BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.7259 of 2019 and
WMP(MD)No.5807 of 2019

The General Manager,
Tiruchirappalli Consumer's Co-Operative
Wholesale Stores Limited, No.R.619,
(Chinthamani Co-Operative Super Market),
12/1, EVR Road, Puthur,
Tiruchirappalli
represented by its General Manager
...Petitioner

Vs

The Regional Provident Fund Commissioner -II,
Sub-Regional Office,
P.Box No588, Sree Complex,
D-Block, No.18, Madurai Road,
Trichy – 620 008. ...Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the impugned order passed by the respondent bearing No. TN/RO-TRY/PDC/C-3/3179/14B/PROC/18 dated 10.04.2018 and quash the same.

For Petitioner : Mr.G.Murugan

For Respondent : Mr.N.Dilip Kumar

ORDER

The order passed by the respondent / PF authority levying damages under Section 14-B of the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] is challenged in this writ petition.

2.The petitioner a co-operative store registered under the Co-Operative Societies Act failed to pay the EPF contribution from the month of March 2012 to June 2017. Therefore, the respondent EPF authority has initiated proceedings under the Act by issuing summons on 05.01.2018. After providing opportunity to this petitioner, the respondent has passed the order dated 10.04.2018 levying damages of Rs.10,84,479/- under Section 14-B of the Act. Challenged the same the petitioner has approached this Court.

3.The learned Counsel for the petitioner submits that the petitioner store was established in the year 1939, in order to provide groceries at subsidised rates to the general public and they are also running fair price shops. While so the store suffered a huge loss in the year 2011-2012 to the tune of Rs.1,90,73,909/- and therefore they have closed down their store in the year 2012. They were not even in a position to pay salary to their employees. Under such circumstances, the proceedings was initiated under Section 14-B of the Act and damages have been levied. For this belated payment of PF contribution, the PF authority has also levied interest of Rs.5,24,545/- under Section 7-Q of the Act.

4.The learned Counsel for the petitioner contends that without considering that the store was functioning with an object to serve the general public and without considering the financial condition of the store, the PF authority has imposed the maximum damages as against the petitioner store.

5.The learned Counsel for the respondent submits that as against the order passed under Section 14-B of the Act, the petitioner is having an appeal remedy under Section 7-I of the Act. However without invoking the statutory appeal remedy available under the Act, this writ petition has been filed. Further this writ petition has been filed mainly on the ground that the petitioner was not provided with sufficient opportunities before levying damages and interest. The learned Counsel by referring to the impugned order states that the General Manager of the petitioner store has appeared before the authority on 22.01.2018, 21.02.2018, 07.03.2018 and 02.04.2018 and he was provided with sufficient opportunities. Only thereafter orders have been passed. Despite the same, the petitioner alleges that he was not provided with sufficient opportunities.

6.The learned Counsel further submits the writ petition is also filed on the ground hat there is no '*mens rea*' on the part of the petitioner for the belated payment. This issue has already been decided by the Hon'ble Full Bench of this Court in ***Sun Pressing (P) Ltd represented by its the Managing Director, SIDCO Industrial Estate, Madurai Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi*** reported in ***2024-1-Writ.L.R.801*** that *mens rea* is not required for deciding the issue in the proceedings initiated under Section 14-B of the Act. However the petitioner has not made out any case for not paying the contribution amount within time.

7.This Court has considered the rival submissions made and perused the materials placed on record.

8.The order impugned in this writ petition is an order passed by the respondent / PF authority under Section 14-B of the Act. By the order impugned, the respondent has levied a sum of Rs.10,84,479/- as damages for the belated payment of PF contribution for the period March 2012 to June 2017. Admittedly there was default in payment of PF contribution by the petitioner store for this period. Therefore, the PF authority is justified in proceeding under Section 14-B of the Act and levying damages.

9.As rightly pointed by the learned Counsel for the respondent the statute provides for a remedy of appeal under Section 7-I of the Act. However the petitioner without invoking the remedy available under the Act has filed this writ petition. This writ petition, which was entertained by this Court in the year 2019 is listed for final disposal only in the year 2024.

10.The petitioner is a co-operative store. The main object of the co-operative store is to provide grocery and other food grains to the common man at subsidised rate through fair price shops. The petitioner claims that they suffered a loss of Rs.1,90,73,909/- for the assessment year 2011 - 2012 and therefore they have failed to pay the contribution from the moth of March 2012. Though the General Manager of the petitioner store is said to have appeared nearly for five hearings before the PF authority, he has not placed their financial condition before the authority. If there is any delay in payment of contribution the PF authority is entitled to levy the damages under Section 14-B of the Act. The delayed payment is also liable to be recovered with interest under Section 7-Q of the Act. Accordingly, in this case, the authority has imposed damages under Section 14-B of the Act and also levied interest under Section 7-Q of the Act. It is reported that the interest levied by the respondent Rs.5,24,545/- was paid by the petitioner store.

11.The Hon'ble Full Bench of this Court while deciding the principles to be followed for assessing the quantum of damages payable under Section 14-B of the Act has laid down certain guidelines in

Sun Pressing (P) Ltd represented by its the Managing Director, SIDCO Industrial Estate, Madurai Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi reported in ***2024-1-Writ.L.R.801*** and clause Nos.iii, v, vi, vii and viii the said guidelines would be relevant to this case to be considered by the authority while deciding the issue, which read as follows:

> "39. ... .
> ... .
> ....
>
> *(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.*
>
> *(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."

12.Though the petitioner claims that their financial condition was placed before the authority, there is no material on record that it was placed before the authority. Therefore, this Court is of the view that the petitioner shall be provided with one more opportunity to address his financial condition to the authority specifying the reasons for the delay in payment of the contribution.

13. Since this petitioner is a store involved in selling grocery and food grains through fair price shops to the general public, this Court is inclined to set aside the impugned order and remit the matter to the authority to consider the case of the petitioner in assessing the quantum of the damages in the light of the guidelines issued by the Hon'ble Full Bench of this Court cited supra.

14.In the result the impugned order is set aside. The matter is remanded back to the respondent for fresh consideration as stated above. Accordingly this writ petition is disposed in the above terms. No costs. Consequently connected miscellaneous petition is closed.

21.10.2024

Internet : Yes / No
Index : Yes / No

DSK

To
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B.PUGALENDHI.J.,

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