IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	6/3/2024
Delivered on	4/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.13874 of 2014
a n d
M.P.No.1 of 2014

M/s.Sivananda Steels Limited
rep. By its Managing Director
Mr.P.Venkatesan
Nos.18, 19 and 20 Industrial Estate
Ambattur
Chennai 600 058. ... Petitioner

Vs

The Regional Provident Fund Commissioner
R 40 A TNJB Office-cum-Shopping Complex
Mugappair Road
Mugappair
Chennai 600 032. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records in respect of the impugned order dated 2/5/2014 passed by the respondent in TN/SRO/AMB/6361/PDC/A.1/2014, quash the same, directing the respondent not to take coercive action to realise alleged damages and interest without consent of the BIFR.

For petitioner	...	Mr.C.S.Dhanasekaran
For respondent	...	Ms.Sunitha Kumari Senior Counsel for R.1.

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ORDER

This writ petition is filed seeking for a certiorarified mandamus to quash the impugned order dated 2/5/2014 passed by the respondent in Proceeding No.TN/SRO/AMB/6361/PDC/A.1/2014 and to direct the respondent not to take any coercive action to realize the damages and interest without consent of the BIFR.

2. Brief facts that are necessary for the disposal of the writ petition are as follows:-

The petitioner Company was dealing with manufacture of Steel Casting. On account of various problems, it has suspended the work with effect from June 1999. It has approached the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR) for revival and Rehabilitation of the Company. The same was registered as Case No.107 of 2000. An enquiry under Section 16 of Sick Industrial Companies Act, 1985, was also conducted. Finally, the petitioner Company was declared as Sick Company. The Central Provident Fund Commissioner, New Delhi was also a party to the said proceedings. After due enquiry of all the parties concerned, a Scheme was sanctioned on 9/8/2005 by the BIFR. In the said Scheme, the provision relating to Employees State Insurance and Employees Provident Fund was also agreed upon by the parties and the relevant portion is extracted hereunder:-

> "5.2 H (i). to grant waiver of penal interest and other charges as on the cut-off date and during the rehabilitation period.
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> (ii). To accept the principal outstanding (ESIC – Rs.12.64 lakhs and EPF Rs.28.53 lakhs) as an cut-off date over a period of three years from April 1, 2004."

3. The petitioner Company was due of Rs.28.53 lakhs towards Provident Fund contributions. Out of the said amount, Rs,96,198/- was remitted during the period 5/7/1999 to 1/4//2000. The balance amount of Rs.27,57,172/- was also remitted in favour of the respondent by way of Demand Draft bearing Nos.612515 to 612517 dated 20/6/2006 and it was also granted by the respondent on 21/6/2006, thereby the total principal outstanding amount of Rs.28,53,000/- was duly paid and accepted for the period commencing from 1996 - 1997 to 2002 – 2003 taking the cut off date as 31/3/2003.

4. As per the BIFR Scheme, the petitioner Company was exempted from remitting the penal interest and other charges. As per the letter dated 10/10/2012, the respondent has intimated about the leave and concessions in sub-Clause H of the orders of BIFR in respect of waiver of penal interest and other charges. The petitioner Company by way of letter dated 9/1/2013 has drawn the attention of the respondent about the order of BIFR dated 9/8/2005, in paragraph No.5.2 H in respect of waiver of penal interest and other charges with cut off date of 31/3/2003. However, the respondent has directed the petitioner Company by way of a letter dated 12/3/2014 to appear before the respondent for enquiry

under Section 14 B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (herein after referred to as PF Act). The petitioner Company has participated in the enquiry and explained about the relief granted as per the orders dated 9/8/2005, as per para 5.2 H. However, as per the impugned order dated 2/5/2014, respondent has directed the petitioner to pay damages under Section 14 B and interest under Section 7 Q of the Employees Provident Fund Act, totalling of Rs.4,90,855/-. Aggrieved by the same, petitioner has filed this writ petition.

5. The respondent has filed counter affidavit stating that the petitioner Company has remitted the Employees Provident Fund contributions to the period 1996 – 1997 to 2012 – 2013 belatedly. Since all the dues were paid belatedly, summons under Section 14 B of EPF and MP Act, 1952 r/w. para 32 A of the Employees Provident Fund Scheme were issued. The petitioner is therefore, liable to pay Rs.3,10,614/- under Section 14 B of the Act and Rs.1,80,241/- under 7 Q of the Act, totalling to Rs.4,90,855/-.

6. During the course of hearing, authorised signatory of the petitioner was participated in the enquiry and informed that the petitioner

Company was closed in the year 1999 and Employees Provident Fund Contributions were remitted. The BIFR Scheme was sanctioned to the petitioner in favour of the petitioner Company in Case No.107 of 2000 and that the petitioner Company was declared as SICK Company and damages levied on the petitioner, under Section 14 B of the Act were calculated as per the scheduled rates provided under 32 A of the Employees Provident Fund Scheme. The waiver of the damages can only be done by the Central Board of Trustees as stipulated under 32 B of the Scheme. The penalty imposed under Section 14 B of EPF & M Act, 1952 cannot be construed as the penal interest and the levy of damages under 14 B of the Act and 7 Q of the Act is only as per Law and there is no violation of the Scheme of BIFR at para 5.2 H.

7. It is also mentioned in the counter affidavit that BIFR has wrongly issued order for waiver of the penal interest as BIFR perceived that interest was charged as a measure of penalty. The penal interest is not imposed by way of penalty but imposed as an amount towards interest to be compensated by the employer to the EPF Corporate Fund for belated remittances and the interest will be transferred to the employees by the

Employees Provident Fund Trust as statutory dues and therefore, sought for dismissal of the writ petition.

8. It is submitted by the learned counsel for the petitioner that the impugned order passed by the respondent is erroneous against the orders of BIFR dated 9/8/2005. In para 5.2 H which go to show that the petitioner has to pay Rs.28.53 lakhs towards Employees Provident Fund dues and the penal interest was waived along with other charges. It is further submitted that other charges includes the damages under Section 14 B of the Act and therefore, the respondent cannot claim either damages under Section 14 B of the Act or interest under 7 Q of the Employees Provident Fund Act.

9. It is also further submitted that in similar circumstances regarding the payment of dues in respect of Employment State Insurance, this Court in W.P.No.27951 of 2006 has given liberty to the Employees State Insurance Authorities to approach BIFR under Section 18 (9) of the Act for clarification of any difficulty regarding the interest as to whether the interest is liable to be paid or not under the sanctioned Scheme. Therefore, it is submitted that in the instant case also in so far as the

payment of damages under Section 14 B of the Act, if the respondent has got any issues, it can approach the BIFR and get the clarification as to whether the damages under Section 14 B of the Act were also waived as per the Scheme of BIFR given in favour of the petitioner Company.

10. Learned counsel appearing for the petitioner has placed reliance to a judgment of the Hon'ble Supreme Court of India in ***REGIONAL PROVIDENT FUND COMMISSIONER, WEST BENGAL & ANOTHER Vs. DELTA JUTE & INDUSTRIES LTD & ANOTHER (C.A.No.14167 of 1996 dated November 1, 1996),*** wherein at paragraph No.4, it has been held as follows:-

> "4. In the facts of the case and also considering the fact that after a scheme was prepared by this Court, the respondent Company, which was a sick industry, has revived and has paid both the current and arrear dues of provident fund contribution in instalments without any default. In the special facts of the case, it will not be desirable to direct for payment of interest and

damages as claimed so that the process of revival is again put to jeopardy. Considering the provisions of Section 14-B of the said Act and also the facts of the case, we do not intend to interfere with the impugned order. This appeal is accordingly disposed of without any order as to costs."

11. The learned counsel appearing for the respondent has submitted that even if the Approval Scheme of the BIFR at para 5.2 H is taken into consideration, there is nothing to interpret that the damages under Section 14 B of the Employees Provident Fund were waived. It is also submitted that BIFR proceedings are erroneously issued for waiver of penal interest, which should not have been given and therefore, submitted that impugned notice issued by the respondent is valid and cannot be interfered with.

12. Learned counsel appearing for the respondent has cited a decision reported in ***2001 (88) FLR 692 RALLIWOLF LIMITED Vs.***

THE REGIONAL PROVIDENT FUND, wherein at paragraph Nos.20 and 21, it has been held thus:-

> "20. The amendment to the E.P.F. Act, 1952 was enacted by Act 33 of 1988. Parliament was conscious of the existence of the Sick Industrial Companies Act, 1985 which had been enacted a few years earlier. In amending the provisions of section 14-B. Parliament empowered the Central Board to reduce the quantum of damages that may be required to be paid under the said Section. There is no provision by which the liability of the employer to pay the contribution of the employer or the contribution of the employee has been excused or exempted. Even in the case of a sick industrial undertaking, the obligation of the employer to deduct and pay the employee's contribution together with his own contribution continues to subsist. Parliament as a matter of legislative policy has enacted that the employer

shall, however, be granted a waiver of damages payable under Section 14-B where the undertaking of the employer is a sick industrial undertaking and a scheme for its rehabilitation has been sanctioned. There again, it must be noticed that the eligibility to the grant of waiver under section 14-B is subject to those conditions which have been prescribed therein. Parliament having thus amended the E.P.F., Act, 1952 to take within its purview the position of a sick industrial undertaking, the extent of the immunity which has been conferred upon such undertaking with reference to provident fund dues under the Act, must be confined to what has been legislated by Parliament. The extent of the immunity or exemption cannot be extended beyond what was allowed in terms of the amendment to the E.P.F. Act, 1952.

21. Apart from this position, the question that arises for consideration is as to whether a

Company which is a sick industrial undertaking can claim the benefit of the provisions of section 22 in respect of the dues payable towards provident fund and other benefits under the E.P.F. Act, 1952. In the present case, as a matter of fact, it must be noticed that the reference to the B.I.F.R., came to be made some time in 1998. The dues which have become payable relate to the period both prior and subsequent to the making of the reference. The dues cover contributions of the employees as well as of the employer. The contributions of the employees have been deducted by the employer in the instant case but have not been paid into the Fund. The moneys have been unlawfully retained by the employer."

13. Heard Mr.C.S.Dhanasekaran, learned counsel for the petitioner and Ms.Sunitha Kumari, learned Senior Counsel for the first respondent. Perused the materials available on record carefully.

14. The short question to be considered is whether as per BIFR Scheme approved on 9/8/2005, petitioner is exempted from payment of damages under Section 14 B of the Act and payment of interest for belated payment under Section 7 Q of the Act?

15. There is no dispute that the petitioner Company has remitted Provident Fund contributions belatedly. The petitioner Company was declared as Sick, as per BIFR proceeding under the SICK Industries Companies Act, 1985. During the process of revival under Rehabilitation of the petitioner Company, a Scheme was evolved and orders were passed on 9/8/2005. In the said order, in so far as payment of contributions to Employees State Insurance Corporation and the employment of Provident Fund are concerned, there is a specific mention at para 5.2 H. The relevant portion is extracted hereunder for ready reference.

> "5.2 H (i). to grant waiver of penal interest and other charges as on the cut-off date and during the rehabilitation period.
>
> (ii). To accept the principal outstanding (ESIC

– Rs.12.64 lakhs and EPF Rs.28.53 lakhs) as an cut-off date over a period of three years from April 1, 2004."

16. On a perusal of the above, it is clear that in so far as Employees Provident Fund is concerned that the petitioner has to pay an outstanding dues of contributions to the tune of Rs.28.53 lakhs and that the penal interest and other charges are waived on the cut off date. Admittedly, as acknowledged by the respondent on 21/6/2006, the petitioner Company has paid all the dues of Rs.28.53 lakhs in so far as Provident Fund Contributions are concerned.

17. According to the learned counsel for the petitioner since the petitioner has paid all the outstanding dues of Rs.28.53 lakhs as on 28/6/2006, the respondent should not have issued notice demanding the damages under 14 B of the Act and interest under Section 7 Q of the Act, which comes to Rs.4,90,855/-.

18. On the other hand, learned counsel representing the respondent submits that even as per the Approval Scheme under para 5.2 H of the BIFR dated 9/8/2005, damages under Section 14 B of the Act were not waived and though there is a mention of waiver of penal interest, the said waiver is erroneous.

19. In so far as the second contention of the respondent that the waiver of the penal interest by the BIFR is erroneous is concerned, the respondent admittedly is a party to the BIFR Scheme. Once the respondent is a party, whatever the Scheme is declared for revival of the petitioner Company, the petitioner is bound by those relevant provisions under the Scheme, thereby, the respondent cannot now contend that BIFR proceedings are erroneously passed in so far as waiver of the penal interest is concerned.

20. As per the impugned notice, the respondent has demanded an amount of Rs.1,80,241/- under Section 7 Q of the Act, which is penal interest. If at all the respondent has got any doubt, in respect of giving a waiver of penal interest in the Scheme, the petitioner should have approached the BIFR authorities under Section 18 (9) of the Act for any

clarification but no such effort was made by the respondent. Therefore, at any stretch of imagination, it cannot be said that the respondent cannot contend that BIFR Proceeding in 5.2 H granting a waiver of penal interest is erroneous. Therefore, this Court is of the opinion that the petitioner is entitled for waiver of the penal interest of Rs.1,80,241/- under Section 7 Q of the Act.

21. In respect of damages under Section 14 B of the Act is concerned, as per para 5.2 H of the BIFR Scheme, the petitioner is waived penal interest and other charges. According to the learned counsel for the petitioner, the waiver of "other charges" including damages under Section 14 B of the Act.

22. It is submitted vehemently by the learned counsel for the respondent that waiver of other charges, does not include damages under Section 14 B of the Act and it includes some administrative charges. Having gone through para 5.2 H carefully, this Court is in agreement with the respondent. The BIFR Scheme is very clear in so far as penal interest under Section 7 Q of the Act is concerned. If at all if the intention of the Scheme of revival of the petitioner Company is to give waiver of damages

under Section 14 B also, there is no reason why specifically it is not mentioned about the waiver of damages under Section 14 B of the Act.

23. Further, the damages under Section 14 B of the Act are of a different category than the other charges. Therefore "other charges" cannot be interpreted to include damages under Section 14 B of the Act. If at all the other charges includes damages under Section 14 B of the Act, there was no necessity for specifically mentioning about the penal interest. Therefore, while issuing the proceeding under BIFR, it was consciously recorded only waiver of penal interest and not the damages. Therefore, it cannot be interpreted that other charges includes 14 B.

24. Further, the learned counsel for the petitioner has submitted that in case, if the respondent has got any doubt as to whether other charges includes 14 B damages, the respondent may approach BIFR under 18 (9) of the Act for clarification. In fact, it is other way round. On the face of it, 5.2 H cannot be interpreted to include damages under Section 14 B of the Act, thereby, if at all the petitioner has got any questions in respect of 5.2 H, as to whether it includes 14 B damages, the petitioner can approach the BIFR under Section 18 (9) of the Act, seeking clarification.

Therefore, considering the discussion made above, this Court is of the opinion that the petitioner cannot contend that as per 5.2 H, not only the penal interest under Section 7 Q of the Act was waived but also waived the damages under Section 14 B of the Act.

25. Considering the discussion made above, this Court is of the view that the petitioner is entitled for exemption of waiver of penal interest of Rs.1,80,241/- under Section 7 Q of the Employees Provident Fund Act and not entitled for waiver of damages under Section 14 B of the Act to the tune of Rs.3,10,614/-.

26. Accordingly, this writ petition is allowed in part, quashing the impugned order dated 2/5/2014 passed in TN/SRO/AMB/6361/PDC/A.1/2014 issued by the respondent only in so far as the penal interest under Section 7 Q of the Act is concerned. The petitioner however is required to pay the damages to the tune of Rs.3,10,614/- (Rupees Three lakhs ten thousand six hundred and fourteen

only) under Section 14 B of the Employee's Provident Fund Act. No costs. Consequently, the connected Miscellaneous Petition is closed.

4/7/2024

mvs.

Index: Yes/No
Neutral Citation: Yes/No

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.13874 of 2014

4/7/2024