



WP(MD)No.12416 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.12416 of 2017
and
WMP(MD)No.9558 of 2017**

M/s.Sitalakshmi Mills Limited
Weaving Unit,
Arasanoor Village,
Sivagangai – 630 561,
Sivagangai District,
Represented by its Director,
Mr.Sushil Kumar Sharaf

...Petitioner

Vs

- 1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
63-3rd cross – Yeshwantpur,
Bengaluru -560 022.
- 2.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
(For Tamil Nadu and Pondicherry State),
(Industrial Tribunal cum Labour Court) (Central),
Chennai.
- 3.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office – Lay Doak College Road,
Chokkikulam, Madurai – 625 002.



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4.The Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office – Madurai – 625 002.

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned order of the 1st respondent passed in NO.TN/RO/MDU/37439/RO/Circle M8/ PDC/LD/2015 dated 06.08.2015 for a sum of Rs.16,02,105/- under Section 14B of the EPF Act, and in No.TN/37439/M8/7Q/PDC/MDU/20.5 dated 06.08.2015 for a sum of Rs.8,74,609/- under Section 7 Q of the EPF Act and the orders of the 1st respondent passed in Appeal No.A/KN-111/2016 dated 04.05.2017 respectively and the and the 8F order of Attachment of Immovable property issued by the 4th respondent in No.EPFCP.16 No.TN/MDU/37439/RECY/CP16/2017 dated 04.2017 received on 20.04.2017 and to quash the same or to direct the 2nd respondent to take up the main appeal into file and decide the case on merits.

For Petitioner : Mr.P.Chandra Bose

For Respondent : Mr.AJohn Xavier

No.3

For Respondent : No representation

No.4



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ORDER

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The petitioner mill has filed this writ petition as against the orders passed by the PF authority levying damages under Section 14-B and levying interest under Section 7-Q of the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act']. That apart, the the orders of the appellate authority / 1st respondent in the statutory appeal filed by the petitioner under Section 7-I of the Act and the recovery proceedings initiated by the PF authority under Section 8-F of the Act are also challenged herein.

2. The petitioner mill was registered under the Companies Act and was running its weaving unit at Arasanoor Village, Sivagangai district. They have also got coverage under the Act. The petitioner mill failed to pay the EPF contribution from the month of March 1996. Therefore, show cause notice was issued by the 3rd respondent on 21.03.2014 for conducting enquiry for the delay in payment of the EPF contribution. The petitioner has also appeared for enquiry through his counsel and took a plea that the mill itself was declared as a sick industry in the year



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2000 by the Board for Industrial and Financial Reconstruction.

The mill was also closed down in the year 2004 and it was sold in the year 2008. However without considering this submission of the petitioner, the EPF authority has passed an order under Section 14-B of the Act, levying damages of Rs.16,02,105/- and also levying interest of Rs.8,74,609/- under Section 7-Q of the Act on 06.08.2015. Challenging the same, the petitioner preferred an appeal with a delay of 465 days before the appellate authority under Section 7-I of the Act. The appellate authority has rejected the appeal filed by this petitioner that it was filed beyond the limitation period. In the meantime the 4th respondent proceeded for recovery under Section 8-F of the Act by attaching the immovable property of the petitioner .

3.The learned Counsel for the petitioner by referring to the orders passed by the Board for Industrial and Financial Reconstruction [BIFR] in case No.338 of 1999, which was filed by this petitioner submits that the BIFR has declared the petitioner mill as sick industry as per Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 by order dated 20.07.2000. The learned Counsel submits that the



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entire company was closed down in the year 2004 due to the labour problem and also financial problem and the company was sold in the year 2008. All these facts have been placed in the enquiry conducted by the EPF authority in the year 2014. However, the authority without considering all these facts has mechanically passed an order levying damages and interest.

4.The learned Counsel further submits that the appellate Tribunal is at New Delhi and in the year 2014 a separate appellate Tribunal was proposed to be established for the Southern Region at Bangalore. However the Tribunal was not established at Bangalore till the year 2015. Therefore there was a confusion in preferring appeal and hence there was a delay in filing the appeal under Section 7-I of the Act. However the Tribunal without considering the notification for establishment of Tribunal in the year 2014 has simply rejected the appeal filed by the petitioner and therefore, the petitioner having left with no other option was constrained to file this writ petition as against the order passed by the appellate Tribunal under Section 7-I of the Act.



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5.The learned Counsel further submits that as against the order passed under Section 7-Q of the Act determining the interest for the belated payment, no appeal provision is provided under the Act and therefore, this writ petition is maintainable as against the orders passed under Section 7-Q of the Act.

6.He also submits that the appellate tribunal has rejected the appeal filed by the petitioner under Section 7-I of the Act on 04.05.2017 and even before that the 4th respondent has initiated proceedings under Section 8-F of the Act by attaching the immovable property of the petitioner mill and therefore, the petitioner is challenging the consequential order passed under Section 8-F of the Act also.

7. The learned Counsel for the respondent / EPF authority submits the petitioner has already filed an appeal under Section 7-I of the Act before the 1st respondent / appellate Tribunal with a delay of 465 days. The statute provides only 60 days time to file an appeal and further the appellate tribunal can condone the delay of 60 days. Therefore the appeal ought to have been filed within a period of 120 days. But in this case the



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appeal was filed with a delay of 465 days. Therefore the appellate authority has no powers to condone this huge delay and accordingly the appellate tribunal has rightly rejected the appeal. Therefore the orders of the appellate tribunal need not be interfered with. Since the petitioner has not filed the appeal in time and it was rejected, the petitioner cannot maintain this writ petition as against the order levying damages under Section 14-B of the Act. He further submits that the statute enables the 4th respondent to proceed with the recovery under Section 8-F of the Act, in consequent to the order passed on 06.08.2015 and therefore, the proceedings dated 20.04.2017 initiated under Section 8-F of the Act, cannot be questioned in the writ petition.

8.This Court considered the rival submissions and perused the materials placed on record.

9.The EPF authority has levied the damages under Section 14-B of the Act for the belated payment of PF contribution from March 1996 to March 2010. The petitioner mill was declared as a sick industry by the BIFR in the year 2000. The petitioner claims that all these materials have



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been placed before the PF authority. However the PF authority has simply rejected the plea raised by the petitioner stating that every company would be facing financial constraints. This Court is not inclined to accept the manner in which the EPF authority has levied damages. The petitioner is having appeal remedy under Section 7-I of the Act and the petitioner has also filed the appeal before the 1st respondent. However it was rejected by the 1st respondent that it has been filed beyond the statutory period. The learned Counsel by referring to the notification of the year 2014, makes out a case that there was a notification for establishment of a separate appellate tribunal for the Southern Region at Bangalore. However it was not established as per the notification immediately. Therefore there was a confusion during the relevant point of time, as to the Forum before which the appeal to be filed. This reason ought to have been considered by the appellate tribunal while considering the appeal. However without considering the reasons stated by the petitioner, the appellate tribunal has rejected the appeal filed by this petitioner.



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10.Further as rightly pointed by the learned Counsel for the petitioner as against the order passed under Section 7-Q of the Act, there is no appeal provision available under the Act. Therefore this writ petition is maintainable as against the order passed under Section 7-Q of the Act. The proceedings was initiated by the PF authority in the year 2014 by issuing show cause notice dated 08.08.2014. The petitioner mill was declared as a sick industry even in the year 2000. According to the petitioner, the mill was closed down in the year 2004 and since then there was no operation in the petitioner mill. Therefore, this Court is of the view that the impugned order passed under Section 14-B of the Act has been passed without considering these aspects.

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



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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.

(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



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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."

12. In view of the above, this Court sets aside the orders passed by the EPF authority under Sections 14-B and 7-Q of the Act, dated 06.08.2015 and the matter is remanded back to the PF authority for fresh consideration. The PF authority shall consider the case of the petitioner in the light of the observations made by the Hon'ble Full Bench in the



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above cited judgment and pass appropriate orders within a period of six months from the date of receipt of a copy of this order. In view of the order passed by this Court setting aside the orders passed under Section 14-B and 7-Q of the Act, the consequential orders passed by the 4th respondent under Section 8-F of the Act is also set aside.

13. In the result, this writ petition is allowed in the above terms.
No costs. Consequently connected miscellaneous petition is closed.

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Internet : Yes / No
Index : Yes / No

DSK



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B.PUGALENDHI.J.,

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