

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5354 of 2015

Steel Authority of India Limited

Vs

Regional Provident Fund Commissioner & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Mr. B.B. Bhula.

For the P.F. Authorities : Mr. Anil Kr. Gupta.

Hearing concluded on : 26.08.2025

Judgment on : 12.09.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the **attachment order dated 9th/17th February, 2015** issued to the respondent bank, by the Regional Provident Fund Commissioner, Durgapur in respect of order dated 21st February, 2015 under Sections 14B and 7Q of the EPF Act for the period from **08/1995 to 07/2008**, amounting in total Rs.58,16,767/- and an order no. WB /DGP /009528 /000 /Enf501

/Damages /5915 /18802 dated 21st January, 2015 passed by the Regional Provident Fund Commissioner, Sub-Regional Office Durgapur thereby levying damages and charging interest for the period from **07/2011 to 08/2011** totally Rs. 79,337/-.

2. The petitioner's case in the writ application is that two separate proceedings were simultaneously initiated by the respondent no. 2 and simultaneously decided by the respondent no. 1 levying damages and charging interest under Section 14B and Section 7Q of the said Act, for the periods from 08/1995 to 07/2008 and from 07/2011 to 08/2011.
3. On 6th February, 2015, the petitioner received copies of two orders issued by the Respondent no. 1, both dated 21st January, 2015, levying damages and interests as under:-

a) WB/DGP/009528/000/ Enf501/ Damages/5915/18802 for the period from **07/2011 to 08/2011** - damages u/s 14B Rs. 23,334/ and interest u/s 7Q Rs. 56,003/- totaling Rs. 79,337/-.

b) WB /DGP /009528 /000 /Enf501 /Damages /5914 /18803 for the period from **08/1995 to 07/2008** damages u/s 14B Rs.4,85,769/- and interest u/s 7Q Rs. 3,30,998/- totalling Rs. 58,16,767/-.

4. **It is stated that the said notices for the said proceedings were predetermined and had already returned a conclusion as regards the alleged dues without affording any opportunity of hearing to the petitioner and were also never served with sufficient time for the petitioner to respond.**

5. Vide notice no. WB/ DGP/ 009528/000/Enf501/ Damages /1711 dated 19th/20th March, 2014 for the period 07/2011 to 08/2011, damages of Rs. 23,334/- and interest of Rs. 56,003/- were demanded from the petitioner, alleging delayed remissions of EPS contributions, EDLI contributions and EDLI administration/inspection charges as per dates of challans issued by the Bank of the respondent no. 2, i.e. State Bank of India. However, the said remissions had been made by the petitioner within the permitted time (i.e. fifteenth of next month and five days grace period) in as much as not only cheques were issued by the petitioner and paid into the Bank A/c of the respondent no. 2 within the due dates, but **the cheques were also realized and debited from the petitioner's Bank A/c in United Bank of India within due dates;** and the delay in issuing challans was only on the part of State Bank of India-the Bank of the respondent no. 2 in failing to timely credit the proceeds of the realized cheques into the Bank A/c of the respondent no. 2.
6. Vide notice no. WB/DGP/009528/000/Enf501/Damages/1712/21557 dated 19th/20th March, 2014 for the period 08/1995 to 07/2008, damages of Rs.34,85,769/- and interest of Rs.23,30,998/- were demanded from the petitioner, alleging delayed remissions of PF contributions, and other delayed payments. However, the petitioner was not liable to pay the same because: (i) Subsequently portion of the demanded amount was in respect of delay in remissions of EPS contributions for the period from 08/1995, commencement of Scheme till the earlier assessment order under Sec. 7A issued in October, 2014, **but the delay during that period had occurred due to stay orders passed**

by the Hon'ble High Court and Supreme Court in the writ petition filed by employees' unions challenging the validity of Employees' Pension Scheme, 1995, and after the matter was finally decided by Hon'ble Supreme Court in November, 2003, necessary remissions were made by the petitioner between February to April, 2004, and deficit amount of remissions and interest for entire period of delay from August 1995 onwards as assessed by the respondent no. 2 in October, 2004 vide earlier proceedings u/s 7A of the EPF & MP Act, 1952 was also paid. Thus, a substantial portion of the demanded amount was based **on repetitive claim** for the same period of delay from August, 1995 upto October, 2004, and the demanded amount of damages and interest had been calculated even on the interest amounts paid earlier. (ii) **Interest u/s 7Q has apparently been demanded w.e.f. August, 1995 even though Section 7Q was brought into force w.e.f. July, 1996.**

7. **Written notes has been filed by the respondent/EPF authority relying upon the following judgments, justifying the orders under challenge:-**

- a) ***Asstt. P.F. Commissioners, Employees' Provident Fund Organisation vs Pawan Kumar Agarwala & Ors., 2007 SCC OnLine Cal 692.*** (Orders under Section 14B and 7Q EPF being appealable before the tribunal).

In this case **10 years** have passed since the writ was admitted and the petitioner herein has alleged perversity in the orders under challenge.

- b) ***Hindustan Times Ltd. vs Union of India & Ors., (1998) 2 SCC 242.*** (Causes of delay which are not acceptable).

The causes referred to there in, are not the reasons herein.

- c) ***Horticulture Experiment Station Gonikoppal, Coorg vs Regional Provident Fund Organization, (2022) 4 SCC 516.***

(Mens rea not essential ingredient for penalty).

- d) ***Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) vs Union of India & Ors., 2005 SCC OnLine Cal 313.*** (Period of delay (if any) is relevant in the findings not it's reasons).

In this case even the period of delay has not been explained.

- e) ***Employees' Provident Fund Organization & Ors. v. Birlapur Vidyalaya & Ors., 2007 (2) L.L.N. 476.***

8. Considering the argument of the respondent, though the orders under challenge in the writ application are appealable, the petitioner preferred the writ application and the same was admitted in the year 2015. **Ten years have passed** and, as such, directing the petitioner to prefer an appeal at this stage, will be against the principle of natural justice and perversity of the orders under challenge has also been asserted.
9. The order under Section 14B has been passed in respect of delay in payment of the following contributions:-

*“(i) Provident Fund Contributions for the months from
08/1995 to 07/2008.*

*(ii) Employees' Pension Fund Contributions for the months
08/1995 to 07/2008.*

(iii) *Employees' Deposit Linked Insurance Scheme contributions for the months **08/1995 to 07/2008.***

(iv) *Administrative charges for the months **08/1995 to 07/2008.***

(v) *Administrative charges on Deposit Linked Insurance Scheme for the months from **08/1995 to 07/2008.***

(vi) *And damages and interest for the period **07/2011 to 08/2011 (1 month).***”

10. The authority who passed the order under Section 14B and 7Q of the EPF Act has categorically noted that the representative of the petitioner herein had stated that there was no delay in depositing dues as alleged by the EPF Authority.
11. It is further noted by the Authority that in spite of several opportunities being granted to the petitioner, they failed to appear before the authority and as such the authority proceeded to conclude the matter on the basis of available records (though petitioner's alleged that no due notice was given to them).
12. **It appears from the said order that the authority concerned has not given any specific findings in the order passed under Sections 14B and 7Q of the EPF Act. After noting that the matter is being heard on the basis of available records, the authority has proceeded to pass the order awarding the damage and accrued interest.**
13. The final observation in the order under challenge is:-

“.....None appeared on 21.01.2015 since lots of opportunity has been given to the establishment concerned for natural

*justice in the matter to ascertain the dues u/s-14B & 7Q but the establishment failed to appear before the hearing authority. **It appears that the establishment has nothing to say in the instant matter. So I think there is no need to linger the proceedings further and the hearing is concluded on the basis of available records.....***”

14. Finally a composite order under Section 14B and 7Q of the EPF was passed **with absolutely no discussion.**

15. In ***Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.)***

Versus Union of India & Ors. (Supra), the Calcutta High Court held:-

*“11.2. In this context we may refer to the provisions of section 14B. The reasonable opportunity of being heard has been given to the employer in order to establish that there is no default and he is not liable for damages or that the period of default is such that he is liable to a particular rate of damages or he is entitled to exemption provided thereunder. In case of imposition of damages the question being guided by statutory directions and guidelines which are mathematically calculable and being absolutely objective with mathematical precision, **it is only the period of delay which is relevant to be explained but not the reasons. Whatever might be the reasons the damage is leviable.** The same can neither be reduced nor waived **except** in relation to an establishment which is **a sick industrial company** and in respect of which **scheme for rehabilitation** has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 and that too by the Central Board under the 1952 Act. Section 14B does not contemplate any power either to the Central Provident Fund Commissioner or such officers authorized by the Central Government by notification, to reduce*

or waive the damages leviable under section 14B since specified in the scheme. It is expected that the records would be available in the establishment with the employer. Therefore the apprehension that the transferee may not be able to explain the reason for default would not attract the principles of natural justice and cannot be a factor to interpret the provisions of section 17B. The principles of natural justice has no role to play in the sphere of interpretation of statutes. In any event when the language of a particular section is clear and the meaning given to it is compatible with the context in which it has been enacted and the object and purpose for which it has been designed to serve, and is not inconsistent therewith, then we are not supposed to take any external aid for construing or interpreting a particular legislation.”

16. The order in this case is absolutely an unreasoned one, there is no findings relating to the actual delay in this case (*Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) Versus Union of India & Ors. (Supra)*). The petitioner tried to submit some documents to show that the delay for a certain period is due to the pendency of the proceedings before several Courts, **but the authority did not even discuss the same.**

17. Remanding this case after 10 (ten long years) will be an abuse of the process of law and against the principle of natural justice and as such the writ is being decided by this judgment.

18. In *Organo Chemicals Industries and Anr. vs Union of India & Ors., 1979 (4) SCC 573, decided on 23 July, 1979*, the Supreme Court held:-

“Per Krishna Iyer, J.

6. A high official hears and decides. The maximum harm is pecuniary liability limited by the statute. The writ jurisdiction is ready to review glaring errors. Under such circumstances the needs of the factual situation and the legal milieu are such that the absence of appellate review in no way militates against the justice and reasonableness of the provision. The argument of arbitrariness on this score is untenable. **The section is not bad, though action under the section can be challenged in writ jurisdiction when infirmities which attract such jurisdiction vitiate the order. [71 E-F]**

8. The word 'damages' under s. 14B has a wealth of implications and limitations, sufficient to serve as guideline in fixing the impost. The conceptual limitations of 'damages' serve as guideline and barricade the exercise. The Commissioner cannot award anything more than or unrelated to 'damages'. Nor can he go beyond 100% of the amount defaulted. Such limitations without further guidelines are not uncommon in taxing laws to penalise defaults and suppressions. [73B, H, 74A] 64 C.I.T., M.P. v. Radhakrishnan, [1979] 2 SCC 249; P. N. Kaushal v. Union of India, etc., [1978] 3 SCC 558; referred to.

11. The power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14B is therefore good for these reasons. [74G]

Per Sen, J.

3. The imposition of damages under section 148 serves a two-fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults. [87E]

The expression "damages" accruing in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/s 14B is not merely "to provide compensation for the employees". The imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in

general not to commit a breach of the statutory requirement of section 6 of the Act, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. The damages need not bear any relationship to the loss which is caused to the beneficiaries under the scheme. [87F-G]

*7. The power of Regional Provident Fund Commissioner to impose damages under section 14B is quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute, by taking into consideration various factors, namely, the number of defaults, the period of delay, the frequency of defaults and the amount involved. Having regard to the punitive nature of the power exercisable under Section 14B and the consequences that ensue therefrom, **an order under Section 14B must be a "speaking order" containing the reasons in support of it. [83H-84A]** 67 **Commissioner of Coal Mines Provident Fund, Dhanbad v. J. Lalla & Sons, [1976] 3 S.C.R. 365; referred to.***

8. Mere absence of provision for an appeal in the Employees Provident Fund and Miscellaneous Provisions Act, 1952 does not imply that the Regional Provident Fund Commissioner, is invested with arbitrary or uncontrolled power, without any guidelines. [85B]

The conferral of power to award damages under section 14B is to ensure the success of the measure. It is dependent on existence of certain facts, there has to be an objective determination, not subjective. [85C]

The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of Section 14B but is cast with the duty of making a speaking order after conforming to the rules of natural justice. [85C]

The absence of a provision for appeal or revision can be of no consequence. Where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such a high authority will not be abused. The Government or such authority is in a position to have all the relevant and necessary information in relation to each kind of establishment, the nature of defaults made by the employer and the necessity to decide whether the damages to be imposed should be exemplary or not. When the power has

to be exercised by one of the highest officers, the fact that no appeal has been provided for "is a matter of no moment". There is always a presumption that public officials would discharge, their duties honestly and in accordance with the rules of law. [85G, D-F]

Mohammad Ali and Ors. v. Union of India and Anr., [1963] Suppl. 1 SCR 993; K. L. Gupta v. Bombay Municipal Corporation, [1968] 1 SCR 274; Chintalingam and Ors. V. Govt. of India and Ors. [1971] 2 SCR 871 and Pannalal Binjraj v. Union of India, [1957] SCR 233; followed."

19. Para 32B of the EPF scheme, 1952 is as follows:-

"32B. Terms and conditions for reduction or waiver of damages.- The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the following terms and conditions, namely,-

(a)in case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b)in cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf recommends, waiver of damages up to 100 per cent. may be allowed;

(c)in other cases, depending on merits, reduction of damages up to 50 per cent. may be allowed."

20. In *M/s. Hindustan Times Limited vs Union of India & Ors., AIR 1998*

SC 688, decided on 7 January, 1998, the Supreme Court held:-

*"..... From the aforesaid decisions, the following principles can be summarised: **The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard;** the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the*

delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under section 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under section 14B would be taken; mere delay in initiating action under section 14B cannot amount to prejudice inasmuch as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under section 14B, he had changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature: he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect....."

- 21. Under the Employees' Provident Fund Act,** Section 14B allows the Central Provident Fund Commissioner to recover "damages" from employers who fail to make timely payments of mandatory contributions to the Employees' Provident Fund (EPF), essentially acting as a penalty to incentivize compliance and ensure employees receive their full benefits by punishing employers for delayed payments; this includes contributions to the Pension Fund and Insurance Fund as well.

- 22. It further appears that admittedly vide an order dated 15.03.1996 the Calcutta High Court stayed the implementation of the EPF (amendment) Ordinance 1995 until further orders in WP 593 of 1996.**
- 23.** The alleged period of default was from 08/1995 to 07/2008 and 07/2011 to 08/2011 (one month). So the contention of the petitioner that the delay was due to an order of stay passed by the High Court and matter pending before other Courts is prima facie substantiated.
- 24.** It is thus submitted that as such there was no delay on the part of the petitioner/company during the periods as alleged and thus no damages under Section 14B and interest under 7Q of the Act could have been claimed, imposed or demanded for the said period.
- 25.** In the present case, the materials on record clearly show that the damages and interest there on, has been imposed for **delay caused due to connected proceedings pending before various forums/Courts.** There is no delay which can be attributed solely to the petitioner herein and as such the orders under Section 14B & 7Q of the EPF dated 21st January, 2015 (period 08/1995 to 07/2008) and 21st January, 2015 (period 07/2011 to 08/2011) **being devoid of any reason are set aside,** being not in accordance with law. Consequently the attachment order dated 9th/17th February, 2015 issued to the respondent bank, by the Regional Provident Fund Commissioner, Durgapur in execution of the orders under Sections 14B and 7Q of the EPF Act, **is also set aside.**
- 26. The writ application is thus allowed.**
- 27.** Connected application, if any, stands disposed of.

- 28.** Interim order, if any, stands vacated.
- 29.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)