BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2025

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

WP.(MD)No.720 of 2021
and WMP.(MD)No.602 of 2021

The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road, Tiruchirappalli.

... Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi.

2.M/s.Cethar Ltd.,
No.4, Dindigul Road, Uram,
Rayar Garden, Trichy-625 001,
Rep. through its Joint Vice President.

3.Mr.Venkataramanarao Nagarajan,
Liquidator for M/s Cethar Limited,
New No.29, Kavarai Street, West Mambalam,
Chennai, Tamil Nadu 600 033.

... Respondents

(R3 is impleaded order dated 01.09.2025 in WMP.(MD)No.14648 of 2025 in WP.(MD)No.720 of 2021)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records relating to the order of the first respondent in ATA.No.496 (13) 2014 dated 13.08.2014 and quash the same as unconstitutional and illegal.

For Petitioner	: Mr.N.Dilipkumar
For R2 & R3	: Mr.D.Srinivasa Ragavan, Legal Aid Counsel.

ORDER

The provident fund authority has preferred this writ petition as against the order passed by the Tribunal in ATA.No.496 (13) 2014 dated 13.08.2014.

2.The above said appeal has been preferred by the second respondent as against the damages levied by the authority under

Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred as 'the Act'] and interest levied under Section 7Q of the Act. The second respondent is covered under the Act and has been registered with code number TN/22237. They have not paid the contribution for the period 2010 to 2013, for which a proceedings was initiated by the petitioner/ authority under Section 14B of the Act and damages were levied by order dated 22.05.2014 as Rs.84,68,246/- and interest was determined under Section 7Q of the Act as Rs. 48,49,277/- for the belated payment. This order was challenged by the second respondent by way of appeal before the EPF appellate tribunal in ATA.No.496 (13) 2014 and the same was allowed by the tribunal by its order dated 13.08.2014. Challenging the same, the petitioner /authority has preferred the present writ petition.

3.The learned counsel appearing for the petitioner/authority submits that the second respondent company was in existence from the year 1977, having several establishments in six locations, such as, windmills in two locations, guest house, vacant lands at various locations and four subsidiary companies. However, the second respondent has failed to pay the contribution towards its employees. According to the learned counsel for the petitioner, the second respondent has failed to pay contribution for the following periods:-

- from October 1987 to November 1989,
- from March 1997 to June 1997,
- from December 1997 to March 1998,
- from June 1998 to September 1998,
- from October 1998 to February 1999,
- from March 1999 to October 1999 and
- from September 2014 to June 2015.

For these belated payment, proceedings were initiated as against the second respondent. Even thereafter, the second respondent has failed to pay the contribution for the subject period from March 2010 to September 2013.

4.The learned counsel for the petitioner submits that whenever there is a delay in payment of contribution, interest has to be levied as per statute under Section 7Q of the Act. The Act also provides for damages under Section 14B in order to avoid these type of delayed payment of EPF contribution. The amount was also determined as per the scheme provided under the Act and there is no reasons to interfere with orders passed by the authority. However, the appellate authority has set aside the order passed by the petitioner/authority that there is no *mens rea* and the *actus reus* for the second respondent to commit this default. Further, the learned counsel for the EPF authority submits that the findings of the appellate tribunal on the necessity for *mens rea* and the *actus reus* as per the decisions of the Hon'ble Supreme Court referred to in the impugned order are no longer good law in view of the judgment of the Hon'ble Supreme Court in ***Horticulture Experiment Station Gonikoppal Vs Regional Provident Fund Organisation*** reported in ***(2022) 2 SCC 516,*** wherein the Hon'ble Supreme Court has held that *mens rea* or *actus reus* is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

5.Though the second respondent has been served, there was no representation for the second respondent. It is also reported that the second respondent is under liquidation and a liquidator has also been appointed. Therefore, this Court vide its order dated 01.09.2025 in WMP.(MD)No.14648 of 2025 in WP.(MD)No. 720 of 2021 impleaded the Liquidator as third respondent and notice was also ordered. Though notice has been served on the respondents 2 & 3, there is no representation for them.

6.This writ petition is pending from the year 2021 and in order to give a quietus, this Court by its earlier order dated 28.10.2025 appointed Mr.D.Srinivasa Ragavan, learned counsel as legal aid counsel for respondents 2 & 3.

7.The learned Legal Aid counsel appearing for the respondents 2 & 3 submits that though he has made several attempts to get proper instructions from the respondents 2 & 3, he is not in a position to get instructions. He has pointed out that the company is under liquidation and the Tribunal has passed the order in the year 2014, which was challenged only in the year 2021 and therefore, he requests to dismiss this writ petition.

8.This Court has considered the submissions made on either side and perused the available records.

9.The second respondent is registered under the Act, however, failed to pay the EPF contribution in time, for the period from March 2010 to September 2013. Therefore, a proceedings was initiated under Section 14B of the Act. When there is a delay in payment, EPF contribution is liable to be recovered together with interest, as per Section 7Q of the Act. There cannot be any order under Section 14B of the Act without providing an opportunity of hearing to the concerned Company. In this case, materials on record would reveal that enquiry was conducted on 31.12.2013, 30.01.2014, 27.02.2014, 05.03.2014, 21.03.2014, 03.04.2014 and 22.05.2014. On 22.05.2014, the authority after providing several opportunities, has passed the order under Section 14B as per paragraph 33 of EPF scheme. They have also arrived interest for the belated payment under Section 7Q of the Act.

10.The above order has been challenged before the Tribunal. In fact, there is no provision to file an appeal as against the order passed under Section 7Q. However, the Tribunal has entertained the appeal. A perusal of the appeal would reveal that the Tribunal has mainly set aside the order that there is no *mens rea* and the *actus reus* for this delay. As rightly pointed out by the learned counsel for the petitioner, this issue of requirement of *mens rea* and the *actus reus* has already been decided by the Hon'ble Supreme Court in ***Horticulture Experiment Station Gonikoppal***

Vs Regional Provident Fund Organisation reported in ***(2022) 2 SCC 516***, as under:-

> *"19.Taking note of the three-Judge Bench judgment of this Court in Union of India Vs Dharmendra Textile Processors, 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 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities."*

11.It is to be noted that there is no discussion with regard to the interest levied under Section 7Q of the Act. It is contended by the learned Legal Aid counsel that this writ petition has been filed after 7 years from the orders of the appellate authority and that the company is under liquidation. No doubt, the company is under liquidation, however, this Court cannot ignore the submissions of the learned counsel for the petitioner that this interest amount arrived under Section 7Q of the Act is the amount for the belated payment of contribution which is meant for the workers and it cannot be denied, due to the delay in filing this writ petition.

12.In view of the above decision and discussions, the orders passed by the first respondent in ATA.No.496 (13) 2014, dated 13.08.2014 is set aside and this writ petition is allowed. Considering the financial condition, the petitioner is entitled to recover the arrears amount, if any, proportionally and also on installments.

13.This Court directs the Legal Aid Services Authority to pay a sum of Rs.10,000/- to Mr.D.Srinivasa Ragavan, learned Legal Aid counsel as remuneration. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2025

NCC : Yes/No
Index : Yes/No
Internet:Yes
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To

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi.

2.High Court Legal Aid Services Authority,
Madurai Bench of Madras High Court,
Madurai.

B.PUGALENDHI,J

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WP.(MD)No.720 of 2021

04.11.2025