BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.5224 and 5225 of 2015
and
W.M.P.(MD)Nos.2 of 2015

For W.P(MD)No.5224/2025

M/s. Kaleeswara Mills "B" Unit,
(A unit of NTC Limited)
Represented by its General Manager,
Thondi Road,
Kalayarkoil,
Sivagangai District. ... Petitioner

Vs

1. The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organization,
No.1, Lady Doak College Road,
Chokkikulam, Madurai - 2.

2. The Recovery Officer,
Employees' Provident Fund Organization,
No.1, Lady Doak College Road,
Chokkikulam, Madurai - 2.

3. The Chief Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
No.14, Balaji Cana Place,
New Delhi - 110 066.

4. The Director (Recovery),
EPF Organization,
Bhavishya Nidhi
Bhavan, No. 14,
Bhikaji Cana Place,
New Delhi 110 066. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in connection with the Impugned Order passed by the 4th respondent vide proceedings ref. No. RRC/49 (3) 07/NTC dated 20.03.2015 and the consequential order passed by the 1st respondent vide Proceedings ref. TN/MDU/RRO/RECY/5648/2015 dated 26.03.2015, quash the same.

For W.P(MD)No.5225/2025

M/s. Pioneer Spinners,
(A unit of NTC Limited)
Represented by its General Manager,
L.Murugan,
Kamuthakudi, Paramakudi Taluk,
Ramanathapuram District. ... Petitioner

Vs

1. The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organization,
No.1, Lady Doak College Road,
Chokkikulam, Madurai - 2.

2. The Recovery Officer,
Employees' Provident Fund Organization,
No.1, Lady Doak College Road,
Chokkikulam, Madurai - 2.

3. The Chief Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
No.14, Balaji Cana Place,
New Delhi - 110 066.

4. The Director (Recovery),
EPF Organization,
Bhavishya Nidhi
Bhavan, No. 14,
Bhikaji Cana Place,
New Delhi 110 066. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in connection with the Impugned Order passed by the 4th respondent vide proceedings ref.No. RRC/40 (3) 07/NTC dated 20.03.2015 and the consequential order passed by the 1st respondent vide Proceedings ref. TN/MDU/RRO/RECY/7707/2015 dated 26.03.2015, quash the same.

For Petitioners : Mr. Niranjan S.Kumar

For Respondents : Mr.P.Karthick

COMMON ORDER

The petitioners are the units of National Textile Corporation, which is a Government of India undertaking. These units have been taken over by the Union of India under Sick Textile Undertaking (Nationalization) Act 57 of 1974. The petitioners units and other units in the State of Tamil Nadu and Puducherry have suffered accumulated loss of Rs.505 Crores in the year 2004. Therefore, a reference was made to the Board for Industrial and Financial Reconstruction vide reference No. 502/2004 under the Sick Industrial Companies Act (SICA). The petitioners Mills and other mills were also amalgamated with NTC holding company at New Delhi. In the mean time, the provident fund authorities have conducted an inspection in the petitioners Mills and levied a sum of Rs.41,97,639/- as damages to the petitioner Mill/M/s.Kaleeswara Mills and a sum of Rs.42,93,559/- to another Mill/M/s.Pioneer Spinners by proceedings dated 21.06.2004 and 22.10.2010 respectively. As against the amount levied under Section 14(B) of the Provident Fund Act, M/s.Kaleeswara Mills filed a writ petition in W.P.No.30676 of 2004 before the Principal Seat of this Court and the same was referred to the Hon'ble Division Bench of the Principal

Seat of this Court. The Division Bench by its order dated 19.10.2006, disposed the writ petition with liberty to M/s.Kaleeswara Mills to seek waiver of damages as per the directions in paragraph No.36 of the Full Bench judgment reported in ***2006 (5) CTC (1)*** in the case of ***M/s.Gowri Spinners Mill Private Limited***. Based on this order, the petitioner Mills have made a request to the respondent EPF authority and the same has been considered by the third respondent by his proceedings dated 13.06.2007 issuing directions to the Regional Authority not to take any coercive steps. Thereafter, in the year 2010, the Recovery officer of EPF Madurai sent a communication that the earlier direction dated 13.06.2007 has been withdrawn by the authority and therefore, the petitioner Mills have to pay a sum of Rs.41,97,639/- and Rs.42,93,559/- respectively within a stipulated time. The Recovery Officer has also issued directions to freeze the Bank accounts. Therefore the petitioners have filed another writ petition before this Court challenging the order of the Recovery Officer, dated 13.10.2010 before the Principal Seat of this Court in W.P.Nos.13659 of 2010 and 13658 of 2010 respectively. The said writ petitions were entertained by the Court and interim orders were also granted. Finally the writ petitions were disposed with a direction to the EPF authority to keep the issue under abeyance till the disposal of the issue before the the Hon'ble Supreme Court. In the mean time, the Mills were revived and therefore, the BIFR by its proceedings dated 20.10.2014 released the NTC from BIFR proceedings under the Sick Industrial Companies Act observing that the un-implemented scheme provisions of the modified sanctioned scheme (MS-2008) to be implemented by all the concerned. The BIFR has framed a scheme in the year 2008. In this scheme, certain conditions have been issued to the Government of India and one of such conditions is to waive damages/penalties on the provident fund dues (Regional Provident Fund Commissioner).

2.The petitioners Mills based on this scheme framed by the BIFR have made representations to the EPF authority and the same have been rejected by the order impugned in these writ petitions insisting upon the Mills to pay the damages under Section 14(B) of the Provident Fund Act. Those rejection orders are challenged in these writ petitions. The respondent EPF authority has rejected the claim of the petitioners that the Mills have been revived and turned into positive and therefore, the Mills are not entitled for waiver of damages under Section 14(B) of the Provident Fund Act. The orders dated 20.03.2015 and 26.03.2015 are challenged in these writ petitions.

3.Since this issue in both the writ petitions are one and the same, these writ petitions are taken up together and disposed by this common order.

4.The learned Counsel for the petitioners submits that admittedly these Mills went on loss, referred to BIFR under the Sick Industrial Companies Act and a scheme was also framed by the BIFR. He has referred to the directions issued to the Government of India in Paragraph (C)(5) of the Scheme which is extracted as understands

> *"C(v) To waive damages/penalties on the PF dues (Regional Provident Fund Commissioner) and ESI (Directorate of ESI) dues outstanding as on the cut off date and not to charge any damages/penalties during the implementation period."*

5.The learned Counsel for the petitioners also referred to the provisions under Scheme 32-B (b) of Employees Provident Fund Scheme, 1952 and the judgment rendered by the Hon'ble Full Bench reported in ***2024 (2) CWC 241.*** He relied on Clause 9 of paragraph 39 of the Hon'ble Full Bench and the scheme framed by the BIFR and submitted that the petitioners Mills are entitled for waiver, however without considering these aspects, the impugned orders have been passed.

6.Mr.Dhilip Kumar, learned Counsel for the EPF authority submits that the levy under Section 14(B) of the Provident Fund Act on the petitioners Mills was made even in the year 2004. This levy under Section 14(B) of the Provident Fund Act was made for the delayed payment of contribution of the period of 2000 – 2004. The petitioners have challenged the orders under Section 14(B) of the Act previously by filing a writ petition before the Principal Seat of this Court in W.P.No. 30681 of 2024 and the same was dismissed by the Hon'ble Division Bench of the Principal Bench on 19.10.2006 and therefore the issue becomes final. Thereafter, by referring to the BIFR proceedings, the petitioners Mills have made certain requests not to take any coercive steps and the same was considered and coercive steps were not taken. Thereafter, the Mills have got revived and started to make profit. Therefore, this impugned orders have been passed claiming damages for the period 2000 to 2004 under Section 14(B) of the Act. Therefore, according to him, this levy of damages has already been upheld by the Division Bench of the Principal Seat of this Court and the petitioners cannot maintain these writ petitions.

7.The learned Counsel for the respondent authority has also referred to the previous judgment rendered by the Hon'ble Full Bench of the Principal Seat of this Court on this issue in the case of ***M/s.Gowri Spinning Mills Limited Private Vs. Assistant Provident Fund Commissioner and another***, dated 10.10.2006 wherein, the Hon'ble Full Bench of the Principal Seat of this Court has passed an order as under:

> *“27. In an unreported decision of the Division Bench of the Calcutta High Court in Kusum Engineering Co. Ltd. Vs. Regional Provident Fund Commissioner (Appeal No.591 of 1990 and Matter No.2254 of 1990) it was held that the provident fund dues are statutory liability and the Provident Fund Act is a is a prece of social welfare legislation enacted for the purpose of wel In Vikram of welfare of of the labourers. If the industry is to run, the labour welfare legislation has to be given effect to and that construction of the Act could not be given in such a way,*

which takes away or suspends the rights of the provident fund authorities from realizing the provident fund dues and/or damages. Poddar Vs. Regional Provident Fund Commissioner, 2001 CEN 476, a learned single Judge of the Calcutta High Court held that merely because the company is a sick company and it has been referred to the BIFR, is not an impediment in recovering the dues of the provident fund. Similar is the view taken by another learned single Judge of the same High Court in Universal Paper Mills Ltd. Vs. Regional Provident Fund Commissioner, 2001-11-LLJ 1193 (Cal). In I.D. Corporation, Orissa Ltd. Vs. R.F.Commr., 2001 Lap & I.C. 3821, the Orissa High Court has held that provident fund dues of employee and steps like certificate or recovery proceedings taken by the Provident Fund Commissioner for realization or recovery of such dues under the provisions of the EPF Act cannot be held to be covered under Section 22 (1) of the SICA. "

8.The learned Counsel for the respondent authority by referring to the scheme framed by the BIFR submits that this scheme is not applicable to the NTC Mills in Tamil Nadu and Pondicherry. Section 32 B (b) of the scheme does not mandate that once an issue has been referred to BIFR, waiver is an automatic. The learned Counsel has also relied on the order passed by the Hon'ble Single Judge of this Court in W.P.No.16375 of 2015, order dated 06.03.2025, in respect of the very same Kaleswara Mills of the Coimbatore Unit.

9.In response to the submission of the learned Counsel for the authority, the learned Counsel for the petitioners has referred to the paragraph No.7 in chapter 3 of the scheme and submits that the scheme also covers the mills in Tamil Nadu and Pondicherry.

10.This Court has considered the rival submissions made.

11.The authority by its impugned notice has called upon the petitioners Mills to pay the damages, which have been levied under Section 14B of the PF Act. Admittedly, levy has been made for the period 2000 to 2004. As pointed out by the learned Counsel for the respondent authority, the petitioners mills are also challenging the levy made under Section 14(B) of the Act for the said period by way of a separate writ petition in the year 2004 and the same have been disposed by the Hon'ble Division Bench of the Principal Seat of this Court granting liberty to the petitioners to approach the provident fund authorities either for waiver or rejection or to postpone the determination of damages as per the directions of the Full Bench in M/s.Gowri Spinning Mills Limited. Thereafter, the requests of the petitioners Mills were also considered by the authority and they have not taken any action as against the petitioners Mills till 2015. The impugned notice have been issued in the year 2015 considering that the mills have been turned positive and discharged from the proceedings of the BIFR. The BIFR while discharging the NTC Mills in its proceedings dated **20.08.2014** with certain conditions and the same are extracted as understand:

> *"4.Thus, taking into consideration the submissions made in the last hearing and the report filed by the MA(IDBI), the Bench observes that the company's networth has turned positive by Rs. 1600.10 crore as on 31.03.2014 Also, the networth of the company was positive during the FY ended 31 03.2013. Accordingly, the Bench directs as under :-*
>
> *i)The sick company, M/s NTC Ltd ceases to be a sick industrial company. within the meaning of Section 3(1)(0) of SICA, as its networth has turned positive. It is therefore, discharged from the purview of SICA/BIFR.*
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> *ii) The Board discharges IDBI from the responsibility of Monitoring Agency (MA) to the Board.*
>
> *iii) Unimplemented provisions of the Modified*

Sanctioned Scheme (MS-2008) to be implemented by all the concerned.

iv) The Special Director, if any appointed by the Board on company's Board of Directors (BOD), would stand discharged with immediate effect

v) The company would complete necessary formalities with the concerned Registrar of Companies (ROC), as may be required

VI) All pending MAs in the present reference would become infructuous.

Let a copy of this order be circulated to all concerned"

12.Clause 3 of Paragraph No.4 of this modified scheme stipulates that unimplemented provisions of the modified sanctioned scheme to be implemented by all the concerned. In the modified scheme, the BIFR has already issued a direction to the Government of India to waive the damages/penalties on the provident fund dues (Regional Provident Fund Commissioner) and ESI (Directorate of ESI) as on cut off date and not to charge damages/penalties during the implementation period. However, an objection has been made on behalf of the respondent authority that this scheme dated 05.09.2018 is not applicable to the mills in Tamil Nadu and Pondicherry. However, the same has also been covered in Paragraph No.7 in chapter No.3 as under:

> *"7.Taking into consideration the sanctioned scheme of BIFR in respect of 8 subsidiaries and scheme in respect of NTC (TN&P) approved by GoI, 53 Mills were to be modernized and 66 unviable mills were slated for closure after offering MVRS to employees. Out of total mills, 2 mills (1 each from 53 viable Mills and 66 unviable mills) at Pondicherry have been transferred to State Government of Pondicherry w.e.f 01-04-2005 reducing the number of mills to be revived and slated for closure to 52 and 65 respectively."*

13.Therefore, it appears that apart from the eight subsidiaries referred in Paragraph H of the scheme, the mills in respect of the National Textile Corporation of Tamil Nadu and Pondicherry as approved by the Government of India were also included in the Paragraph No.7 and therefore, this Court is not inclined to accept the contention of the learned Counsel for the respondent that the scheme for the mills at Tamil Nadu and Pondicherry have not been sanctioned by the Board.

14.The Hon'ble Full Bench of this Court in the case of ***Sun Pressings Private Limited vs. Presiding Officer, EPF Appellate Tribunal*** reported in ***2024 (2) CWC 241*** after elaborate discussions with regard to the maintainability of the damages under Section 14(B) of the Act has issued guidelines 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-Bof 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.

15.Moreover, the provision under Scheme 32 B (b) enable the authority to waive the damages upto to 100% in the event of the BIFR has granted relief in its scheme. In this case, while the BIFR discharging the mills a relief has been provided under the scheme dated 05.09.2008 reiterated in the order dated 20.08.2014 and therefore, this Court is inclined to allow the writ petitions by citing the said order impugned and refer the matters to the authority for fresh consideration.

16.It must be kept in mind by the authorities that the object of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is not to inflict punishment for its own sake, but to ensure due compliance with the statutory obligations cast upon the employers. It is not designed to operate as an instrument of oppression or to destroy the very existence of establishments and sick units. Merely because the provision allows for the imposition of penalty, the same should not be imposed in a mechanical manner. The mechanical imposition of damages ultimately leads to a situation wherein the benefits are not passed on to the employees. Therefore, in the case of sick industrial units or industries undergoing genuine financial distress, the authorities are required to consider mitigating circumstances before deciding on whether to impose damages.

17.Accordingly, the matters are remanded back for fresh consideration by the authorities concerned. Thus, the writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

12.09.2025

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR

B.PUGALENDHI, J.

LR

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