

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 26349 of 2015

Central Board of Trustees Employees P.F. Organization

Vs.

M/s. Megha Design Pvt. Ltd. & Ors.

For the Petitioner : Mr. Anil Kumar Gupta.

For the Respondent No.1 : Mr. Victor Chatterjee.

Hearing concluded on : 21.08.2025

Judgment on : 09.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred by the Central Board of Trustees Employees' PF Organization praying for quashing of the impugned order dated 20th November, 2014 passed by the Employees' Provident Fund Appellate Tribunal in A.T.A. No. 657 (15) of 2014.

- 2.** The petitioner's case is that the respondent no.1, M/s Megha Design Private Limited is an establishment covered under the EPF & MP Act, 1952 (in short the said Act) and scheme framed there under, having a Code No. i.e. Establishment I.D. No. WB-cat0029568000. Since the respondent no.1 failed to deposit Provident Fund and allied dues for the period from April, 2004 to November, 2012 in time, a proceeding under Section 14B of the said Act was initiated by the Assistant Provident Fund Commissioner under the provisions of the said Act and scheme framed there under.
- 3.** Accordingly, a notice dated 17th March, 2014 was issued by the Assistant Provident Fund Commissioner to the respondent no.1 with an option to either appear in person or through his legal representative on 23rd April, 2014 at around 11.30 A.M. and if the Respondent No. 1 had already made the payments within the respective due dates, then supporting documents of proof of such remittance may be produced on the date of hearing.
- 4.** Since the respondent's representative duly admitted their default in payment of provident fund and allied dues for the aforesaid period, penal damages was determined under sections 14B of the Provident Fund and Miscellaneous Provisions Act, 1952 amounting to Rs. 6,45,194/- by the Assistant Provident Fund Commissioner, Kolkata by his Order dated 30.06.2014.

5. The said establishment was asked to deposit the amount of damages within a period of 15 days from the date of receipt of the said order but the respondent no.1 failed to do so.
6. An appeal being A.T.A. No. 657(15) of 2014 (**Mega Designs Pvt. Ltd. Vs. Asst. Provident Fund Commissioner**) was filed before the Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the said Learned Tribunal), challenging the order dated 30.06.2014 passed under Section 14B of the EPF & MP Act, 1952 by the Assistant Provident Fund Commissioner, Kolkata.
7. The Employees Provident Fund Appellate Tribunal passed an order on 20th November, 2014. Operative portion of the said impugned order is quoted hereunder:-

"In this case there are no finding by the Ld. Commission in the impugned order that the appellant had acted with mens rea or actus reus to contravene the statutory provisions."

8. Hence, the writ application challenging the said award.
9. The tribunal in its order under challenge has further held:-

*"In view of the facts and observation made by the respondent in the impugned order, and after hearing the arguments and counter arguments, this Tribunal has come to the decision that the respondent has **failed to prove on record that the appellant establishment has willfully defaulted in***

remitting the provident fund contributions.

Accordingly, the impugned order passed by the respondents suffers from serious infirmity. The impugned order passed by the respondent is set aside and the appeal is allowed.”

10. The petitioner has filed a short written note and relied upon the following judgments and has submitted as follows:-

- i. Hindustan Times Ltd. versus Union of India & Ors. reported in (1998) 2 SCC 242;***
- ii. Organo Chemical Industries & Anr. versus Union of India & Ors. (1979) 4 SCC 573;***
- iii. Horticulture Experiment Station Gonikoppal, Coorg. Versus Regional Provident Fund Organization reported in (2022) 4 SCC 516;***
- iv. Chairman, SEBI versus Shriram Mutual Fund & Anr. (2006) 5 SCC 361;***
- v. Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) Versus Union of India & Ors. reported in (2005) 3 CHN 428.”***

11. It is further submitted by the petitioner that ‘mens rea’ is not an essential ingredient for contravention of provisions of civil Act and the Ld. Tribunal wrongly held that ‘mens rea’ is essential for imposing damages under section 14B of the said Act.

12. The judgment of the Larger Bench of the Calcutta High Court in ***Dalgaon Agro Industries Ltd. (Now known as Tasati Tea***

Ltd.) Versus Union of India & Ors. (Supra) paragraph 13 has been relied upon, by the petitioner wherein it has been held as follows:-

*“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.”

- 13.** The petitioner relying upon the said judgment, submits that the following observations of the Division Bench is correct:-

“whatever might be the reasons the damage is leviable. The same can neither be reduced not waived except in relation to an establishment which is a sick industrial company and in respect of which a scheme of 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 subject to such terms and conditions as may be specified for the Scheme.”

- 14.** On hearing the learned counsel for the parties and on perusal of the materials on record including the order under challenge and also relying upon the judgment of the Supreme Court passed in

Organo Chemicals Industries & Anr. versus Union of India and Ors. (1979) 4 SCC 573, the tribunal finally held as follows:-

“In this case there are no findings by the Ld. Commissioner in the impugned Order that the appellant had acted with mens rea or actus reus to contravene the statutory provisions.

*In view of the facts and observations made by the respondent in the impugned order, and after hearing the arguments and counter arguments, this tribunal has come to the decision that the respondent has **failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions.** Accordingly the impugned order passed by the respondent suffers from serious infirmity. The impugned order passed by the respondent is set aside. The appeal is allowed. Copy of the order be sent to the parties. The file be consigned to the record room.”*

- 15.** It has been further held by the Presiding Officer that the order is not a speaking order.
- 16.** The order which was challenged before the Tribunal is dated 30.06.2014. In the said order under Section 14B of the EPF Act, the authority concerned held as follows:-

“They were asked to appear before the Assistant Provident fund Commissioner (Damage) on 23-04-2014 for hearing. Mr. Ad. Maqsood Alam, authorized

*representative appeared on behalf of the establishment to represent the case and filed a letter of authority dated 28.5.2014 and he confirmed that the statement of belated remittance as shown in Annexure-A has been verified by the establishment and **admitted about the delay remittance** of EPF/EPS/EDLI contributions and other allied charges for the period from 04/2004 to 11/2012.*

***As such, I consider** that the establishment had defaulted in the payment of statutory dues without any valid reason. Not only the loss of interest caused to the funds is required to be made good, **also the increase in the cost of administration is to be taken into account** and also to deter the employer from repeating such violation of Rules, Penal Damages under Section 14B of the Act are required to be levied so that in future, dues are paid in time.*

The belated payment made for various months from 04/2004 to 11/2012, damages can be imposed upon the Company according to the Rules.”

And proceeded to assess the damages under Section 14B of the Act.

- 17. The authorised officer has based his order only on the alleged “admission” of the representative of the company, which it now appears is denied, as the company went in appeal against the said order and as such the case of ‘admission’ is clearly not substantiated.**

18. Other than the alleged 'admission' there is no discussion or findings of the 'delay' if any. The authority in this case did not explain the period of delay (if any). *Dalgaon Agro Industries Ltd. (Now known as Tasati Tea Ltd.) Versus Union of India & Ors. (Supra)*.
19. 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 14B 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.”

- 20. In *Horticulture Experiment Station Gonikoppal, Coorg vs The Regional Provident Fund Organisation, (2022) 4 SCC 516*, the Supreme Court held:-**

“13. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

*17. Taking note of three-Judge Bench judgment of this Court in **Union of India and Others v. Dharmendra Textile Processors and others (supra)**, which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”*

- 21. 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.”

**22. 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....."

- 23. 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.

24. In the present case the tribunal rightly held that the order challenged before it did not contain any details as to how and why the damages was awarded. No proper calculation has been shown in the order.

25. The order of the authority under Section 14B of the EPF Act, contains the following observation:-

“.....also the increase in the cost of administration is to be taken into account.....”

26. The said observation is clearly an abuse of power/law. As to how an authority can levy damages to **“meet the increasing cost of administration”** is best known to the authority concerned.

27. Thus the order assessing damages under Section 14B of the EPF Act along with interest is clearly arbitrary and has been passed by the authority (APFC (damage cell)) without proper reasons and was thus not clearly in accordance with law, and **the learned tribunal rightly set aside the said order dated 30.06.2014 passed by the APFC, Kolkata.**

28. The learned tribunal’s finding being in accordance with law **requires no interference.**

29. WPA 26349 of 2015 is dismissed.

- 30.** All connected application, if any, stands disposed of.
- 31.** Interim order, if any, stands vacated.
- 32.** 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.]