BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.3872 of 2020 and
WMP(MD) No.3268 of 2020

The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
P.B.No.588, Sree Complex, "D" Block,
No.18, Madurai Road,
Tiruchirappalli. ... Petitioner

Vs

1.The Presiding Officer,
Central Government Industrial Tribunal Cum
Labour Court,
1st Floor, B Wing, 26 Haddows Road,
Shastri Bhavan, Chennai.

2.M/s. Royal Hospital,
1624 South Main Street,
Thanjavur - 613 009. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order passed by the 1st Respondent EPFA No.224/2017 (A.T.A.No.568(13)2013) dated 21-03-2019 and quash the same as illegal.

For Petitioner : Mr.N.Dilip Kumar,
For R2 : Mr.C.Karthikeyan

O R D E R

This writ petition is filed as against the order passed by the Central Government Industrial Tribunal Cum Labour Court in EPFA No.224/2017 (A.T.A.No.568(13)2013) dated 21.03.2019, in and by which, the appeal preferred by the second respondent Hospital was allowed and the order passed by the EPF authority levying damages on the second respondent was set aside.

2.The second respondent establishment is a hospital, namely, M/s. Royal Hospital at Thanjavur, covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. (hereinafter referred as the Act). A proceedings under Section 14B and 7Q of the Act was initiated as against the second respondent Establishment, alleging that the second respondent has remitted the EPF dues as well as the administrative charges belatedly for the period from 2002-2003 to 2011-2012 and an order levying damages with interest to the tune of Rs.8,74,090/- has been passed by the EPF Authorities, by order, dated 04.07.2013. The second respondent has challenged the above order before the Employees Provident Fund Appellate Tribunal, Chennai. A detailed order has been passed by the Appellate Authority by setting aside the order passed by the EPF authorities, dated 04.07.2013, that the delay for remittance of EPF contribution pointed out by the EPF authorities is not proper, as there is no wilful default on the part of the establishment; the EPF contribution has not been made by the Establishment in time in view of the litigation, which were pending and therefore, there is no *mensrea* on the part of the Establishment in remittance of the statutory contribution towards the employees. Aggrieved by this order, the EPF authority has filed this writ petition in the year 2020.

3.The learned counsel appearing for the petitioner/EPF Authority submits that the second respondent establishment is a hospital, covered under the Act and they have enrolled 15 regular employees under the Act, from the year 2001. The enforcement officer of the EPF Authority has conducted an inspection in the second respondent establishment in the month of January 2001 and found that 53 employees were working in the hospital. However, EPF contribution has been remitted by the Establishment for 15 employees alone. Therefore, a proceedings was initiated under Section 7A of the Act as against the second respondent and an order under Section 7A was passed on 31.10.2002, which was challenged by the Establishment before this Court in WP(MD) No.38982 of 2003 that no opportunity was provided to them. That writ petition was allowed by this Court, by its order, dated 30.09.2009 that the authority has failed to provide sufficient opportunity to the Establishment and this Court, by its order, dated 30.09.2009, remanded the matter back for fresh consideration after providing an opportunity to the second respondent. Accordingly, the EPF Authority has issued a fresh summon to the second respondent on 04.01.2010, conducted an enquiry and passed an order, under Section 7A of the Act, on 30.06.2010, fixing the liability of

Rs.4,05,479/-. The second respondent establishment has also paid the said amount on 01.07.2010, on the next day of the order. Thereafter, the Authority has initiated a proceedings, under Section 14B of the Act, by issuing summons to the second respondent. After providing sufficient opportunities on 27.05.2013 and 17.06.2013, an order of levying damages to the tune of Rs.4,11,526/- for the period from January 2001 to February 2012 was passed, by the Authorities on 04.07.2013. The learned counsel further submits that though the second respondent has paid the interest under Section 7Q of the Act, disputed the order passed under section 14 B of the Act on the ground that he has failed to remit the amount due to pending litigation between the respondent establishment and the EPF authority and therefore there is no wilful default on the part of the establishment and also there is no *mensrea*. The Tribunal has considered the case of the establishment and has allowed the appeal filed by them that there is no *mensrea* on the part of the establishment in not paying the contribution in time.

3.1. The learned counsel for the petitioner further submits that out of 53 employees noted during the inspection, the establishment has admitted the liability towards 5 more employees apart from 15 employees and paid the contribution for those 5 employees on 01.07.2010 as soon as the order under Section 7A of the Act was passed. However, they have evaded the payment of contribution of those 5 employees intentionally, when they have remitted the contribution for 15 employees initially. According to the learned counsel, the inspection was made on 31.01.2001 and thereafter an order under Section 7A has been passed only on 31.10.2002. However, the Establishment has challenged the order before this Court, by way of a writ petition in WP(MD) No.38982 of 2003 that they have not been provided with sufficient opportunity. This Court, has in fact remitted the matter only in the year 2009. According to the learned counsel, the moment, an order under Section 7A was passed, the Establishment has immediately paid the contribution for those 5 employees, on the next day itself, i.e. on 01.07.2010. However, they have evaded the payment for these employees for whom they have accepted and paid the contribution on 01.07.2010 for the past 10 years, by referring to the litigation, which has been preferred that he has not been provided an opportunity.

3.2.The learned counsel further submits that the inspection was made on 31.01.2001 and thereafter the order under Section 7Q has been passed on 31.10.2002, after providing sufficient opportunity to the Establishment. However, the Establishment has projected their case that they have not been provided with any opportunity and also filed a writ petition in the year 2003. After the order of this Court in the year 2009, the Establishment has paid the contribution when an order under Section 7A has been passed. Thus, the Establishment has evaded the remittance of dues of 5 employees for 10 years. Therefore, there is a deliberate delay in payment of contribution by the Establishment and accordingly, the observations of the Tribunal that there is no *mensrea* cannot be accepted.

3.3.The learned counsel for the petitioner by referring to the orders of the Honourable Full Bench reported in 2024-1-Writ L.R.801, WP(MD) Nos.7339, 9688 of 2013, 2765 & 2782 of 2014 submits that the question of *mensrea* has already been answered by the Full Bench of this Court as under:-

> *"Therefore, levy of damages under Section 14B of the Act is not a criminal liability but a civil liability arising out of a statutory obligation. In view of the principles reiterated by several judgments distinguishing the difference between criminal liability and the civil liability for violation of statutory obligation and the judgment in Horticulture Experiment Station, Gonikoppal, Coorg Vs.Regional Provident Fund Organization, (2022) 4 SCC 516, we are bound to hold that means rea or actus reus is not an essential requirement or sine quo non for levying penalty under Section 14-B of the Act.*

3.4.The learned counsel by emphasizing clause 10 of the guidelines framed by the Honourable Full bench of this Court in the above cited Judgment submits that the Honourable Full Bench has elaborately discussed with regard to levy of damages and under what circumstances it has to be avoided. The guidelines framed are as under:-

"39.Therefore, following the principles reiterated by the Hon'ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame 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 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 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.

4.The learned counsel for the second respondent establishment submits that there is no wilful default on the part of the establishment in remittance of EPF dues. The moment an order under Section 7A has been passed, on the next day, the contribution for 5 employees has been remitted. While so, an order under Section 14B, levying damages has been passed after a period of 10 years, without any valid reasons, when there is no fault on the part of the Establishment. The learned counsel further submits that the Judgment of the Honourable Full Bench of this Court as referred by the learned counsel for the petitioner has been passed holding that there is no requirement of *mensrea* in the case of EPF contribution, based on the orders of the Honourable Supreme Court in ***Horticulture Experiment Station, Gonikoppal, Coorg vas. Regional Provident Fund Organization***, reported in ***(2022) 4 SCC 516,*** which has been delivered by the Honourable Supreme Court subsequent to the orders of the Tribunal.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.Admittedly, the second respondent Establishment is a profit making Unit having 53 employees at the time of inspection conducted by the EPF Authorities on 31.01.2001. Though the Establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, they have omitted to remit the EPF contribution for 5 employees, when they have made EPF contribution for 15 employees initially. A proceedings was initiated under Section 7A of the Act as against the second respondent; an order has been passed on 31.10.2002, which was challenged by the Establishment before this Court in WP(MD) No.38982 of 2003 that no opportunity was provided to them; this Court, by its order, dated 30.09.2009 has remanded the matter back for fresh consideration; after affording opportunity, an order, under Section 7A of the Act was passed on 30.06.2010, fixing the liability of Rs.4,05,479/-; the second respondent establishment remitted that amount on 01.07.2010, soon after the order; thereafter, an order under Section 14 B, levying damages for a sum of Rs.4,11,526/- was passed; that was challenged by the Establishment before the Appellate Authority and it was allowed. The second respondent Establishment, by taking advantage of the litigation in WP(MD) No.38982 of 2003 and by taking a plea that they have not been provided with sufficient opportunity have evaded the remittance of contribution for five employees. More over, they are now claiming that there is no *mensrea* and therefore, they cannot be levied damages under 14 B of the Act. When the establishment is accepting the order passed under

Section 7A of the Act, they must be knowing that they are liable to pay the contribution to those five employees, even on the day, when a notice has been issued to the Establishment in the year 2001. They need not wait for an order under section 7Q of the Act, in view of the guidelines issued by the Honourable Full Bench.

7.In view of the above and also in the light of the guidelines framed by this Court, this writ petition is allowed. The order impugned in this writ petition in EPFA No.224/2017 (A.T.A.No.568(13)2013) dated 21-03-2019 is set aside. A direction is issued to the second respondent Establishment to pay the damages under Section 14 B of the Act, within a period of six months from the date of receipt of a copy of this order, in four equal installments. No costs. Consequently, connected Miscellaneous Petition is closed.

03.09.2025

Index:Yes/No
NCC:Yes/No

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2.M/s. Royal Hospital,
1624 South Main Street,
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B.PUGALENDHI, J.

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Order made in
W.P(MD)No.3872 of 2020 and
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