BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2024

CORAM :

**THE HON'BLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.10860 of 2012
and
M.P.(MD)No.2 of 2012
and
W.M.P.(MD)No.7829 of 2022

Kanyakumari District Sarvodaaya Sangam,
Kottar,
Nagercoil - 629 002,
Kanyakumari District,
represented by its Secretary,
T.Manoharan ... Petitioner

Vs

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
4th Floor - Core - 2,
Scope Minoar, Laxmi Nagar,
New Delhi.

2. The Regional Provident Fund Commissioner - II,
Employees Provident Fund Organization,
Sub Regional Office,
Nagercoil, Kanyakumari District.

3. The Recovery Officer,
Employees Provident Fund Organization,
Sub Regional Office,
Nagercoil, Kanyakumari District. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 2nd Respondent in his proceedings No. TN/NGL/290IT/14B/100850/PDC (7)/2011 dated 07.02.2011 and Appellate order passed by the 1st Respondent made in his proceedings in A.T.A.No.284(13)/2011 dated 19.04.2012 and consequential order passed by the 3rd respondent in his recovery proceedings No.TN/NGL/290I-T/Recy/8F/2012 dated 18.07.2012 and quash the same.

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|---|---|---|
| For Petitioner | : | Mr.S. Karthik, |
| For Respondents | : | No Appearance |

**ORDER**

This writ petition has been filed in the year 2012 as against the order passed by the second respondent in Proceedings No.TN/NGL/290/IT/100850/PDC(7)/2011, dated 07.02.2011 and the order passed by the first respondent in A.T.A.No.284(13)/2011, dated 19.04.2012 and the consequential order passed by the third respondent in the recovery proceedings No.TN/NGL/290I-T/Recy/8F/2012, dated 18.07.2012.

2.This petition is the second round of litigation. The writ petitioner Sangam has failed to pay the EPF contributions for the period

March 1999 to February 2002. Therefore, the second respondent has passed an order as against the petitioner Sangam on 12.01.2005 by imposing Rs.14,50,949/- as damages as per Section 14 of the EPF Act. The said order of the second respondent was challenged by the petitioner Sangam in W.P(MD)No.7945 of 2005 and the same was allowed by this Court by order dated 23.11.2012 by setting aside the order of the second respondent passed under Section 14(B) of the EPF Act and remanded the matter back for fresh consideration. Therefore, the enquiry was conducted by providing an opportunity to the petitioner Sangam and another order was passed by the second respondent on 07.02.2011, which was challenged by the petitioner before the first respondent in A.T.A.No. 284(13)/2011 and the same was dismissed by order dated 19.04.2012. Consequently, the third respondent has frozen the petitioner's account on 19.07.2012. Therefore, the petitioner has filed this petition in the year 2012.

3.Similar petitions were posted before the Hon'ble Full Bench of this Court in deciding the issue of *mens rea* in the proceedings initiated under Section 14(B) of the EPF Act. The Hon'ble Full bench by order dated 03.06.2024 answered the reference and directed the Registry to list all other similar petitions before the respective Courts and accordingly, this writ petition of the year 2012 is listed for hearing before this Court.

4.The learned Counsel for the petitioner submits that the petitioner Sangam is a Sarvodaaya Sangam affiliated to Tamil nadu Sarvodhaya Sangam, which has been established for the purpose of promoting the Gandhian thoughts in the rural areas. They are mainly involved in production of Kadhi products by providing employment in the rural areas. The petitioner claims that they are a non profit oriented Sangam and they are doing it as a service in order to promote employment in the rural areas. He further submits that the petitioner Sangam was started in the year 1962 and they were depending upon the grants provided by the Central and the State Governments and there where some delay in the payment of grants by the State and the Central Government. Therefore, in order to preserve the Sangam, they have failed to pay this amount in time to the provident fund. According to the petitioner, they have voluntarily covered under the Employees Provident Fund Scheme and they were allotted with the provident fund No.T.R/II/46517. They failed to pay the contribution in time and it is only due to the delay in payment of grant, which has to be provided by the State and Central Governments, it is neither wilful nor wanton. However, the EPF authority has levied damages under Section 14 (B) of the Act.

5.The learned Counsel for the petitioner by referring to the guidelines issued by the Hon'ble Full Bench in W.P(MD)Nos.7339, 9688 of 2013 etc. batch, dated 03.06.2024 submits that the the authority has to consider the relevant factors for the delay before imposing the penalty and therefore, the learned Counsel requested to remand back the matter to the Department for fresh consideration.

6.There is no representation for the respondents.

7.A similar writ petition on the penalty imposed under Section 14 (B) of the said Act was referred to the Hon'ble Full Bench to find out whether *mens rea* is a determinative factor in imposing damages under Section 14(B) of the said Act as well as other incidental issues and the Hon'ble Full Bench has framed the following issues and decided the reference as under :

> *"39.Therefore, following the principles reiterated by the Hon'ble Supreme Court and different High Courts including our High Court in similar circumstances, this*

*Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-*

*(i) Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.*

*(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.*

*(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.*

*(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.*

*(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.*

*(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.*

*(vii)There shall be proper application of mind objectively on*

*the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.*

*(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.*

*(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.*

*(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.*

*(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The*

*discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."*

8.The petitioner Sangam claims that it is a Sarvodaya Sangam established for providing employment in rural areas. The functioning of the Sangam depends on the grant provided by the State and Central Government. The same needs to be considered by the EPF authority while fixing the quantum of damages to be levied under Section 14(B) of the EPF Act. Therefore, this writ petition is allowed and the impugned order is set aside and the issue is remanded back to the second respondent for fresh consideration in the light of the guidelines issued by the Hon'ble Full Bench of this Court in W.P(MD)No.7339, 9688 of 2013 etc. batch, dated 03.06.2024. No costs. Consequently, the connected miscellaneous petitions are closed.

**01.10.2024**

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR

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**B.PUGALENDHI, J.**

LR

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