BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9076 of 2019
and
W.M.P.(MD)No.7067 of 2024

M/s.Nadippisai Pulavar,
K.R.Ramasamy Co-Operative Sugar Mills Limited,
Thalainayar,
Ilanthope Post - 609 201,
Mayiladuthurai,
nagapattinam District,
Through its Managing Director ... Petitioner

Vs

1. Regional Provident Fund,
Commissioner -II,
Employees Provident Fund Organization,
Regional Office,
No.18, Madurai Road,
Trichy-620 008, Trichy District.

2.The Enforcement Officer,,
Employees Provident Fund Organization,
District Office,
95, Mothilal Street,
Kumbakonam,
Thanjavur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent herein No. CB / TRY / EPF / PDC / C-34 / 27100 / 2017-2018 dated 02/07/2018 received on 11/07/2018 issued by the 1st respondent and to quash the same.

For Petitioner	:	Mr.C.Karthikeyan
For Respondents	:	Mr.I.Pinayagash

O R D E R

This writ petition is filed as against the order of the EPF authority passed under Section 14B of the EPF and MP Act.

2.The respondent EPF authority has initiated the proceedings under Section 14B of the Act in the year 2018 for the belated payment of EPF contribution from 01.04.2017 to 31.03.2018. This proceedings was conducted on 27.06.2018 by issuing a summon to the petitioner on 04.06.2018. On 27.06.2018 the Accountant of the petitioner Mill has appeared before the EPF authority and has also stated about financial the crisis faced by the Mill. However, without providing sufficient time the authority has proceeded with the proceedings and has levied the damages as per Para 32-A of the EPF Scheme. Aggrieved by that, the Mill has preferred this writ petition on 11.04.2019. This Court has also entertained this petition by admitting the same on 15.04.2019 and also granted an order of interim stay.

3.The learned Counsel for the petitioner submits that the Mill has been closed down in the year 2016 due to the financial crisis and that was also duly intimated to the respondent that they were not in a position to pay a salary from the year 2016. However, they have paid the EPF contribution. Without considering the financial status of the petitioner Mill, the respondent EPF authority have levied the damages in a mechanical manner and also without providing sufficient opportunity to explain their financial condition.

4.The learned Counsel for the respondents by referring the provision under Section 7-I of the Act submits that the petitioner is having a remedy of statutory appeal before the appellate Tribunal. However, he has filed this writ petition without invoking the available remedy under the Act. He further submits that the petitioner may be granted liberty to file an appeal as provided under the statue. The petitioner is not covered under the EPF and MP Act and is liable to pay the EPF contribution regularly and there is any delay in payment of EPF contribution they are liable to be levied with the damages under Section 14B of the Act as per para 32-A of the Scheme.

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

6.Though the learned Counsel for the respondents submits that statutory remedy is available under Section 7-I of the Act, this Court by order, dated 15.04.2019 has also entertained this petition and granted interim order. Therefore, this Court is not inclined to direct the petitioner to approach the appellate tribunal after four years.

7.The learned Counsel for the petitioner claims that the unit was closed down in the year 2016 due to financial condition and that was also appraised before the EPF authority.

8.Perusal of the orders also disclose that by the proceedings under

Section 14B of the Act was initiated by issuing summons on 04.06.2018 fixeing the date of hearing on 27.06.2018. A representative of the petitioner Mill has appeared before the respondent EPF authority and also stated that due to the financial condition they are unable to remit the dues in time.

9.Since this Court is of the view that the EPF authority has not provided sufficient opportunity and has also not considered the submissions of the petitioner that there was a financial condition, this Court is inclined to remand back the matter.

10.This Court is also referring to the guidelines issued by the Hon'ble Full Bench 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,*** for assessing the quantum of damages under Section 14B of the Act. Clause Nos.iii, v, vi, vii and viii of the said guidelines would be relevant to this case and the same is extracted as under:

"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.

(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.

(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.

(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."

11.Therefore while remitting for fresh consideration, this Court also directs the EPF authority to consider the case of the petitioner in the light of the above guidelines issued by the Hon'ble Full Bench as stated supra.

12.Accordingly, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

29.10.2024

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

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B.PUGALENDHI, J.

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