IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.2855 of 2023
and
C.M.P.No.23728 of 2023

Guru Nanak College
(A unit of Guru Nanak Educational Society (Regd.))
having its office at
Velachery Road, Velachery, Chennai-600 042.
represented by its General Secretary & Correspondent
Sardar Manjit Singh Nayar ... Appellant

vs.

1. Employees Provident Fund Appellate Tribunal
having its office at
4th Floor, Core 2, Scope Minar, Laxmi Nagar,
Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
Regional Provident Fund Office
No.3, Rajaji Salari, Tambaram, Chennai-600 045.

3. The Provident Fund Commissioner,
Regional Provident Fund Office,
No.3, Rajaji Salai, Tambaram, Chennai - 600 045. ...
Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patents to set aside the order dated 27.07.2023 in W.P. No.20967 of 2014 and thereby to quash order dated 03.01.2014 passed by the 1st respondent in A.T.A. No.380(13) of 2013 and order dated 21.05.2013 passed by the 2nd respondent in TB/RO/TAM/62438/Gr.54/PDC/2013 pending disposal of the present Writ appeal.

For Appellant : Mr. H. Karthik Seshadri

For Respondents : Mrs. Revathi Manivannan
[for R2 & R3] For EPF.
R1 - Left.

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ appeal has been preferred as against the order passed in W.P. No.20967 of 2014 on the file of this Court dated 27.07.2023, wherein the appellant herein has filed Writ petition as against the respondents to quash the impugned order dated 03.01.2014 in A.T.A. No.380(13) of 2013 passed by the 1st respondent and the order dated 21.05.2013 in TB/RO/TAM/62438/Gr.54/PDC/2013 passed by the 2nd respondent. The Writ Court dismissed the Writ petition. As against the same, the present Writ appeal has been filed by the petitioner in the Writ petition.

2. **The brief facts of the case are as follows:-**

The appellant is an educational institution and it is of Gurunanak Educational Society registered under the Tamil Nadu Societies Registration Act 1975 and the college is being run as a minority community college and the place where the college is situated has been gifted by the Government of Tamil Nadu for the development of an Arts and Science College. The college was started primarily with aid from the Government of Tamil Nadu in the year 1971 as a very small unit with limited number of Staff and very few departments and in the year 1980-81, they started evening college. The appellant college is collecting donations from public and are functioning with the grants in aid from the Government. The appellant college was unaware of the fact that it is covered under the EPF & MP, Act 1952. The 2nd respondent had passed order dated 04.01.2023 under Section 7(A) of the Act holding that the appellant is covered under the provisions of **'Employees Provident Fund and Miscellaneous Provisions Act, 1952'** and held that the appellant is liable to pay a sum of

Rs.39,63,563/- for the period from 17.06.1985 to 31.03.2010. The said amount was paid without prejudice to the rights of the appellant and to show its bonafideness. Thereafter, the appellant has preferred review under Section 7-B(i) of Employers Provident Fund Act before the 2nd respondent and the same was dismissed through order dated 06.03.2013. As against the said order, an appeal was preferred by the appellant before the Employees' Provident Fund Appellate Tribunal at New Delhi, the 1st respondent herein in ATA No.411(13) of 2013. During the pendency of the above said appeal, the 2nd respondent issued a notice dated 06.05.2013 for assessment of interest and damages under Section 7Q and 14B of the Act for a sum of Rs.22,42,691/- by way of interest and damages of Rs.33,96,220/- for a period from March 2005 to March 2010. Further, interest of Rs.11,86,722/- and damages of Rs.9,05,014/- for a period from June 1985 to February 2005. Hearing was fixed on 21.05.2013 for the appearance of the appellant. The 2nd respondent in an hurried manner, passed the order dated 21.05.2013 without giving sufficient opportunity and adjudicated the damages of Rs.43,01,234/-. As against the damages, an appeal has been preferred by the appellant before the 1st respondent, Employees Provident Fund Appellate Tribunal in ATA No.380(13) of 2013 and the matter was stayed subject to deposit of

50% of the amount, no opportunity of being heard, was granted by the 2nd respondent. Thereafter, the 2nd respondent proceeded under Section 8(g) to recover the interest and damages. The appellant had approached this Court in W.P. No.15657 of 2013 to quash the said order and interim stay was granted and the same is still in force. The appellant also filed W.P. No.21684 of 2013 challenging the order dated 18.07.2013 passed by the 1st respondent and the same was also stayed on condition that the appellant has to deposit interst within 4 weeks and a common order was passed by this Court not to take any coersive steps till the disposal of the appeal in ATA No.411(13) of 2013 and ATA No.380(13) of 2013. Now the appellant has filed Writ petition before the

Writ Court challenging the impugned order passed by the 1st respondent. The said Writ petition was dismissed. Aggrieved by the said order, the present Writ appeal has been filed by the Writ petitioner.

3. The learned counsel appearing for the appellant would contend that the appellant institution is an educational institution and college is being run as minority community college and the college was started in the year 1971 as a very small unit with limited number of Staff and in the year 1981, they started evening college. In the meantime, the 2nd respondent

has passed order dated 04.01.2013 holding that the appellant is covered under the provisions of **'Employees Provident Fund and Miscellaneous Provisions Act, 1952'** and the appellant is liable to pay a sum of Rs.39,63,563/- for the period from 17.06.1985 to 31.03.2010 and the same was paid without predudice to the rights of the appellant on 06.02.2013. Thereafter, the appellant preferred a revision as against the order under Section 7-B(i) of the Act before the 1st respondent. During the pendency of appeal, the 2nd respondent issued a notice dated 06.05.2013 and hearing was fixed on 21.05.2013 and thereafter passed an order dated 21.05.2013 in a hasty manner without giving opportunity. As against the said order, they filed an appeal before the 1st respondent in ATA No.380(13) of 2013 and the same was dismissed by the 1st respondent by confirming the order of the 2nd respondent dated 21.05.2013 through an order dated 03.01.2014. The 2nd respondent has not given opportunity to putforth defence of the appellant and there is no any wilful default and there is no any *mens rea* in the delayed payment of contributions. The damages shall not be extreme than the amount of arrears. The 1st respondent has not given any reasons when the award of interest itself is not adjudicated. Further, the contribution itself is under challenge through

ATA No.411(13) of 2013. While pending said appeal, the 2nd respondent hastily passed the order. Since there is no wilful delay and there is no *mens rea,* the damages cannot be levied. Therefore, the said aspects have not been considered by the Appellate Authority as well as by the Writ Court. Therefore, the order passed by the Writ Court is liable to be set aside by allowing this appeal.

3.1. In support of his contention, the learned counsel appearing for the appellant has relied upon the following judgments:-

1. ***Employees State Insurance Corporation vs. HMT Ltd., and another reported in (2008) 3 SCC 35.***

2. Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri & Ors reported in (2014) 15 SCC 263.

3. Assistant Provident Fund Commissioner, EPFO and Anr. vs. Management of RSL Textiles India Private Limited reported in (2017) 3 SCC 110.

4. Loyal Textile Mills Limited vs. Regional Provident Fund Commissioner reported in 2020 SCC Online Mad 10811.

5. Regional Provident Fund Commissioner - II vs. Hooghly Mills

Company Limited and Anr. reported in 2022 SCC Online Cal 248.

6. Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization reported in (2002) 4 SCC 516.

7. Union Territory of Ladakh & Others vs. Jammu and Kashmir National Conference and another reported in 2023 SCC Online SC 1140.

4. The learned counsel appearing for the official respondents would contend that provisions of Employees Provident Fund Act and Miscellaneous Provisions Act, 1952, applies to the appellant establishment with effect from 17.06.1985 by virtue of Notification S.O. No.986 dated 19.02.1985 of Government of India. The appellant is defaulter of monthly provident fund dues payable in terms of Sections 6, 6A & 6C read with para 38 of the EPF Scheme 1952. The Provident Fund dues payable for the period from 17.06.1985 to 31.03.2010 is accepted by the appellant. Thereby, a sum of Rs.44,36,646/- was determined and the same was collected from the appellant. Therefore, appellant was liable to pay damages and interest. Hence the proceedings dated 21.05.2013 under

Section 7Q was issued under Section 14B of the Act. Whenever there is default in provident fund dues, Section 17Q & 14B of the Act automaticlaly step in. The appeals in ATA No.380(13) of 2013 challenging the order dated 21.05.2013 passed by the 2nd respondent under Section 14B of EPF & MP Act 1952 and ATA No.411(13) of 2013 challenging the order dated 04.01.2013 passed by the 2nd respondent under Section 7A of the Act had been disposed of on the same day i.e., 03.01.2014 by the 1st respondent Tribunal. The proceedings under Section 7A dated 04.01.2013 demanding dues for a period from June 1985 to March 2010 was paid by the appellant. Therefore, the damages under Section 14B and interest under Section 7Q automatically step in. The appellant was afforded opportunity of hearing. when the appellant reached employees' strength of 20, the provisions of Employees Provident Fund Scheme 1952 automatically step in. Therefore, the 2nd respondent passed a reasoned order based on the records produced by the appellant and the 1st respondent also in the appeal, after elaborate discussion, correctly dismissed the appeal. The Writ Court also after elaborate discussion dismissed the Writ petition by holding that the respondents have power to levy damages and interest as contemplated under the Act and delay in remittance as per the provisions and rules.

Therefore, the 2nd respondent passed a reasoned order and dismissed the Writ petition. Therefore, the Writ appeal is liable to be dismissed.

5. Heard both sides'. Perused all the materials available on record.

6. It is an admitted fact that the appellant institution is covered under Employees' Provident Fund Act and Miscellaneous Provisions Act 1952 and there is no dispute that the appellant institution paid the contributions for the period from 17.06.1985 to 31.03.2010 with delay. The appellant also after receipt of the order passed by the 2nd respondent under Section 7(A) of the Act, remitted the amount and the same was challenged through appeal and during the pendency of the appeal, the 2nd respondent has levied damages under Section 14B of the Act and demanded damages amount, that has been challenged before the Writ Court and the Writ Court dismissed the Writ petition.

7. The main contension raised by the appellant in this Writ appeal is that no opportunity was given to the appellant in the 7(A) proceedings by the 2nd respondent. However, the appellant himself has admitted that he appeared before the 2nd respondent for enquiry, but no sufficient

opportunity was given to him to putforth his case. In this case, the order passed by the 2nd respondent would go to show that on behalf of the appellant, a representative of the College appeared before the Authority and pleaded for keeping the matter in abeyance, since the Provident Fund dues assessed is under challenge before the EPF Authorities and the damages should not be levied until finalization of the appeal, through a representation dated 18.05.2013 and thereafter, the authority has passed impugned order dated 21.05.2013. Therefore, the contention of the appeallant that no opportunity was given, is not an acceptable one.

8. The next contention raised by the appellant is that there is no malafide intention and *mens rea* to delay the payment and thereby, interest cannot be levied.

In support of his contention, the learned counsel appearing for the appellant has relied upon judgments in:

8.1. Employees State Insurance Corporation vs. HMT Ltd., and another reported in (2008) 3 SCC 35, wherein, the Hon'ble Supreme Court in para 25 and 26 held as follows:-

> *25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also*

not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.

26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof".

8.2. Assistant Provident Fund Commissioner, EPFO and Anr. vs. Management of RSL Textiles India Private Limited reported in (2017) 3 SCC 110, wherein, our Hon'ble Supreme Court held in para 325 as follows:-

"3. This issue is now wholly covered against the appellants in the decision rendered by this Court in McLeos Russel India Ltd., v. Regl. Provident Fund Commr., wherein it has been held in Para 11 that :(SCC p.272)

"11. ...the presence or absence of mens rea and / or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100% of the arrears have to be imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B it will be only logical that mens

rea and / or actus reus was prevailing at the relevant time".
4. In the impugned judgment, at para 23, it has been specific ally held by the High Court that,
"In this case, there is no finding rendered by the original authority or the appellate authority with regard to mens rea or actus reus, except saying financial crises cannot be a reason to escape".
5. In view of the above, these appeals are dismissed".

8.3 ***Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization reported in (2002) 4 SCC 516,*** wherein, the Hon'ble Supreme Court has held in para 19 as follows:-

> "19. Taking note of the three-Judge Bench judgment of this Court in Union of India v. 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".

On perusal of ***Employees State Insurance Corporation vs. HMT Ltd., & another and Assistant Provident Fund Commissioner, EPFO and Anr. vs. Management of RSL Textiles India Private Limited*** cases, the Hon'ble Supreme Court held that e*xistence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof.* The Hon'ble

Supreme Court, in the case of ***Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization,*** after referring the Hon'ble Full Bench of Hon'ble Supreme Court, held that taking note of the three-Judge Bench judgment of this Court in Union of India v. 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.

Therefore, the judgments relied on by the appellant are noway helpful to decide the case in his favour. As per the judgment of ***Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization,*** the Hon'ble Supreme Court categorically held that 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. Therefore, the argument of the learned counsel appearing for the appellant that there is no *mens rea* in delay of payment and thereby, damages cannot be levied is not an acceptable one. Other judgments relied on by the appellants are not applicable to the present facts of the case, since the facts of this case are distinguishable.

9. The third contention raised by the appellant in the appeal is that the damage amount is exceeded the arrears of EPF and the same is not permissible as per the Act. This Court, carefully perused the records and the arrears of amount due is Rs.44,36,646/- for the period from 17.06.1985 to 31.03.2010 and the damages levied is Rs.43,01,234/-. Therefore, damage amount levied by the 2nd respondent is not more than the arrears due. Therefore, the argument of the learned counsel appearing for the appellant is not acceptable to that effect.

10. 2nd respondent has passed a reasoned order by giving opportunity to the appellant and the appellant also admitted the dues and paid the amount belatedly and thereby, the 2nd respondent has passed a reasoned order under Section 14-B of the Act. Similarly, the Appellate Authority / 1st respondent also passed a reasoned order and observed that "Reasons to levy the damages were apprised to the appellant and it sought three months time to verify the records shown. The delay occurred due to lack of knowledge of statutory provision is no ground to waive damages".

Therefore, the order passed by the 1st and 2nd respondents are in order and the Writ Court also in its order elaborately discussed about the legal aspects and observed that "arrears of amount from the period of 17.06.1985 to 31.03.2010 is Rs.44,36,646/- and the same was also remitted by the appellant on 22.11.2011 and 05.03.2013 respectively. As such the respondents 2 and 3 have power to levy damages as contemplated under Section 14B and 7Q of the Act" and also observed that "the petitioner was afforded an opportunity of hearing and thereby, the order passed by the 1st and 2nd respondents, there is no any infirmity or illegality found in the impugned orders passed by the 1st and 2nd respondents and dismissed the Writ petition.

11. Therefore, in view of the above discussions, this Court is of the opinion that this Writ appeal has no merits and deserves to be dismissed and accordingly, the Writ appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(J.N.B.J.) & (P.D.B.J)

18.06.2024
mjs
Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No

To

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having its office at
4th Floor, Core 2, Scope Minar, Laxmi Nagar,
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2. The Assistant Provident Fund Commissioner,
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J.NISHA BANU,J
and
P.DHANABAL,J

(mjs)

Judgment in
W.A.No.2855 of 2024

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