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W.P.No.23686 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.23686 of 2019

and

W.M.P.Nos.23535 of 2019 & 3533 of 2020

M/s.Sabari Textiles Pvt. Ltd.,
Rep. by its Executive Director,
Mr.S.Sivakumar,
SF No.59/1, Velappanaickenpalayam,
Vadavalli Village,
Coimbatore – 641 669. ... Petitioner

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Post Box No.3875, Dr.Balasundaram Road,
Coimbatore – 641 018. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Impugned order in EPFA No.559 of 2018 dated 10.04.2019 issued by the Presiding Officer, Employees Provident Fund Appellate Tribunal, Chennai to quash the same.

For Petitioner : Mr.P.Thangaraj
For Respondent : Mr.C.Kulanthaivel
Senior Counsel



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ORDER

This Writ Petition is filed to call for the records relating to the Impugned order in EPFA No.559 of 2018 dated 10.04.2019 issued by the Presiding Officer, Employees Provident Fund Appellate Tribunal, Chennai to quash the same.

2.The petitioner is a Textile manufacturing Establishment and runs it's business under the name and style of M/s. Sabari Textile Pvt. Ltd., Coimbatore. It is undisputed that the petitioner is covered under the Act and remitting the statutory contributions towards the employees. According to the petitioner it's business was seriously affected due to the increase in prices of cotton, power tariff, spare parts and as well as the substantial increase in basic wages and dearness allowance of workmen. Added to these there was a slump in the entire cotton textile industry and so the petitioner incurred heavy losses since 1997. According to the petitioner the accumulated loss was Rs.27.45 crores and it far exceeded its networth resulting in delayed remittances towards PF contribution. The petitioner Mill was referred to BFIR and was declared as a sick industry vide order dated 22.02.2006.



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While so, the respondent passed an order in January, 2016, directing the petitioner to pay a sum of Rs.3,96,067/- towards damages under Section 14-B of the EPF Act. The petitioner filed an appeal in EPFA 559/18 challenging the aforesaid order. The Appellate Tribunal allowed the appeal in part. The Appellate Tribunal while confirming the order of the Authority, on request of the petitioners, permitted it to pay the 14-B damages in two installments and within four months from the date of receipt of a copy of the order. Aggrieved by the order of the Appellate Tribunal, the petitioner has filed the above writ petition.

3.The learned senior counsel for the petitioner submitted that the Appellate Tribunal failed to note that there was no element of *mens rea* on the part of the petitioner to controvert the statutory provision. The learned senior counsel further submitted that the petitioner establishment was declared as a sick industry vide order dated 22.02.2006 and therefore damages under Section 14B could not be claimed against it.

4.The learned counsel appearing for the respondent on the other hand submitted that both the objections were considered by the Appellate Tribunal



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and the Appellate Tribunal rejected the same. The learned counsel further relied on the Judgment of the Hon'ble Supreme Court in the case of Horticulture Experiments Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organization reported in 2022 (4) SCC 516, in support her contention that *mens rea* or *actus rea* was not an element for imposing penalty and damages.

5.I have heard both the learned counsels and have perused the materials placed on record.

6.It is pertinent to note that at the request of the petitioner permission was given by the Appellate Tribunal to pay the amount demanded under Section 14B in two installments. In my view the petitioner's request having been acceded to, the petitioner ought not to have filed the writ petition. Be that as it may, even the objection of the petitioner that the element of *mens rea* was necessary for imposing damages cannot be sustained in view of the declaration of law on the aspect by the Hon'ble Supreme Court in the case of Horticulture Experiments Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organization reported in 2022 (4) SCC 516. The Hon'ble Supreme



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Court in paragraph No.19 of the said Judgment clearly states as follows:

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“19.Taking not of the three-Judge Bench Judgment of this Court in Union of India Vs. Dharamendra Textile Processors, which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”

7.As the petitioner's objection is squarely answered by the said Judgment, I find no merits in the same. At this stage the learned counsel appearing for the petitioner requested that the petitioner may be permitted to deposit the damages of Rs.3,96,067/- under 14-B in five installments instead of two installments granted by the Appellate Tribunal. Considering the request made by the learned counsel appearing for the petitioner, the petitioner is permitted to deposit the damages of Rs.3,96,067/- under 14-B order in four installments within a period of four months from the date of



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receipt of a copy of this order. It is made clear that in case the petitioner fails to comply with this order, the respondent would be at liberty to recover the same in accordance with law.

8. With the above direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

12.01.2024

Index : Yes / No

Internet : Yes / No

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To

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Post Box No.3875, Dr.Balasundaram Road,
Coimbatore – 641 018.

2. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Chennai.



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N.MALA, J.

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