



W.P.(MD) No.8290 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.8290 of 2016

The Central Board of Trustees
Employees Provident Fund Organisation
through its Regional Provident
Fund Commissioner
Regional Office
Lady Doak College Road
Chokkikulam
Madurai-2

... Petitioner

-vs-

1.M/s.Puliampatti PACB Ltd.,
Palani

2.The Presiding Officer
Employees' Provident
Fund Appellate Tribunal
New Delhi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records pertaining to the impugned order of the second respondent herein in his proceedings bearing A.T.A.No. 574(13)2012, dated 19.08.2014 and set aside the same and confirm the order



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passed by the Assistant Provident Fund Commissioner under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act in his proceedings No.TN/RO/MDU/4152/RO/Circle 13/PDC/LD dated 06.06.2012.

For Petitioner : Mr.S.Anwar Sameem

For Respondents : Mr.V.O.S.Kalaiselvam for R1
No appearance for R2

ORDER

This writ petition has been filed by the petitioner aggrieved by the order dated 19.08.2014, passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in A.T.A.No.574(13)2012, whereby the learned Appellate Tribunal interfered with the proceedings of the Employees' Provident Fund Organisation, Madurai, bearing No.TN/RO/MDU/41592/RO/circle13/PDC/LD/2012, dated 29.05.2012 and reduced the damages imposed on the second respondent under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short, "the Act, 1952") to 25%.

2. A perusal of the impugned order, dated 19.08.2014, would disclose that the learned Appellate Tribunal, having come to the conclusion that the Assistant Provident Fund Commissioner, Madurai, has not applied



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his mind while imposing damages under Section 14B of the Act, 1952 and also having come to the conclusion that there was no *mens rea* on the part of the second respondent in delaying the remittance of the provident fund dues, came to the conclusion that the second respondent cannot be made liable for paying damages, but instead made him liable to compensate the loss caused due to the delay in remittance of the provident fund dues and accordingly, reduced the compensation to the tune of 25%.

3. Existence of *mens rea* is not a condition precedent for imposing damages under Section 14B of the Act, 1952. This aspect of the matter is now well settled and no more *res integra*. The Honourable Apex Court, in the case of ***Horticulture Experiment Station vs. Provident Fund Organisation***, reported in **(2022) 4 SCC 516**, has decided the issue once for all. Paragraph Nos.15 and 19 of the said decision read as under:

“15. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

...

...

19. Taking note of three-Judge Bench judgment of this Court in Union of India v. Dharamendra Textile



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Processors [(2008) 13 SCC 369, 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 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.

4. A Full Bench of this Court also having taken note of the above said decision of the Honourable Apex Court, by a common Judgment dated 03.06.2024, passed in W.P.(MD) Nos.7339, 9688 of 2013, 2765 & 2782 of 2014, laid down certain guidelines in the matter of deciding the liability under Section 14B of the Act, 1952. Paragraph No.39 of the said decision reads 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*



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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*



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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.*



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- (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*



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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.”*

5. In the light of the above, the order impugned in the present writ petition cannot be sustained and the same is, accordingly, set aside and the matter is required to be remitted back to the Appellate Tribunal for fresh consideration by duly taking into consideration the decision of the Honourable Apex Court in the case of **Horticulture Experiment Station** (cited supra) and the guidelines laid down by the Full Bench of this Court, which are extracted supra.



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9. It is open to the either side to make available the relevant records before the Central Government Industrial Tribunal by reconstruction of the files, if necessary, for the expeditious disposal of the matter as directed above.

10. Accordingly, this writ petition is disposed of. No costs.

06.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note to Office: Mark a copy of this order to the Central Government Industrial Tribunal, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006.

To:
The Presiding Officer,
Employees' Provident
Fund Appellate Tribunal,
New Delhi.



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MUMMINENI SUDHEER KUMAR, J.

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