



WP Nos.2140 & 2141 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. Nos.2140 & 2141 of 2024

and

W.M.P.Nos.2295 & 2297 of 2024

M/s. SEPC Limited,
Rep by its Chief Financial Officer,
No. 10/1, Venkatanarayana Road,
Bascon Futura SV., 4th Floor,
T.Nagar,
Chennai - 600 017

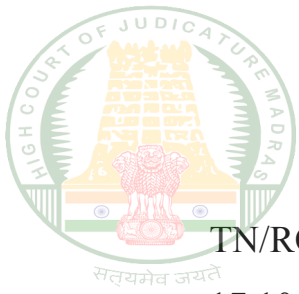
.... Petitioner in both W.Ps

Versus

The Regional Provident Fund Commissioner - II,
Employees Provident Fund Organisation
37, Royapettah High Road,
Chennai 600 014

... Respondent in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the Respondent connected with the Order bearing Ref. Nos. TN/RO/AMB/65572/PDC/201/2023/DEMAND NOTICE /7Q and



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TN/RO/AMB/65572/0/PDC/201/2023/LEVYORDER/14B

dated

17.10.2023 and quash the same.

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For Petitioner in both WPs: M/s.John Zactariah
James Gupta

For Respondent in both WPs: Mr.S.Viswanathan

COMMON ORDER

The issue involved in these writ petitions are similar in nature.

The Petitioner company is an Engineering Services company, pays Provident Fund to its employee, which has been under financial struggles from the year 2016 and has been severely affected due to the COVID 19 Pandemic consequently leading to the payment of salaries being delayed. Petitioner company has reported losses and has been qualified to be declared as a sick company under the BIFR Act, after which the company was summoned on 2022 to appear before the Authority by way of show cause notice with regard to Section 7(Q) and damages under Section 14(B) of the Provident Fund Act, wherein the authority has not explained the reasons for the delay of 5 years in summoning the petitioner company, which has been responded with a counter by the company.



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Personal hearings conducted by the Respondent was also attended by the Petitioner, wherein the Petitioner company admitted to have not paid the contributions to the unidentified employees. The Respondent has levied interest and damages against the petitioner company and has passed two orders dated 17.10.2023 purporting to be under Section 14(B) and Section (7Q) of the Act wherein the summons were issued on the grounds of delay in payment of contributions to the employees.

2. Aggrieved by the order of the Respondent under Section 7(Q) of the Provident and Miscellaneous Provisions Act, 1952, in and by which direction was issued to the petitioner company to pay a total sum of Rs.70,49,478/- in W.P.No.2140 of 2024 and Rs.1,16,90,583/- in W.P.No.2141 of 2024 along with interest, the petitioner company preferred Appeals before the Central Government Industrial Tribunal, but since there is no presiding Officer at the said Tribunal, the Petitioner has filed these present Writ Petitions, seeking the relief supra.

3. The learned counsel appearing for the Petitioner submits that they have been paying Provident Fund Contributions without any default in respect of their employees, and due to slump in their business causing



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financial constraints, which subsequently lead to erosion of net worth of the company in 2016, and being affected by COVID 19 Pandemic, the petitioner's business was severely affected with cash flow. It is submitted that to resolve financial difficulties the company formulated a resolution plan under RBI on Potential Frame Work for Resolution of Stress Assets Direction, 2019, wherein lenders appointed Agency for Specialized Monitoring to monitor operations through Trust and Retention Account Mechanism.

4. It is also submitted that it had already reported huge losses through its Balance Sheet / Annual Report 2016 and has already qualified to get itself declared to be a sick Company under the provisions of the erstwhile BIFR Act, whereby the company will not be able to carry on with their planned business operations rendering close to 600 employees jobless.

5. Further, learned counsel submits that the Petitioner Company, was summoned to appear on 06.09.2022 before the Authority vide summons dated 29.07.2022, to show cause as to why interest under Section 7(Q) and damages under Section 14(B) of the Act should not be



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levied in respect of the alleged delay in payment of contribution for the period April 2017 to May 2022. No details were given in respect of number of days of delay on whose account there has been delay and how many employees are involved. The delay of more than five years on the part of the Department has neither been explained nor any reasons have been given in support of the delay. The Petitioner Company filed a detailed counter statement disputing the claim made by the Respondent. The Company states that it also attended the personal hearing and clearly pointed out that without quoting the individual cases merely issuing summons based on the data available in the computer would not constitute sufficient cause for issuing summons and levying damages and stated that contribution is not payable to unidentified employees.

6. Further, learned counsel submits that during personal hearing, they made submissions, which the respondent has failed to acknowledge and has passed orders on 17.10.2023 under Section 14B and Section 7(Q) of the Act, It is further submitted that the interest payable has been calculated without taking the pay day of the company into account and delay should be computed after affording 15 days grace period from the 5th of the month (Their pay day).



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“when a demand of this nature is made, it cannot be said that no prejudice is caused. It is highlighted by the Respondents that once the amount due is determined the levy of interest is automatic. The rate of interest is stipulated at 12 per cent or at a higher rate if so is provided in the scheme. Despite this, there can be errors with regard to the period and the calculation. It is a statutory power which is exercised by the competent authority under the Act. Once the said authority takes recourse to the measure for computation and sends a bald order definitely the affected person can ask for clarification and when computation sheet is provided to him he can file an objection. Though, the area of delineation would be extremely limited,



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yet the said opportunity cannot be denied to the affected person.”

8. The learned counsel for the petitioner submits that in the show cause notice issued by the Respondent, there are no details furnished as to the number of employees affected by the delay and the alleged penalty calculated by the Department under Section 14B constitutes two components namely interest and penalty and the interest alone will be given credit to the members account and the penalty may or may not be given credit to the members account and considering the sick nature of the company, the said aspect should have been taken into account before imposing penalty. However, learned counsel for the petitioner submits that a sum of Rs.50,00,000/- has already been deposited and seeks the indulgence of this Court to deposit the balance amount in 12 equal installments and also permit the petitioner to withdraw the appeals pending before CDIG.

9. On the above contentions, heard the learned counsel for the respondent who submitted that this Court, may pass orders granting time to the petitioner and the petitioner may be directed to deposit the balance



amount within the time frame fixed by this Court.

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10. The learned counsel for the petitioner in both writ petitions submitted that the writ petitions have been filed as against the order under Sections 7(Q) and 14 (B) of the Act and for non compliance of Sections 7(A), 7(Q) and 14(B) in which an order was passed. However, during the pendency of the petitions, the petitioner had already deposited Rs.50,00,000/- and agreed to deposit the balance amount before the Authority. Since the petitioner already filed an appeal as against the order passed under Section 7(A) of the Provident Fund Act and only on account of there being a presiding Officer, the present writ petitions have been filed.

11. In such circumstances, the appeal having already been filed before the CGID and the same is pending, and also considering the fact that the petitioner has already deposited a sum of Rs.50,00,000/- and a request has been made on behalf of the petitioner seeking to deposit the balance amount by way of 12 installments. Considering the pendency of the appeal, this Court without going into merits of the contentions raised by the petitioner in the appeals is inclined to direct the petitioner to



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deposit the balance amount in 12 equal monthly installments of which the 1st installment shall be paid on or before 07.03.2025 and the other installments shall be paid on or before the 7th of every succeeding month. Further, in view of the aforesaid payments having been made, the petitioner is permitted to withdraw the appeals pending before the CGID.

12. Accordingly these writ petitions stand disposed of. There shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

24.02.2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

vsn

Note: Issue order copy on or before 06.03.2025

To

The Regional Provident Fund Commissioner - II,
Employees Provident Fund Organisation

37, Royapettah High Road,

Chennai 600 014



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M.DHANDAPANI, J.

vsn

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and W.M.P.Nos.2295 &2297 of 2024

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