

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

**WPO No. 165 of 2021
NIZAM'S RESTAURANT PVT. LTD.
VERSUS
REGIONAL PROVIDENT FUND COMMISSIONER AND ORS.**

For the Petitioner : Mr. Soumya Majumdar, Advocate.
Ms. Sanjukta Dutta, Advocate.

For the Respondents : Mr. Anil Kumar Gupta, Advocate.

Heard on : 01.05.2023.

Judgment on : 01.05.2023.

RAJA BASU CHOWDHURY, J:

1. The present writ application has been filed, inter alia, challenging the order dated 16th March 2021 passed by the respondent no.3 under Sections 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act).
2. The petitioner claims to be covered under the provisions of the said Act. It is in connection with the above coverage that sometimes on or about 22nd February, 2021, the petitioner was served with a notice for determination

of liability under Sections 7Q and 14B of the said Act, for the period from 1st January, 2011 to 22nd February, 2021. Along with the said notice the petitioner was also forwarded with the statement showing amount payable under Section 7Q and 14B of the said Act. The petitioner immediately objected to such determination and by communication in writing dated 9th March, 2021 had brought to the notice of the respondents that the respondents had not taken into consideration the payments made by the petitioner from February 2009 to March 2009.

3. It was also, inter alia, highlighted in such communication that the petitioner's establishment being a sick unit and having suffered a set back due to Covid-19 was not in full operation due to inadequate staff.
4. That the old records, files, books were not readily available with them and as such had requested the respondents to provide them copies of the relevant documents, challans including particulars of payments made by them for the period from February 2009 to March 2015, for the petitioner to reconcile and scrutinize their accounts for making submissions on the basis thereof.
5. It is the petitioner's case that the respondents did not adhere to the aforesaid communication and on the contrary by a composite order dated 16th March, 2021 determined a sum of Rs.12,82,163/- towards damages under Section 14B of the said Act and Rs. 32,08,907 towards interest under Section 7Q of the said Act. Challenging the aforesaid order, the present writ application has been filed.

6. I find that at the interim stage a co-ordinate Bench of this Court by an order dated 6th April, 2021, while entertaining the writ application and while directing the petitioner to deposit a sum of Rs. 8,00,000/- (eight lakhs) with the Provident Fund Authorities, restrained the respondents from taking any coercive action against the petitioner till 23rd June, 2021.
7. Mr. Majumdar, learned Advocate representing the petitioner, submits that in compliance of the aforesaid direction passed by the co-ordinate Bench of this Hon'ble Court the petitioner had deposited a sum of Rs. 8,00,000/- (eight lakhs) with the Provident Fund Authorities, which fact was also acknowledged by the learned Advocate representing the Provident Fund Authorities as is recorded in the order dated 13th August, 2021. It would, however, appear from the record that by an order dated 8th October, 2021 a co-ordinate Bench of this Hon'ble Court while extending the interim order, was inter alia pleased to keep the issue of maintainability of the writ application open. Since then, affidavits have been exchanged by the parties and the matter has come up for final hearing.
8. Mr. Majumdar, learned Advocate representing the petitioner, by drawing attention of this Court, to the notice dated 22nd February, 2021, submits that although in the aforesaid notice the respondents had indicated that they shall proceed to determine interest under Section 7Q and damages under Section 14B of the said Act for the period from January, 2011 to February, 2021, however, while passing the order dated 16th March, 2021, the respondents have purported to make a determination from

February, 2009 to December, 2020. This, according to Mr. Majumdar is not permissible.

9. By drawing attention to the order impugned in the writ application, it is submitted that although the order records that the respondents had arrived at a finding on the basis of the scrutiny of the records maintained in their office, the petitioner had not been given access to such documents. Since the respondents were relying on their records to determine interest and damages under Sections 7Q and 14B of the said Act respectively, on the basis of the documents available with them, natural justice demands that such documents be made available to the petitioner. In the instant case, notwithstanding the petitioner requesting the respondents to make available the aforesaid records, the records have not been made available to the petitioner. By once again referring to the notice dated 22nd February, 2021, at page 47 of the writ application, Mr. Majumdar submits that the respondents by the aforesaid notice had proposed to levy interest and damages for the period 1st January, 2011 to 22nd February, 2021 for Rs. 406969/- and Rs. 831096/- respectively. Unfortunately, while passing the aforesaid order the same had been enhanced to Rs. 32,08,907/- and Rs. 12,82,163/- towards interest and damages under Section 7Q and 14B of the said Act respectively. He says that such a determination had been made on the basis of the records not made available to the petitioner and also without granting any access

thereof to the petitioner. In any event no prior notice of proposed enhancement was given to the petitioner.

10. It is still further submitted that by order dated 23rd December, 2016 the respondents had already determined interest and damages for the period from March 1986 to February 2010. By referring to the aforesaid order at page 42 of the writ application, he submits that the respondents had earlier determined interest under Section 7Q of the said Act as NIL. Having so determined, the respondents could not have re-determined the interest under Section 7Q of the said Act, for a part of the aforesaid period, as according to Mr. Majumdar the provisions of the said Act do not empower the respondent to make a re-determination, in so far as interest under Section 7Q of the said Act is concerned. He says that the order impugned is perverse and has been passed in violation of principles of natural justice. A co-ordinate Bench of this Hon'ble Court while taking into consideration the aforesaid factors had entertained the writ application. Since the aforesaid application was entertained, at this stage the writ petition should not be dismissed on the ground of maintainability. He further submits that the appellate provision also cannot stand in the way of this Court deciding the present writ application. He says that the order impugned should be set aside and the respondents should be directed to reconsider the matter and take a decision afresh.

11. *Per contra*, Mr. Gupta, learned advocate representing the Provident Fund Authorities, submits that this Hon'ble Court while exercising its power of judicial review is not called upon to examine the correctness of the order passed by the respondents. He says that the order dated 16th March, 2021 is in respect of determination made both under Sections 7Q and 14B of the said Act. A perusal of the said order would demonstrate that the said order is a composite order and thus, is appealable under Section 7(I) of the said Act. Since there is an appellate provision, this Hon'ble Court ought not to entertain the present application.
12. In support of his aforesaid contention, he places reliance on a judgment delivered by this Hon'ble Court in the case of ***M/s. Capri Home Products Ltd. & Ors. v. The Regional Provident Fund Commissioner (I) W.B., Sikkim, The Andaman & Nicobar Island & Ors.***, reported in ***(2005) 2 WBLR (CAL) 898***. He further submits that there is no irregularity on the part of the Provident Fund Authorities in passing the order impugned. The petitioner was put on notice and a summon for determination of interest under Section 7Q and damages under Section 14B of the said Act dated 22nd February, 2021, was duly served on the petitioner. By referring to the order impugned, he says that the petitioner's representative duly attended the hearing. The petitioner was given reasonable opportunity of hearing to present its case. The petitioner's representative notwithstanding being afforded with the opportunity, did not offer any explanation on the proposed levy and proceeding on such premise the

aforesaid order had been passed. He says that there is no irregularity on the part of the respondents in passing aforesaid order. By placing reliance on a judgment delivered by a Special Bench of this Court in the case of ***Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) v. Union of India & Ors.***, reported in ***(2005) 3 CHN 428***, he submits that the petitioner cannot evade the liability under Section 14B of the said Act, as is specified in the scheme.

13. By drawing attention of this Court to the summons dated 22nd February, 2021, he says that the petitioner was duly put on notice that the determination would be made for the period from 15th March, 2009. As such, there is no irregularity on the part of the respondents in passing the order dated 16th March, 2021. In the given facts, the writ application should be dismissed.
14. Heard learned advocates appearing for the respective parties and considering the materials on record, I find that the petitioner relies on an order passed under Section 7Q read with Section 14B of the said Act, for the period from March, 1986 to February, 2010, in order to demonstrate that a determination under section 7Q and the damages payable under Section 14B of the said Act, for the aforesaid period had already been made. It is also noticed that the respondents prior to making a final determination vide order dated 16th March 2021, under Section 7Q read with Section 14B of the said Act, had put the petitioner on notice by issuing a summon dated 22nd February, 2021, to appear for hearing

under Section 14B of the said Act and for determination for payment of interest under Section 7Q said Act, for belated remittance made during the period from 1st January 2011 to 22nd February, 2021” and also proposing the levy of interest and damages for the above period. Particulars of the proposed levy of the interest and damages under Sections 7Q and 14B of the said Act, for the above period which were detailed in annexure A, and a summary thereof as shown in the summons itself is extracted hereinbelow:-

“Now the scrutiny of the records maintained by this office for the remittance made by you during the period from 01/01/2011 to 22/02/2021 shows that there are certain payments which were made after the respective due dates and the total amount by way of penalty and the amount of interest on such belated payments are as under : (Details in Annexure-A)

	<i>Amount of damages ## (Rs.)</i>	<i>Interest (Rs.)</i>	<i>Total (Rs.)</i>
<i>EPF Contributions in A/c 1</i>	<i>812327</i>	<i>394893</i>	<i>1207220</i>
<i>EPS Contribution in A/c 10</i>	<i>16167</i>	<i>10359</i>	<i>26526</i>
<i>EPF Administration/ Inspection charges in A/c 2</i>	<i>1356</i>	<i>964</i>	<i>2320</i>
<i>EDLI Contribution in A/c 21</i>	<i>1046</i>	<i>664</i>	<i>1710</i>
<i>EDLI Administration/ Inspection charges in A/c 22</i>	<i>173</i>	<i>89</i>	<i>262</i>
<i>Total</i>	<i>831069</i>	<i>406969</i>	<i>1238038</i>

15. My attention has also been invited to the Annexure “A” to aforesaid summons by Mr. Majumdar to demonstrate that the respondents had identified that a sum of Rs. 1,54,685/- and Rs.3,22,260/- as a proposed levy, for the period from 15th March, 2009 to 12th October, 2011 in respect of interest under Section 7Q, and damages under Section 14B of the said Act.
16. I find that Mr. Gupta learned advocate, has strenuously argued that the petitioner was put on notice, with regard to the proposed levy of interest and damages and as such no surprise was thrown to the petitioner. He says that the petitioner ought to have verified its documents before the hearing.
17. I, however, notice as noted above that the respondents had already determined interest and damages for the period between March 1986 to February 2010, subsequently the respondents after reconciling their record on the basis of payments made by the petitioner vide order dated 23rd December 2016, had returned a finding that the establishment having paid the determined interest under 7Q of the Act, there was a ***NIL*** demand. As such ordinarily, no demand could not have been raised on the petitioner for the period between March 1986 to February 2010. No special circumstances have been shown, to sustain the order dated 16th March 2021, in so far as re-determination of interest in respect of the aforesaid period is concerned.

18. Apart from the above from a perusal of the order impugned, it is noticed that the respondents despite categorically recording that the petitioner having failed to offer any explanation to the proposed levy had concluded the proceedings. Incidentally, while passing the final order the respondents had proceeded to determine a sum of Rs. 32,08,907/- and Rs. 12,82,163/- towards interest and damages under Sections 7Q and 14B of the said Act, respectively, which are higher than proposed levy as indicated in the summons. No explanation has been offered by the Assistant provident fund commissioner, as to why he had proceeded to determine higher quantum of interest and damages, than that was proposed in the summons dated 22nd February, 2021. The enclosure to the said order does not clarify the position at all. In this case, I still further find that the respondents despite request had failed to make available the relevant records to the petitioner, for the period for which enquiry was embarked upon, especially when a redetermination for a particular period was being made.
19. It is true that the order under Section 7Q read with Section 14B of the said Act is an appealable order. I, however, find that a co-ordinate Bench of this Court by order dated 6th April, 2021 had entertained the present writ application. In pursuance of the aforesaid order, the petitioner had already made payment of Rs. 8,00,000/- (eight lakhs) to the Provident Fund Authorities. Ordinarily, once a writ application is entertained the same is heard on merit. In this case, I still further find that by order dated

3rd March, 2022 another co-ordinate Bench of this Hon'ble Court recorded that the issue of maintainability is kept open. In the light of the aforesaid orders, I have also independently scrutinized the maintainability of the writ application. I find the order impugned apart from being perverse suffers from violation of principles of natural justice. It is well settled that this Hon'ble Court is competent to exercise jurisdiction in respect of orders passed by the authorities which are appealable, in case the same stand vitiated by reasons of violation of principles of natural justice or by reason of the authority having no jurisdiction to pass such an order or where the same concerns violation of the fundamental rights.

20. In the present case, the order passed by the authority suffers from the violation of principles of natural justice and as such I do not find any reason to return the application, for the petitioner to avail statutory remedy. It is well settled that a judgment is an authority for what it decides, and a slight variation in facts may alter the result. The judgment relied on by Mr. Gupta in the case of **Capri Home Products Ltd.** (*supra*) is clearly distinguishable in the facts of the present case.
21. This Hon'ble Court in the aforesaid case while considering the issue of maintainability of the writ application had also taken into consideration the fact that there had been no illegality committed in the decision-making process and by proceedings on such premise this Hon'ble Court in paragraph 9 has been, inter alia, pleased to observe as follows:-

“9. Having regard to the discussion already made and having considered all the materials and observations as aforesaid, it

appears that in the impugned decision making process, no illegality or irregularity was committed by the concerned authority. The petitioners were heard and their cases were considered. They themselves identified the Home-workers and accepted such identification and liability in respect of Home-workers engaged by 16 Contractors who identified them and in terms of Para 30 of the said Scheme the entire liability since rest upon the writ petitioners Company to deposit the Provident Fund and other contribution, the writ petitioners have failed to make out a case of judicial review by identifying the grounds to that effect”.

22. In the facts stated hereinabove, the objection raised by Mr. Gupta fails. As discussed earlier the above order, which is impugned in the present writ application apart from being perverse, is vitiated by reasons of violation of principles of natural justice, the same is, accordingly, set aside and quashed. At the same time, it cannot be lost sight of that the respondents claim that the petitioner had defaulted and delayed in making payment of contributions. The petitioner cannot be permitted to escape liability. As such, it shall be open to the respondents to determine the interest and damages payable by the petitioner for the period from January 2011 to February 2021, upon giving a fresh opportunity of hearing by serving due notice/summons on the petitioner. In the event the respondents choose to rely on any documents in course of hearing, the petitioner shall be given an opportunity to take inspection of such documents, for the petitioner to reconcile its accounts. The petitioner shall also be entitled to rely on documents to establish its defense. In so far as the deposit of Rs.

800000/- already made by the petitioner with the respondent no.1 is concerned, the same shall be adjusted by the respondents on the basis of final the determination to be made by them.

23. With the aforesaid observations, the writ application is disposed of.
24. Urgent certified photostat copy of this order, if applied for, be made available to the parties upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

sb/snn.