IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 26207 of 2024

Varun Tea Plantations Limited

Vs.

Regional Provident Fund Commissioner-I & another.

For the Petitioner	:	Mr. Pramit Bag, Mr. Victor Chatterjee, Mr. Aasish Choudhury, Ms. Uma Bagree.
For the Respondent/ P.F. Authority	:	Mr. Shiv Chandra Prasad.
Hearing concluded on	:	07.03.2025
Judgment on	:	10.04.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred against an order dated 22.09.2014 passed by the Regional Provident Fund Commissioner-I, E.P.F. Organization, Regional Office, Jalpaiguri and order dated 16th July, 2024 passed by the learned Central Government Industrial Tribunal, Kolkata in E.P.F. Appeal No. 21 of 2014.

2. **The petitioner's case in short is that:-**

i. In May 2008, the petitioner took over Ellenbarrie Tea Estate. The respondent no. 1 is a statutory authority discharging functions under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The respondent no. 2 used to run the Ellenbarrie Tea Estate till the year 2008.

ii. The period in issue in the present proceeding relates to the period from May, 2002 to July, 2004, when the Respondent No. 2 was running the Tea Estate. The proforma respondent was facing severe financial distress and was not in a position to carry on with the running of the Tea Estate.

iii. The petitioner company took over the Ellenbarrie Tea Estate on lease from the Government of West Bengal. After taking control over the affairs of the tea estate the petitioner immediately paid off all the outstanding dues pertaining to the earlier management, including salaries and also duly deposited the due provident fund contributions thereon in September, 2008.

iv. At the relevant point of time the respondent authorities did not ask for any further payment and also did not state anything regarding levy of interest for any period pertaining to the erstwhile management.

v. In March, 2014 after a substantial gap, the respondent authorities initiated a proceeding under section 14-B of the said Act for the period from 05/2002 to 07/2004. During the period in dispute the Tea Estate was under the control of the respondent no. 2 herein. Without considering the submissions of the petitioner, the respondent no. 1 proceeded to pass an order dated 22.09.2014, imposing damages upon the petitioner for period from 05/2002 to 07/2004, to the tune of Rs. 42,87,611/-.

vi. The petitioner preferred an appeal before the Employees' Provident Fund Appellate Tribunal. The respondent no. 1 filed a reply in the said appeal. However, at the later stage of the proceeding, the respondent no. 1 did not appear in the matter and the matter was being heard ex–parte.

vii. The respondent no. 2 chose to remain absent before the Learned Tribunal. The matter was finally heard by the learned Tribunal on 16th July, 2024, when after hearing the learned counsel for the appellant, the learned Tribunal was pleased to direct the appellant to pay 60% of the levied damage of Rs. 42,87,611/- for the period from 05/2002 to 07/2004 amounting to Rs. 25,72,567/- within a period of three months, failing which the appellant shall be liable to pay the entire assessed amount of damages.

3. The petitioner states that the order dated 16th July, 2024 passed by the Learned Tribunal is without any basis whatsoever.

4. Hence the writ petition.

5. Vide the order dated 22.9.2014, the Regional Provident Commissioner, Jalpaiguri in his order held that the company in spite of being granted sufficient opportunity failed to represent its case before the authority. The authority concerned considering the materials on record held as follows:-

> *"........It is statutory obligation on the part of the employer to remit the Provident Fund dues and other charges within 15 days from the date of close of every month. But the employer has filed to remit the dues for the said period within the stipulated time. The Employees' Provident Fund Organization has to comply with the statutory obligation and has to give interest to its subscriber's accounts whether the employer has remitted the dues in time or not. Because of the belated remittance, the Employees' Provident Fund Organization has lost interest, which it could have earned by investing the amounts in Government securities. Moreover, it is necessary that the damages under Section 14B are levied with the twin objects namely recouping the loss sustained by the Organisation and also to have deterrent effect on the employer not to commit such defaults in future.*
>
> *Therefore, I Sri S.B.Sinha, Regional Provident Fund Commissioner-I in exercise of powers conferred upon me under section 14B of the EPF and MP Act 1952 read*

with Para 32A of Employees Provident Fund Scheme'52, Para 5 of Employees' Pension Scheme'95 and Para 8A of EDLI Scheme'76 order that damages be levied according to the delay shown in the statement of belated remittance.

For the reasons stated above I, Sri S.B.Sinha, Regional Provident Fund Commissioner-I, Jalpaiguri in exercise of the powers conferred on me under section 14B of Act, levy of damages amounting to Rs. 42,87, 611/- (Rupees Forty two lakh eighty seven thousand six hundred eleven) only for the period for the period 05/2002 to 07/2004."

6. The petitioner challenged the said order before the Central Government Industrial Tribunal. The Tribunal on hearing the parties passed the following order :-

"Ld. Counsels for the Appellant submits there is use of the word "may" in section 14-B of the Act of 1952 as well as in para 32(A) of the EPF Scheme, 1952 and which confer discretionary power upon the authority to recover damages and which the RPF Authority has failed to exercise, but in view of decision of the Hon' ble Supreme Court in Horticulture Experiment Station (supra) if an employer fails to discharge its statutory obligation or liabilities under the Act of 1952, then imposition of penalty/damages is sine qua non. The ***defaulter employer cannot escape damages u/s 14-B of the Act.*** *Thus, this tribunal is unable to accept the above submission made by counsel for the appellant. This Tribunal does not find the impugned order to be illegal and improper.*

But at the same time this Tribunal is not unmindful to the facts the damages relate to the period from 05/2002 to 07/2004 when the tea garden in question was owned by M/s. Ellenbarrie Tea Co. Ltd. as certificate issued by the District Magistrate, Jalpaiguri to the Appellant on 20-06-2014 (Annexure-A/2) shows that lease of M/s. Ellenbarrie Tea Co. Ltd. was granted to M/s. Varun Tea Plantation Ltd. for a period of 30 years with post approval of transfer from M/s. Ellenbarrie Tea Co. Ltd.

In view of the above, the Appellant is ***directed to pay 60%*** *of the levied damage of Rs. 42,87,611/- for the period from 05/2002 to 07/2004 amounting to Rs. 25,72,567/- within three months from the date hereof failing which the entire amount of Rs. 42,87,611/- shall fall due. Supply copy of this order to the Appellant for compliance.*

Accordingly, EPF Appeal No. 21 of 2014 is allowed and impugned order dt. 22-09-2014 passed u/s 14-B of the EPF & MP Act, 1952 for the period from 05/2002 to 07/2004 is hereby modified.

Sd/-

Presiding Officer"

7. Written notes along with judgments relied upon was filed by both the parties.

8. The petitioner herein has relied upon the following judgments:-

i) Regional Provident Fund Commissioner, Mangalore- vs- Karnataka Forest Plantations Corporation Ltd., Bangalore, 200 (2) L.L.N. 250;

ii) ***Arambagh Hatcheries Ltd., -vs- Employees' Provident Fund Organisation, 2011 SCC OnLine Cal 5451;***

iii) ***Central Board, Employees' Provident Fund Organization –vs- Employees' P.F. Appellate Tribunal and another, 2015 SCC OnLine Cal 6106;***

iv) ***Tepcon International (I) Ltd.-vs- Regional Provident Fund Commissioner & Ors. in WP No. 16 of 2004 and Gopala Krishnan Venkataseshan and another –vs- Regional Provident Fund Commissioner and others in WP No. 2382 of 2003, 2015 SCC OnLine Cal 6193;***

v) ***West Bengal Power Development Corporation Limited –vs- Union of India and Others, 2021 SCC OnLine Cal 3073.***

9. The Provident Fund Authority being the respondent no. 1 herein has also filed its written notes and has relied upon paragraph 11.3 of the judgment of the Hon'ble Supreme Court in ***Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) –vs- Union of India and Ors. , reported in 2005 (3) CHN 428.***

10. The petitioner's contention is that on taking over the company with all good intentions the company immediately paid off the **outstanding dues of the earlier management** including salaries and also duly deposited the due provident fund contribution in 2008. The proceeding in this case was initiated in March 2014 **for the period from 05/2002 to 07/2004 when the tea estate was under the control of the respondent no. 2.**

11. It is further submitted that the copies of the balance sheet filed by the company will clearly show that petitioner has negative net current assets and as such submits that as per **Section 17B Proviso** of the Act, he is entitled to get the said benefit.

12. Section **17B E.P.F. Act, 1952** is as follows:-

> ***"17B. Liability in case of transfer of establishment.—****Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:*
>
> ***Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."***

13. It is the further contention of the petitioner that in the year 2012 'No due certificate' was issued by the erstwhile employer, the respondent no. 2 herein to the District Magistrate and Collector, Jalpaiguri who accepted the said declaration since no proceedings was initiated thereafter.

14. The present proceeding relates to the levy of damages under Section 14-B of the E.P.F. Act.

15. It is further submitted that the proceeding for damages has been initiated after almost a period of 10 to 12 years.

16. Learned counsel for the Provident Fund Commissioner has raised the point that in case of such recovery there is no period of limitation as the said recovery is under a beneficial act.

17. It is further submitted that when a company is being taken over, the new owner takes over the liability along with the assets and this being a part of the liability, the petitioner is liable to pay the damages which is levied as per the provisions of law and the same cannot be avoided by the companies in the grab of transfer from one owner to another. It is further submitted that in case such conduct is encouraged that shall be detrimental to the welfare of the workers.

18. The petitioner herein has stressed upon proviso to Section 17B which it is submitted exempts the petitioner from payment of such damage in view of the extent of assets which has come into his hands being 'negative' as per balance sheet.

19. It appears from the order of the Provident Fund Commissioner that in spite of several opportunities being granted the petitioner or his representative, they failed to place any documents before the authority concerned. **In appeal** before the Tribunal, the learned Tribunal considering the materials on record granted some **relief** to the petitioner to extent being the direction to **pay 60 per cent** of the amount as levied as damages by the authority concerned being the Regional Provident Fund Commissioner, Jalpaiguri

20. Thus, considering the materials on record, the relevant provisions of law, the judgments relied upon and the order under challenge this Court is of the view that, when the petitioner has taken over the company, he has taken over the company **with its liability** and also its assets.

21. The contention of the petitioner is that as his balance sheet shows a "negative balance" he is entitled to the relief as per proviso to Section

17B which shall be limited to the value of the assets received by him by such transfer.

22. Considering the fact, that it is apparent that the petitioner has a "negative balance" in the balance sheet after having taken over the company, the petitioner cannot be inflicted with liability beyond the value of the assets received by him by such transfer, in view of the proviso to section 17B of the Act.

23. **Admittedly,** the petitioner herein took over the company with the **knowledge** that the company's asset was in the negative. Though it is laid down under the proviso to Section 17B of the Act, regarding liability in case of transfer of any establishment, **this Court has to keep in mind that such transfers are taken over with complete/full knowledge of such dues** and if such transfers are encouraged by being given the benefit of the proviso to Section 17B of the Act, by being exempted from making payments of such damages as per law, **the same shall go against the same principles on which this beneficial legislations have been enacted.**

24. **Accordingly, keeping in mind the relief available to the petitioner under the proviso to Section 17B, this Court directs the petitioner to pay the amount as directed by the Tribunal herein within three months from the date of this order, with liberty granted to the petitioner to proceed against the erstwhile company being the respondent no. 2 herein, to recover the amount as paid by the petitioner.**

25. The orders under challenge thus requires no interference.

26. WPA 26207 of 2024 is accordingly disposed of.

27. All 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 complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)