



W.P. No.25590 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.25590 of 2022
and W.M.P. No.24590 of 2022

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office, No.18, Sree Complex,
Madurai Road, Trichy – 620 008. ... Petitioner

Vs.

M/s. Jai Sai Krishna Theatre
Thro' its Proprietor S. Kumar ... Respondent

PRAYER: The Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records relating to the proceedings of the Employees Provident Fund Appellate Tribunal dated 13.06.2022 in E.P.F.A. No.427 of 2017 and to quash the order.

For petitioner : Mr. R. Meenakshi

For Respondent : Mr. L.P. Balaji Ram

ORDER

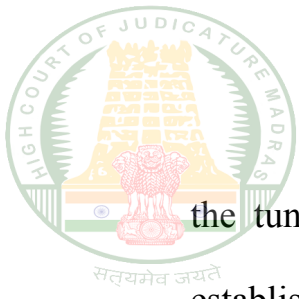
This Writ petition has been filed challenging the order passed by the Appellate Authority under Employees Provident Funds and Miscellaneous



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Provisions Act passed in EPFA No.427 of 2017 (ATA No.827(13)/ 2014), wherein the respondent herein has preferred an appeal as against the order passed by the Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Trichy in Order No.TN/SRO-TRY/PDC/C-21/32609/14B PROC/2014 dated 22.07.2014 challenging the recovery of damages under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 [hereinafter referred as EPF and MP Act]. The Appellate Authority modified the order by reducing it to 25% of the dues of Rs.36,011/- through an order dated 13.06.2022. Aggrieved by the said order, the present Writ petition has been filed by the Assistant Provident Fund Commissioner, the Writ petitioner herein.

2. The learned counsel appearing for the petitioner would submit that the respondent is a proprietor concern and running a Cinema Theatre at Virudhachalam covered under EPF and MP Act. However, failed to remit the above said statutory dues and remitted monthly contributions belatedly for the period from 02/2010 to 06/2012. To quantify the damages and interest, a Show Cause Notice was issued on 28.04.2014 to the employer respondent and the personal hearing was afforded to the employer on 04.06.2014. on 04.06.2014, on behalf of the respondent, his counsel appeared and thereafter, the Authority passed an order dated 22.07.2014 by quantifying the damages to



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the tune of Rs.36,011/-. As against the above said order, the respondent establishment preferred an appeal before the Appellate Authority under Employees Provident Fund Appellate Tribunal, Chennai in EPFA No.427 of 2017 and the same was allowed by reducing the damages to 25% of the dues of Rs.36,011/-. The respondent establishment is liable to pay damages as quantified by the petitioner. The Appellant Tribunal failed to note that the respondent was provided with opportunity of personal hearing and during the hearing, the respondent had admitted the delay in remitting the contributions and therefore, the respondent has to levy damages as per the Act. Mensrea for imposing damages is not relevant and in case of sick companies registered with the BIFR, such companies are liable to pay PF contributions on the scheduled dates. The Appellate Authority without considering the legal propositions erroneously reduced the amount into 25%. Therefore, the order passed by the Appellate Authority is liable to be quashed.

3. In support of her contention, the learned counsel appearing for the petitioner has relied upon the following judgments:

- 1.The Central Board of Trustees and others vs. Teknoturf Info Services Pvt Ltd., and others in W.P. Nos.1239 of 2020 and a batch of cases – Madras High Court.



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2.Angel Educational Trust and others vs. Kotak Mahindra Bank Ltd., and others in CRP No.4187of 2024 – Madras High Court.

3.The Regional Provident Fund Commissioner vs. The Presiding Officer and another in W.P. No.6643 of 2014 – Madras High Court.

4.Assistant Provident Fund Commissioner vs. M/s. Lakshmi Machine Works Ltd., and another in Civil Appeal No.6100 of 2023 – Hon'ble Supreme Court of India.

5.Guru Nanak College vs. Employees Provident Fund Appellate Tribunal and others in W.A. No.2855 of 2023 – Madras High Court.

6.The Regional Provident Fund Commissioner and another vs. Sri V. Balaji Spinning Mills India Pvt. Ltd., and others in W.P. No.7381 of 2022 and a batch of cases – Madras High Court.

7.M/s. Hindustan Times Limited vs. Union of India and others reported in AIR 1998 Supreme Court 688.

8.Horticulture Experiment Station, Gonikoppal, Coorg vs. The Regional Provident Fund Organization in Civil Appeal Nos.2136 of 2012 – Hon'ble Supreme Court of India.



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9.M/s. PGC Textile Corporation (P) Ltd., vs. The Regional Provident Fund Commissioner and another in W.A. No.101 of 2020 – Madras High Court.

10.Assistant Provident Fund Commissioner vs. The Presiding Officer and another in W.P. (MD) No.8808 of 2016. – Madurai Bench of Madras High Court.

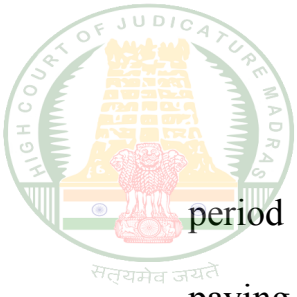
11.Regional Provident Fund Commissioner vs. The Employees Provident Fund and another in CWP No.5201 of 2000 (O & M) – High Court of Punjab and Haryana at Chandigarh.

12.Assistant Provident Fund Commissioner vs. The Presiding Officer and another in W.P. No.2288 of 2021. – Madras High Court.

13.Organo Chemical Industries & another vs. Union of India and others reported in 1979 AIR 1803.

14.Regional Provident Fund Commissioner vs. The Presiding Officer and another in W.P. No.6643 of 2014. – Madras High Court.

4. The learned counsel appearing for the respondent would submit that the respondent is a Proprietor concern and running a Cinema Theatre at Virudhachalam and initially it was started by engaging 20 persons and over a



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period of time, it was covered under the EPF and MP Act and it has been paying the statutory contributions to the eligible employees. The business of the respondent could not run so perfectly owing to severe competition in the similar business field resulting financial crisis on the part of the respondent. The establishment even could not pay the salary to the employees on regular basis and even constrained to reduce the numbers of employees. Therefore, there is a delay in payment of contributions for the period from 02/2010 to 06/2012. The delayed remittance of statutory contributions was not deliberate and the same is neither willful nor wanton. Therefore, the respondent requested the Authority to levy damages and the same was not considered and the Authority quantified the amount as Rs.36,011/- . Aggrieved by the said order, the respondent preferred an appeal before the Appellate Authority and the Appellate Authority after applying the decisions of the Hon'ble Supreme Court and by exercising its power, modified the order passed by the petitioner Authority by reducing it to 25%. As per Section 14-B of the Act and Para 32A of the Scheme, levying of damages is not mandatory in all cases and the Authority has power to levy and reduce the damages. In this case, due to the loss, the respondent was unable to pay the contributions within the stipulated time and already they remitted contributions and also they paid the interest amount of the delayed payments. Therefore, levying of damages is not wanted. However, the Authority awarded damages and the same was



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modified by the Appellate Authority and there is no any perversity in the order passed by the Appellate Authority and therefore, this Writ petition is liable to be dismissed.

5. In support of his contention, the learned counsel appearing for the respondent has relied upon the following judgments:

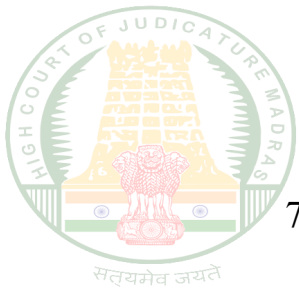
1.The Central Board of Trustees, Employees Provident Fund Commissioner and others vs. Teknoturf Info Services Pvt. Ltd., and others reported in MANU/TN/1061/2025.

2.Assistant Provident Fund Commissioner vs. M/s. Lakshmi Machine Works Ltd., and another in Civil Appeal No.6100 of 2023 – Hon'ble Supreme Court of India.

3.The Central Board of Trustees, Employees Provident Fund Commissioner and others vs. Teknoturf Info Services Pvt. Ltd., and others reported in MANU/TN/0899/2025.

4.Office of the Chief Post Master General and others vs. Living Media India Ltd., and others reported in AIR 2012 SC 1506.

6. This Court heard both sides and perused the records.



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7. In this case, there is no dispute about the coverage of the Act to the respondent establishment and they have made contributions with delay, thereby, the Authority has passed an order under Section 7Q of the Employees Provident Fund Act by quantifying the interest and under Section 14-B of the Act by quantifying the damages. There is no dispute about the quantum of the amount quantified by the Authority and before the Authority, during the time of enquiry under Section 14-B proceedings, the respondent requested to waive the damages on the ground that the respondent establishment was unable to pay the amount due to the financial crisis and they were unable to pay even the salary to the employees and hence they reduced the strength of the employees. In spite of that, the Authority has quantified the amount without any reduction. Therefore, the respondent preferred an appeal before the Appellate Authority under the Employees Provident Fund Act and the Appellate Authority after considering the rival submissions, modified the order by reducing the damages to 25%. The Appellate Authority after referring the judgments of Hon'ble Supreme Court and other High Courts, came to a conclusion that *“statute under Section 14B of the Act itself speaks that the Adjudicating Authority ‘may recover’ such words necessarily speaks that Adjudicating Authority has got a discretion to exercise its Authority to consider to levy lesser damage in the special circumstances. In the peculiar circumstances in the instant case of the appellant, the Adjudicating Authority*



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could have considered the real problem of the case, which compelled a delayed remittance. The appellant runs a hotel business and it underwent some financial crisis for the period from 02/2010 to 06/2012 which necessarily deserves a sympathetic consideration. Already the appellant has remitted contributions and also remitted the interest amount. Therefore, by exercising its discretion, reduced the amount". The above reasons stated by the Appellate Authority is within the scope of Section 14-B of the Act and para 32A of the Scheme.

8. Moreover, the Hon'ble Full Bench of this Court also after analysing all the judgments of the Hon'ble Supreme Court and other High Courts, framed guidelines in respect of adjudication of proceedings under Section 14-B of the Employees' Provident Fund Act read with Para 32-A of the Scheme, where the Hon'ble Full Bench of this Court in ***Sun Pressings (P) Ltd., vs. The Presiding Officer, EPF Appellate Tribunal and another in W.P. (MD)***

Nos.7339 of 2013 and batch cases, has framed the following guidelines:-

(i) Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii) The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be



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levied for the delay in making contributions by the employer.

(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.

(vi) When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(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.

(viii) While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(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



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payment of provident fund dues.

(x) The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi) Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned.

9. Therefore, as per the Hon'ble Full Bench of this Court, the Authority has power to reduce the damages under Section 14-B of the Act and Para 32-A of the Scheme and that power has been rightly exercised by the Appellate Authority in this case and therefore, the order of the Appellate Authority is as per law.

10. The learned counsel appearing for the petitioner has relied upon the following judgments:

- 1. The Central Board of Trustees and others vs. Teknoturf Info Services Pvt Ltd., and others in W.P. Nos.1239 of 2020 and a batch of cases – Madras High Court.***
- 2. Angel Educational Trust and others vs. Kotak Mahindra Bank Ltd., and others in CRP No.4187 of 2024 – Madras High Court.***
- 3. The Regional Provident Fund Commissioner vs. The Presiding Officer and another in W.P. No.6643 of 2014 – Madras High Court.***



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- 4. Assistant Provident Fund Commissioner vs. M/s. Lakshmi Machine Works Ltd., and another in Civil Appeal No.6100 of 2023 – Hon'ble Supreme Court of India.***
- 5. Guru Nanak College vs. Employees Provident Fund Appellate Tribunal and others in W.A. No.2855 of 2023 – Madras High Court.***
- 6. The Regional Provident Fund Commissioner and another vs. Sri V. Balaji Spinning Mills India Pvt. Ltd., and others in W.P. No.7381 of 2022 and a batch of cases – Madras High Court.***
- 7. M/s. Hindustan Times Limited vs. Union of India and others reported in AIR 1998 Supreme Court 688.***
- 8. Horticulture Experiment Station, Gonikoppal, Coorg vs. The Regional Provident Fund Organization in Civil Appeal Nos.2136 of 2012 – Hon'ble Supreme Court of India.***
- 15.***
- 9. M/s. PGC Textile Corporation (P) Ltd., vs. The Regional Provident Fund Commissioner and another in W.A. No.101 of 2020 – Madras High Court.***
- 10. Assistant Provident Fund Commissioner vs. The Presiding Officer and another in W.P. (MD) No.8808 of 2016. – Madurai Bench of Madras High Court.***
- 11. Regional Provident Fund Commissioner vs. The Employees Provident Fund and another in CWP No.5201 of 2000 (O & M) – High Court of Punjab and Haryana at Chandigarh.***
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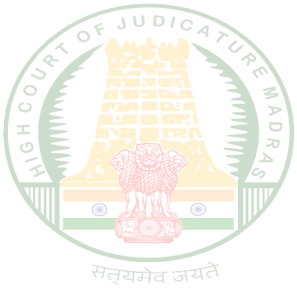
11. On a careful perusal of the above said judgments, it is clear that mensrea is not essential to decide the facts under Section 14-B of the Act and Para 32-A of the Scheme and under the Regulations, the damages to be imposed is contemplated and the Scheme would be a guiding factor and the Authorities are bound to ascertain the mitigating factors and other criterias for the purpose of assessing the damages and the assessment of damages should



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not be made in illogical or mechanical manner and the power of waiver must be exercised cautiously. Under the Proviso under Section 14-B of the Act, the Central Board may reduce or waive the damages levied under Section 14-B of the Act to an establishment which is a sick industrial company and in respect of which a Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established, then the Board has to waive damages.

12. However, after taking into consideration all the various judgments of Hon'ble Supreme Court and other High Courts, the Hon'ble Full Bench of this Court in ***Sun Pressings (P) Ltd., vs. The Presiding Officer, EPF Appellate Tribunal and another in W.P. (MD) Nos.7339 of 2013 and batch cases***, has framed guidelines and as per which, the Authorities while quantifying the damages under Section 14-B of the Act, have to consider all the mitigating circumstances and they have power to reduce the damages. As per the judgment of the Hon'ble Full Bench of this Court, the Authorities while quantifying the damages under Section 14-B of the Act and Para 32-A of the Scheme, can reduce the damages, thereby, the Appellate Authority had exercised its power and the same is within its jurisdiction. Therefore, the judgments relied on by the learned counsel appearing for the petitioner are noway helpful to decide the case in favour of the petitioner.



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13. There is no perversity or illegality in the order passed by the Appellate Authority by reducing the damages into 25%. There is no warrant to interfere with the order passed by the Appellate Authority.

14. In view of the above discussions, this Court is of the opinion that the Writ petition has no merits and deserves to be dismissed.

15. Accordingly, the Writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

19.08.2025
[2/4]

Index : Yes/No
Speaking order/non-speaking order
mjs

P.DHANABAL, J.,

mjs

To

The Central Government Industrial Tribunal-cum-
Labour Court and Employees Provident Fund
Appellate Tribunal,
Chennai.



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