal of the impugned recovery certificate, it is evident that the Assessing Officer issued the aforesaid recovery certificate seeking recovery of amount due under Section 14- B as well as under Section 7-Q of the Act.

51. At this juncture, this Court finds it imperative to reiterate Section 8 E of the Act which elucidates the stay of proceedings pertaining to the recovery certificate and it also deals with the amendment or withdrawal



of the recovery certificate issued pursuant to the same. The aforesaid Section is reproduced herein below:

“8E. Stay of proceedings under certificate and amendment or withdrawal thereof.—(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.”

52. As per sub-clause 3 and 4 of the aforesaid Section, where the order giving rise to a demand of some amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under the Act, and, as a consequence thereof, the demand is reduced, however, the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part



of the amount of the recovery certificate which pertaining to which the appeal or other proceeding are pending.

53. In cases, where a certificate for the recovery of amount has been issued and subsequently, the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under the Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

54. In light of the above stated provision, this Court is of the view that the impugned recovery certificate which directs recovery of amount under Section 14-B as well as under Section 7-Q of the Act suffers from illegality in respect of its direction for recovery under Section 14- B of the Act. Since, the learned Appellate Authority has specifically granted conditional stay on deposit of 10 % of the amount of damages assessed under Section 14- B of the Act, therefore, the authorised officer could not have issued the certificate for recovery of damages computed under Section 14- B.

55. Accordingly, the impugned recovery certificate dated 10th July 2020 is set-aside.

56. In view of the aforesaid facts and submissions as well as the settled law, this Court is of the view that the learned appellate authority's order dated 31st July 2020 suffer from legal infirmity and accordingly, the same is partially set-aside with respect to not entertaining on the merits of the impugned order dated 28th May 2020 passed under 'Section 7Q of the Act'. This Court also set asides the impugned recovery



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certificate dated 10th July 2020.

57. It is further held that an opportunity shall be granted to the petitioner to challenge the impugned orders dated 28th May, 2020 under 'Section 7-Q of the Act' before the learned Appellate Tribunal. The learned Appellate Tribunal upon hearing both the parties shall adjudicate upon whether stay can be extended to the petitioner pertaining to impugned orders dated 28th May, 2020 passed under 'Section 7-Q of the Act' and accordingly, pass a reasoned order.

58. The instant writ petition stands allowed in view of the aforesaid terms.

59. Accordingly, the instant petition along with the pending application, if any, is disposed of.

60. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 9, 2024

gs/db/ryp

Click here to check corrigendum, if any