BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	*Judgment Pronounced On*
28.06.2023	***06.12.2023***

CORAM

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

W.P.(MD)No. 20652 of 2015
and
W.M.P.(MD)No. 2484 of 2022
and
M.P(MD)No. 1 of 2015

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
P.B.No.588, Sree Complex D Block,
No.18, Madurai Road, Tiruchirappalli ... Petitioner

Vs.

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   Scope Minor, Core Ii, 4th Floor,
   Lakshmi Nagar District Centre,
   Lakshmi Nagar, New Delhi.

2. M/s.Vettukottai PACB,
   Orathanadu Post,
   Orathanadu 614 631,
   Thanjavur, Represented through its Secretary. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus,*** to call for the records relating to the order passed by the first respondent in A.T.A.No.765(13)2013, dated 17.06.2014 and quash the same as unconstitutional and consequently direct the 2nd respondent to pay the amount in Ref.No.TN/SRO-TRY/PDC/C-32/43294/14B proceedings/2014, dated 27.09.2013 within a time frame as fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar, Standing Counsel

For Respondents : No appearance

ORDER

This writ petition is filed to quash the impugned order, dated 17.06.2014 passed by the Tribunal in A.T.A.No.765(13)2013 with a consequential direction to the 2nd respondent to pay the amount as per proceedings, dated 27.09.2013.

2. Heard Mr.N.Dilip Kumar, the Learned Standing Counsel appearing for the Petitioner and perused the material documents available on record.

3. The 2nd respondent is an establishment covered under the Employees Provident Fund Act and is under obligation to remit the contributions within 15 days from the closure of every month. But has not remitted the amount for a period from 9/2001 to 3/2002. Hence, a summon, dated 29.07.2013 was issued and thereafter the enquiry was adjourned for various dates based on the request. Finally, on 27.09.2013 the EPF authorities have passed an order under Section 14B as well as 7Q of the Act, for the period from 9/2001 to 3/2012. In the order, dated 27.09.2013, it was directed to pay a sum of Rs.1,84,722/-as damages and Rs.94,347/-as interest, under 7Q of the Act. Aggrieved over the same, the 2nd respondent has preferred an appeal before the Tribunal. Without considering the scope of Section 14B of the Act, the Tribunal has passed an erroneous order, dated 07.06.2014 by restricting the damages levied to 25% of the actual amount of damages levied by the authority. Hence, challenging the same the Employees Provident Fund Organization has filed this writ petition.

4. The Learned Counsel appearing for the Employees Provident Fund Organization has circulated a default statement committed by the 2nd respondent. The same is reproduced here under:

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER
Sub-Regional Office, P.B.No.558, Sree Complex
"D" Block-18, Madurai Road, Trichy-620 008

No. EPFC/TN/TRY/Circle32/TN/43294 /2013/ Page No. 1

STATEMENT OF DELAYED REMITTANCES ATTRACTING DAMAGES U/S 14B

Code No : 43294 - VETTUVAKOTTAI PAC BANK LTD

Period : 01/04/2001-30/03/2012

Wage Month	Due Date	Amount in Ac.01	Ac.02	Ac.10	Ac.21	Ac.22	Date of Remittance	Item No.	Delay Days	Damages under Section-14B Ac.01	Ac.02	Ac.10	Ac.21	Ac.22	Total
02/2001	15/03/2001	14859	1040	7895	474	9	23/11/2001	15	302	4240	298	2254	135	3	6933
03/2001	15/04/2001	15662	955	3324	433	8	04/05/2001	64	20	127	9	45	4	0	208
06/2001	15/07/2001	8747	654	4650	279	6	09/05/2002	24	296	1996	154	1114	67	1	3404
09/2001	15/10/2001	10252	1102	9700	585	12	16/10/2001	1	0	0	0	0	0	0	0
08/2002	15/09/2002	63327	4450	35709	2026	57	15/06/2006	3404	1440	63327	4450	33709	2026	87	103599
09/2002	15/10/2002	4833	338	3565	154	8	04/06/2008	279	1907	4833	338	2565	154	5	7895
10/2002	15/11/2002	15135	1062	8037	482	0	31/03/2008	2647	1924	15135	1062	8037	482	0	24716
01/2003	15/02/2003	5147	361	2733	164	3	19/05/2008	544	1950	5147	361	2733	164	3	8408
04/2003	15/05/2003	5147	361	2735	164	5	16/06/2008	2849	1857	5147	361	2733	164	5	8408
01/2008	15/02/2008	1521	106	809	48	3	21/02/2008	1659	6	4	0	3	0	0	6
02/2008	15/03/2008	2486	0	0	0	0	10/03/2008	543		0	0	0	0	0	0
03/2008	15/04/2008	6168	695	4802	180	8	21/04/2009	1340	371	1567	176	1220	46	3	3012
04/2008	15/05/2008	8415	969	6003	36	8	31/05/2009	346	320	1844	212	1316	8	2	3383
06/2008	15/07/2008	11499	1065	8199	493	9	01/08/2008	13	17	91	9	65	4	0	157
07/2008	15/08/2008	7528	709	5970	322	6	22/08/2008	1480	7	25	3	18	1	0	47
07/2008	15/08/2008	10142	885	7242	435	10	26/05/2009	9	225	1549	135	1106	66	2	2858
08/2008	15/09/2008	21203	1879	15163	850	18	22/10/2008	1493	37	107	9	77	4	0	197
08/2008	15/09/2008	3363	376	2801	168	3	17/01/2009	2301	106	703	77	585	35	1	1401
09/2008	15/10/2008	17540	1805	14275	858	15	17/07/2009	2300	275	4220	455	3689	161	5	6458
12/2008	15/01/2009	14401	1443	10915	658	13	26/03/2009	8	70	278	28	209	13	0	528
02/2009	15/03/2009	8142	863	6530	354	3	11/12/2009	1489	271	1697	168	1212	66	1	3144
TOTAL 14B										111149	8178	61754	3200	92	189222

( )
ASSISTANT PROVIDENT FUND COMMISSIONER

5. It is seen from the statement that in the year 2001-2003 there was a default and there is no default for the years from 2004 to 2008. Subsequently, again for the years 2008-2009 the 2nd respondent has committed default. In short there was default in the years from 2001 to 2003, then again in the year 2008-2009. As per amendment upto 25.09.2008 the damages leviable as per the slab provided is 17%, 22%, 27% and 37%. For the default committed after 26.09.2008 the rate levied is 5%, 10%, 15% and 25%. Hence the EPF organisation is claiming that flat rate of 25% cannot be imposed.

6. It is seen that the 2nd respondent has committed default for the period from 2/2001 to 15.05.2003. The delay varies from 20 days to 1924 days. Therefore, here also they cannot be used flat rate. As per delay for each and every delay different applicable rates should be fixed.

7. The contention of the 2nd respondent for belated payment is that the 2nd respondent is a Quasi-Government Body, registered under Cooperative Credit Societies Act, 1904. During the years 2006-2007 to 2009-2010, the Government of Tamil Nadu has taken several measures to improve the working of Credit Cooperative Societies, especially Credit Cooperative in Agricultural Sector. The Government have ordered scheme of waiver of entire Cooperative Loan outstanding of farmers upto 31.03.2011 to the tune of Rs.11 Lakhs. Under the scheme, during the year 2006-2007 to 2009-2010 the Government have released Rs.17 Lakhs to compensate the waiver of loans. This has been benefited to Lakhs of farmers to avail fresh agricultural loans. The Central Government has also waived agricultural loans of small and large farmers upto 31.03.2007 and over due on 31.12.2007 and unpaid as on 29.09.2008. For other farmers on payment of 75% of loan amount, the balance of 25% was waived. Because of this scheme, several Primary Agricultural Cooperative Bank continued to be in bad shape. The total revival of the Societies could not be done immediately, because they continued to implement the Socio-Economic programs of the Government, thereby incurring loss and to continue the excess employees despite steep fall in volume of their business as a measure of social justice. Further a sizeable amount waived by them as per “Waiver Scheme” announced by the government in 2006-2007 is yet to be compensated by the government.

8. It is seen that the outstanding subsidy from the State and Central Government to the 2nd respondent is Rs.4 Lakhs. And the outstanding from the farmers is Rs.11 Lakhs. In these circumstances, the 2nd respondent Cooperative Society could not pay the monthly salary to be paid to the employees and consequently could not be pay the EPF dues. Except the State and Central Government funds, the 2nd respondent is not having any other source of funds to face the financial commitments. This has resulted in delay payment of statutory dues such as Provident Fund, Wages etc. Moreover, there is accumulated heavy loss. Unfortunately, since 1979 the institution became sick and incur loss continuously. The reason for the present situation was manifold. The accumulated loss as on 30.09.2011 to the tune of Rs.97 lakhs. Because of these reasons the 2nd respondent could not pay the contribution within the prescribed time. Hence the 2nd respondent had filed a petition before the Tribunal for reducing the 14B damages.

9. After considering the rival submissions, it is seen that the 2nd respondent Society is being sand witched between the Socio-Economic Scheme of the Government on one side and on other side the statutory dues to the

Employees Provident Fund Organization. It is also to be seen that the society was running under loss to the tune of Rs.97,00,000/-. Even according to the EPF organization damages under 14B are levied for deterring the establishment for strict compliance. In such circumstances, the damages cannot be levied automatically which should be based on the evidence and well-reasoned order. The authorities have power to scrutinize the evidence and if real hardship is shown, the authorities are bound to pass an order reducing the damages. The EPF organisation authorities are empowered to pass orders either reducing or waiving damages, but while reducing or waving the authorities should state reasons for the same. The EPF authorities cannot pass orders mechanically and for recovery of 14B charges. The explanation given by the 2nd respondent that the Society is incurring regular loss to the tune of Rs.97 lakhs over a period of time is acceptable. Moreover, the implementation of social economic scheme which is a popular scheme of the Government, the Society is incurring loss. Because of the schemes and policies of the Government, the Society is incurring loss and hence its contention ought to be considered.

10. The issue of levy of 14B charges is considered by this Court in several cases and in W.P.(MD)No.3154 of 2013 vide order dated 13.10.2022 this Court has held that the levy of 14B charges ought to be considered as per Circular issued by the EPF organisation. The relevant portion of the order is extracted hereunder:

> "The Commissioner PF had issued circular dated 29.05.1990, wherein guidelines are issued to consider for levying damages. The relevant portion of the circular is extracted hereunder:
>
> *1)Levy of damages for belated payments.*
>
> *"With the amendment to the Act providing for payment of simple interest at 12% per annum (section 7Q) payable from the date of amount has become due till the date it is actually paid, the Central Board of Trustees has approved the following revised rates of damages with condition that the position with regard to the incidence of default following the revision of the rates of damages would be analyzed after six months from the date of new rates come into force:*

S. No.	*Period of delay*	*Interest under section 7Q*	*Revised rate of Damages*	*Total*
1	*2 months or less*	*12*	*5*	*17*
2	*Over 2 months but less than 4 months*	*12*	*10*	*22*
3	*Over 4 months but less than 6 months*	*12*	*15*	*27*
4	*Over 6 months*	*12*	*25*	*37*

2.The levy of damages at the above rates may be subject to the following conditions:

a.the grace period of five days allowed for payment of the dues shall continue to apply. However, any payment made by the employer after the expiry of the due date (which includes the grace period) for whatever reason including bank holiday, shall attract the damages.

b.The Regional Provident Fund Commissioners will have to consider judicially all the relevant facts and circumstances of each case of default and pass formal speaking order for levy of damages keeping in view of the rates of damages specified in the scheme. ***However, where it is decided to impose damages at a lower rate, detailed reasons will have to be given in the speaking order itself for imposing damages at a lower rate****.*

3.The revised rates are applicable in respect of all defaults arising on and after 01.06.1990. All other procedure on the subject enunciated in earlier letter particularly those relating to affording a reasonable opportunity to the employees being heard before final order are passed, restricting the number of adjournment to not more than three, avoiding long adjournments, passing a reasoned speaking order and delivering the order on the date on which the hearing is concluded remain unchanged and these instructions should be scrupulously followed.

1)Procedure for levy of damages

(a) ....
(b).....

(c)Thereafter the grounds, if any, not levying damages or levying damages at the reduced rates, as the case may be should be examined thoroughly with reference to the facts, the reply of the employer and personal submissions

(d)In case it is found the reason adduced by him are sufficient to justify non levy of damages or levy at reduced rates, orders as deemed fit may be passed and communicated. There would be hardly arise an occasion for not levying damages and discretion to reduce penal damages should be used sparingly in cases of genuine hardship. In every such case, however, a copy of the order should be forwarded to the Central Office, simultaneously. This circular is binding on the Employees Provident Fund Organization.

7. On perusal of the provisions of the Act and the Scheme it is seen that the provisions were introduced on various periods and the same is narrated hereunder:

•**Section 14-B. Power to recover damages** – This provision was enacted in 1953, in order to impose some punishment for contravention of the provisions of the Act. The authorities may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the scheme. The Central Board may reduce or waive the damages levied under this section if the unit is declared sick under BIFR.

•**Sections 7-Q. Interest payable by the employer** – This provision was enacted along with sections 7-B to 7-Q with effect from 01.07.1997 and the section 7-Q was introduced to levy interest. The interest shall be levied at 12% per annum

•**Para 32-A. Recovery of damages for default in payment of any contribution** – was enacted under the scheme on 16.08.1991 with effect from 01.09.1991. From 1991 until 1997 the rate of damages was 17%, 22%, 27% and 37%. However, after levy of interest under 7Q from 1997 the rate was changed as 5%, 10%, 15% and 25%. And the interest was levied separately at 12%. This would be evident from the contents of the Circular which was issued by the Commissioner.

8. The period of levy of interest as well as damages can be separated into three parts and the following tabulation would be ready reference:

(i). First from 01.09.1991 to 01.07.1997, where only damages are leviable

(ii). Second from 01.07.1997 to 26.09.2008 where both damages and interest merged and leviable, but based on the Circular the damages may be reduced.

(iii). Third from 26.09.2008 till date where both damages and interest levied separately and based on provisions damages may be reduced.

In the present case the period is from 04/1997, 06/97 which falls within the first period, where damages are leviable and the rates applicable are 17%, 22%, 27% and 37%. From 10/97, 3/98, 5/98 to 12/99, 4/2000 to 05/2000 and 7/2000 falls with second period, where both damages and interest merged and leviable, but based on the Circular the damages may be reduced and the rates applicable are 5%, 10%, 15% and 25% and interest at 12%. In both the cases the PF organisation had power to reduce the rate of damages if the establishment had stated reasons to consider for reduction of rates. The circular also states that the authorities should consider the case judicially by considering all relevant facts and circumstances of each case of default and pass a speaking order. It is also stated if it was decided to impose damages at a lower rate, detailed reasons ought to be given by the authorities. In the subsequent paragraphs of the aforesaid circular also states, if the reply from the defaulted establishments does not show sufficient reasons to reduce the amount and order levying damages as prescribed may be issued. The damages must always be levied by a well-reasoned speaking order. Therefore, the circular, dated 29.05.1990, confer ample power to the authorities to reduce or waive damages. The only condition imposed is that the authorities should pass a well-reasoned speaking order, if they are intending to reduce the rate of damages or waive damages."

11. In the present case, this Court has already held supra that there is financial difficulties and the contention of the 2nd respondent ought to be considered. Hence, this Court by following the Circular issued by the EPF organisation is of the considered opinion that the damages imposed on the 2nd respondent ought to be reduced. It is seen that only for five period the delay is above thousand days. Therefore, for default where the delay is more than thousand days the EPF organisation shall fix the damages as 25% and for the remaining period the EPF organisation shall recover 14B charges at 5% from the 2nd respondent.

12. With these modifications, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
KSA

06.12.2023

To

1. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organisation,
   Sub-Regional Office,
   P.B.No.588, Sree Complex D Block,
   No.18, Madurai Road, Tiruchirappalli

2. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   Scope Minor, Core Ii, 4th Floor,
   Lakshmi Nagar District Centre,
   Lakshmi Nagar, New Delhi.

S.SRIMATHY, J

KSA

Order made in
W.P.(MD)No.20652 of 2015

06.12.2023