IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	6/2/2024
Delivered on	24/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.11798 of 2015

Assistant Provident Fund Commissioner
Office of the Regional Provident Fund Commissioner
Bhavishya Nidhi Bhavan
Dr.Balasundaram Road
Coimbatore 641 018. ... Petitioner

Vs

1. The Presiding Officer
   Employees Provident Fund Appellate Tribunal
   New Delhi.

2. M/s. Sri Venkadesa Kanna Reality (P) Ltd
   Borrower of Kongurrar Integrated Fibre Ltd
   Pollachi, Palani Road
   Gomangala, Pudur
   Pollachi Taluk
   Coimbatore 642 107. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records relating to the proceeding of the second respondent dated 29/4/2013 in ATA No.915 (13) of 2012 and quash the same.

For petitioner	...	Mr.C.Kulanthaivel
For respondents	...	R.1- Tribunal
		Mr.B.Gopalakrishnan for Mr.R.Manoharan for R.2

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<u>O R D E R</u>

This writ petition is filed by the Assistant Provident Fund Commissioner aggrieved by the order dated 29/4/2013 confining the damages at 5% of the actual quantum levied under the impugned order.

2. The facts in brief as per the affidavit are as under:-

Originally Kongarar Integrated Fibre Ltd., was an establishment covered under Employees Provident Fund and Miscellaneous Provision Act, 1952 (in short the EPF Act). The said establishment became a habitual defaulter and failed to pay Provident Fund dues for the periods 11/1995 to 02/1996 and 10/1999 to 02/2003. The authorised Officer of the Employees Provident Fund Organisation has initiated proceedings for levy of penal damages under Section 14 B of the Act for default. A show cause notice was issued on 7/7/2003 intimating the proposed levy of penal damages. Though initially the employer has represented, there was no response, subsequently, thereby, damages inflicted to the tune of Rs.1,35,371/- and Rs.7,71,912/- respectively for two periods and a sum of Rs.59,828/- and Rs.2,62,477/- were also levied towards interest under Section 7 Q of the Act. On account of the failure of the Company to remit the damages levied, the Recovery Officer/EPF Organisation invoked the powers under Section 8 B of the EPF Act and attached the movable and immovable properties of the establishment.

3. Kongarar Integrated Fibre Ltd., has became sick, thereby, filed an appeal before the Board of Industrial Financial Reconstruction (BIFR) in case No.102/97. After affording several chances for the revival of the Company declared the Rehabilitation Scheme as failure and directed ICICI Bank to sell the said Company. Aggrieved by the said orders, the said Company has preferred an appeal before AAIFR, New Delhi in Appeal No.84 of 2004. The said appeal was allowed and matter was remanded back to BIFR for further course of action as per the orders dated 23/5/2007. M/s. DDARS (M/s.Dhir & Dhir Assets Reconstruction

and Securitisation Company Ltd) has expressed its interest to take over the said Company, thereby BIFR has directed the said Company to submit a report for taking over the assets of the Company within 15 days, however, it has not come forward.

4. The assets of the Company were sold by M/s. IDBI Ltd., to SASF which in turn sold the assets of the Company to M/s. Dhir & Dhir Assets Re-construction and Securitisation Company Ltd (DDARS). The said DDARS sold the assets of the company to M/s.Sri Venkatesa Kannan Reality (P) Ltd., Pollachi which is the second respondent herein, through the sale certificate dated 26/3/2010. As per the said certificate, the Provident Fund dues were enlisted as encumbrances and liabilities.

5. The EPF Organisation issued recovery certification and proclamation of sale of attached properties of the establishment. Aggrieved by the same, respondent Company has preferred an appeal in A.T.A.No.915 (13) 2012, the Tribunal has finally disposed of the appeal by reducing the damages to the extent of 5% of the actual quantum levied under the impugned order. Aggrieved by the drastic reduction of the

damages to 5%, the petitioner/Assistant Provident Fund Commissioner has filed the instant writ petition.

6. Counter affidavit filed by the second respondent stating that Kongurar Integrated Fibre Limited was running a spinning mill at Pollachi and it has been remitting the EPF contributions without any default or delay. The said Company begun to incur heavy losses and became unviable and was closed from February 2003 and ultimately, the said Company was declared as a sick unit by BIFR. The second respondent had issued notice calling upon the petitioner to remit the outstanding EPF dues on behalf of M/s.Kongurar Integrated Fibre Limited. The petitioner has also issued notices dated 29/10/2012 directing to pay Rs.8,51,245/- towards damages and Rs.85,124/- towards cost and other charges under Section 14 – B of the Act. The second respondent has preferred an appeal before the EPF Appellate Tribunal, New Delhi in ATA No.915 (13)2012 and it was allowed restricting the penalty to 5% which amounts to Rs.42,552/- only. Under Section 14 B of the Act, the Authority may recover penalty. Keeping in view of the language used and payment of damages under Section 14 B of the Act is flexible, order of the Appellate Authority cannot be interfered with.

7. Heard Mr.C.Kulanthaivel, learned counsel for the petitioner and Mr.B.Gopalakrishnan, learned counsel for the second respondent.

8. It is submitted by the learned counsel for the writ petitioner that the second respondent has challenged the orders after six years of passing the orders by the competent authority under EPF Act. The second respondent preferred an appeal questioning the validity and legality of the proclamation of sale dated 29/10/2012 issued by the authority which was filed in the year 2012. Originally, enquiry was conducted under 14 B of the Act. If the said proceeding dated 1/4/2004 is taken into consideration, limitation has already been lost, as according to the provisions of EPF Act, the appeal has to be filed within 60 days and in case, if the reasons are explained, 60 days more will be given and thereby, within a period of 120 days, appeal should have been filed. The cause of action arose, originally on 1/4/2004 when Proceeding under Section 14 B of the Act were issued. However, the second respondent is contesting the validity and legality of the proclamation of sale dated 29/10/2012. Therefore, from the date of impugned order i.e., 29/10/2012, ATA No.915 (13) of 2012 is justified and is well within the

limitation. Therefore, since the second respondent has challenged only the consequential order, dated 29/10/2012, this Court is of the opinion that the appeal filed by the petitioner was well within the limitation, thereby, it cannot be contended that second respondent has challenged the order after six years.

9. According to the petitioner, the first respondent Appellate Authority without considering the fact that number of notices were given to the second respondent, orders have been passed erroneously restricting the penalty only to 5%. It is a settled legal preposition that EPF Appellate Tribunal has got the power to reduce or waive the damages imposed on the employer. The Hon'ble Division Bench of this Court in W.A.(MD) No.298 of 2024 dated 15/4/2024, at paragraph 16, has observed as follows:-

> "16.In view of the above said deliberations, we are of the considered opinion that the Appellate Tribunal which is an Appellate Authority not only for the authorized officer under the Act, but also for the Central Board, is empowered to reduce or waive

damages as per the scheme. In the present case, in exercise of the said powers, the Appellate Tribunal has reduced the damages to 15%. Therefore, we do not find any illegality or infirmity in the order passed by the Appellate Tribunal or by the writ Court in confirming the order passed by the Appellate Tribunal. There are no merits in the writ appeal. The Writ Appeal stands dismissed. No costs."

10. On perusal of the above, it is clear that the Appellate Authority has got the power either to reduce or waive the damages.

11. Though the first respondent Appellate Authority has got the power to reduce the damages, it has not discussed as to under what grounds it has been reduced to 5%. The first respondent Appellate Authority should have explained the reasons for reducing the damages. In case if the Appellate Authority is not convinced, it has got every right to set aside the order, under question therein. Since the first respondent/Appellate Authority has reduced the damages without any basis, said order is questionable.

12. In such a view of the matter, this Court is of the opinion that there are no valid reasons for reducing to only 5% of the demand, thereby, the impugned order is perverse and is liable to be set aside. Accordingly, order passed by the labour Court restricting the damages only to 5% can be interfered with.

13. In the result, writ petition is allowed. No costs.

24/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.11798 of 2015

24/7/2024