

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 4648 of 2023****Between:**

M/s Balachandika Security Force India Pvt. Ltd.

... Petitioner

And

The Employees Provident Fund Organization.

... Respondent

JUDGMENT PRONOUNCED ON: 15.04.2024**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 4648 of 2023****% 15.04.2024****Between:**

M/s Balachandika Security Force India Pvt. Ltd.

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... Respondent

< Gist:

➤ Head Note:

!Counsel for the Petitioner: Mr P.U.Bhaskar Rao

^counsel for Respondent: Ms. T.Bala Jayasree,

? Cases Referred:

1. (2022) 4 SCC 516

2. (2013) 16 SCC 16

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 4648 of 2023

ORDER:

Heard Mr P.U.Bhaskara Rao, learned counsel appearing on behalf of the petitioner and Ms T.Bala Jayasree, learned standing counsel appearing on behalf of the respondent.

2. The petitioner filed the present writ petition seeking prayer as under:

"to issue a Writ, order or direction more especially in the nature of Mandamus declaring the order dated 04/08/2022 passed by the Respondent herein imposing interest U/s 7(Q) of EPF and Miscellaneous Provisions Act 1952 and the subsequent order passed in EPF Appeal No 2 of 2023 dated 13/01/2023 by Central Government Industrial Tribunal-cum-EPF Tribunal directing the Petitioner Firm to pay 20% of damages U/s 14-B as well as Rs. 31,62,339/- towards interest U/s 7(Q) of the said Act as irregular, improper and unjustified and consequently set aside the same."

3. PERUSED THE RECORD

A. The order dated 17.02.2023 passed in the present writ petition, is as under:

"Petitioner herein had filed an appeal under Section 7-I of the EPF and MP Act, 1952 challenging order dated 04.08.2022 passed by respondent under Section 14-B of the Act and it had also filed an application under Section 7(O) of the Act to waive or reduce the condition of pre-deposit. Vide impugned order dated 13.01.2023 in EPF Appeal No.2 of 2023, Central Government Industrial Tribunal cum Labour Court, Hyderabad cum EPF Tribunal granted stay of operation of the impugned order on the condition of petitioner remitting an amount of 20% of the due amount determined under Section 14-B of the Act within four weeks from the date of order and an amount of Rs.31,62,339/- towards interest levied under Section 7(Q) of the Act.

As stated supra, in the impugned order dated 13.01.2023, Tribunal specifically mentioned that the petitioner herein had filed an appeal challenging the order passed under Section 14-B of the Act. Even then, Tribunal directed the petitioner to deposit an amount of Rs.31,62,339/-. Petitioner had filed copy of the order dated 04.08.2022 No.AP/HYD/226544/PD-517/T-1/2022-23/326 passed under Section 7(Q) of the Act. Same number is mentioned in the impugned order. However, Sri G.Venkateshwarlu, learned counsel appearing for respondent Corporation on instructions would submit that the order under challenge before the Tribunal is under Section 14-B of the Act. In the impugned order, there is no consideration of the principle laid down by Hon'ble Apex Court in M/s Shiv Harbal Research Laboratory vs. Assistant P.F. Commissioner'.

It is apt to note that in the said judgment, Hon'ble Apex Court categorically held that, there is nothing to indicate that any part of the amount awarded under Section 14-B of the Act was required to be deposited at the time of filing of the appeal. Therefore, the impugned order is contrary to the provisions of the Act and also principle laid down by Apex Court in the aforesaid judgment. In view of the same, matter requires examination.

Therefore, till 14.03.2023, there shall be interim suspension of the impugned order dated 13.01.2023 in EPF appeal No.2 of 2023 passed by Central Government

Industrial Tribunal cum Labour Court, Hyderabad to the extent of directing the petitioner to remit an amount of 20% of the amount determined under Section 14-B of the Act and an amount of Rs.31,62,339/- towards interest within four (04) weeks from the date of order. However, it is made clear that proceedings before the Tribunal in the aforesaid appeal may go on.

List on 14.03.2023.

B) The order dated 20.02.2024 passed in I.A.No.2 of 2023 in W.P.No.4648 of 2023, reads as under :

"Heard Ms. T. Balajayasree, learned counsel for the petitioner and learned counsel for the respondent.

Taking into consideration the submissions made by the learned counsel appearing on behalf of the vacate stay petitioner Mrs T.Balajayashree and duly taking into consideration the averments made in the affidavit filed in support of I.A.No.2 of 2023 in W.P.No.4648 of 2023 and duly considering the recent Judgment of the Apex Court dated 23.02.2022 in the case of Horticulture Experiment Station Gonikoppal, Coorg v RPC (Civil Appeal No.2136 of 2012) wherein it has been held by the Apex Court that mens rea is no more the required condition for levy of damage and further duly considering the judgment of the Hon'ble Apex Court dated 18.10.2013 passed in Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and Others, reported in (2013) 16 Supreme Court Cases page 1 and the order dated 28.04.2022 passed in W.P. No. 1139 of 2020, this Court opines that Employees Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation to meet the constitutional requirement to protect the employees, and hence, there are no valid grounds to set aside the order impugned dated 04.08.2022 passed by the respondent herein and the interim order granted by this Court on 17.02.2023 in W.P. No. 4648 of 2023 stands vacated.

List W.P. on 12.03.2024."

C) The respondent filed counter affidavit and in particular, Paras VII to XI, read as under :

"VII) The Hon'ble Tribunal therein has brought in stay in operation of order dated 04.08.2022, subject to the following condition:

A) "The appellant shall remit 20% of amount of impugned order imposed under Section 14-B within four weeks from the date of order and he shall also submit proof of remittance on record."

B) The appellant shall also deposit the amount of Rs.31,62,339/- towards interest levied under Section 7Q of the Act within four weeks from the date of order. The hearing was posted to 07.04.202."

VIII) It is to submit that, the petitioner establishment failed to comply with the conditions laid down by the Hon'ble Tribunal. Aggrieved by the above conditions laid, the petitioner establishment has approached the Hon'ble High Court filed the present writ petition against the Section 7Q Order, dated 04.08.2022 and also against the interim order dated 13.01.2023 given by the Hon'ble Tribunal on the file of Appeal No.2 of 2023.

IX) While so, the Act, 1952 is a beneficial piece of legislation enacted by the Act of Parliament for the welfare of working class. This social security measure is a humane homage the State pays to Articles 39 and 41 of the Constitution. The viability of the fund depends on the employer duly deducting the worker's

contribution from their wages, adding his own little and promptly depositing the sum into the fund constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory bill. The proper implementation of various Schemes under the Act is solely dependent upon the prompt compliance by the establishment. Financial ups and downs are invariably an inherent part of any business. The benefits envisaged and provided under the Act cannot be held hostage to the vagaries of profit and loss of establishments. Even if it is assumed that there was a loss as is claimed, it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time.

X. The Hon'ble Supreme Court in the case of M/s. Organo Chemicals and another Vs. Union of India, 55 FLR 283 has ruled that damages under Section 14B of the Act are punitive in nature to act as a deterrent for defaulter employer.

XI. The authority under the Section 14-B of the Act is duly following legislative mandate provided to it by the Parliament to curb the growing default by the employers. The Respondent authority is also following the scheme for levying of damages as notified by the

government from time to time. The Respondent Authority under the Act performs the duty entrusted to it by fully adhering to the Act and Scheme. Any laxity on part of the authority to deviate from the letter and spirit of mandate not only will frustrate the object of legislation, but also lose its deterrence, which may affect the regular functioning of fund by starving it, thereby hampering a welfare legislation enacted by one arm of the state and administered by another arm of state for the people of the state. Rather, by depriving the people from what could have been their rightful benefits, had there been no departure by the employer from fulfilling the mandated duty of paying the provident fund contribution in time, the employer has made a departure from the rules on several occasions.

4. **The case of the petitioners as per the averments made by the petitioner in the affidavit filed in support of the present writ petition is as under:**

a) The petitioner is a firm registered under Partnership Act and main activity of the petitioner is to supply manpower, security personnel, housekeeping and sanitation personnel and ministerial staff on outsourcing basis to various private and Governmental organisations. The petitioner firm shall have to remit EPF contribution regularly every consecutive

month, but however, because of Covid-19 effect several employer organisations to which the petitioner was supplying manpower became dysfunctional and they failed to release the salary amount to the petitioner firm and the same is also a reason for the petitioner firm delaying the statutory remittance.

b) It is further the case of the petitioner that the respondent authority issued summons under Section 14(B) and also under Section 7(Q) of E.P.F. and Miscellaneous Act, 1952 vide proceedings dated 12.05.2022 directing the petitioner to attend for hearing in the said summons, the respondent authority stated that as per the scrutiny of the records maintained by its office, the EPF remittance made by the petitioner between the period December, 2019 to September, 2021, there were certain payments after the respective due dates and therefore the petitioner is liable to pay the damages to a tune of Rs.28,50,119/- and also an amount of Rs.31,62,339/- towards interest and in total an amount of Rs.60,20,458/-. The petitioner's personnel on receiving such summons appeared before the respondent authority and explained the bonafide reasons under which the

delay in EPF remittance occurred and requested the respondent authority to close the proceedings.

c) It is the further the case of the petitioner that the respondent authority without an enquiry on the said aspect passed the impugned proceedings awarding interest as well as damages. The respondent authority passed impugned order U/s.7(Q) vide Proceeding dt. 04.08.2022 for an amount of Rs.31,62,339/- towards interest and also administrative charges for the delay in EPF remittance. The Respondent Authority also issued other impugned proceeding U/s.14(B) vide Proceeding dt. 04.08.2022 imposing damages to an amount of Rs.28,58,119/-. Accordingly the Respondent Authority passed orders directing the Petitioner to pay an amount of Rs.60,20,458/- under both Heads of interest as well as damages. Aggrieved by the same the Petitioner filed the present writ petition.

d) **The Petitioner preferred EPF Appeal No.2/2023 aggrieved by the order dt. 04.08.2022 passed by the Respondent U/s.14(B) of the EPF & NP Act, 1952 with**

an application U/s.7(O) of the Act to waive the pre-deposit condition mainly contending as under :

- i. The prerequisite condition of depositing the amount may not be extended to the present Appeal where the order of challenge is U/s.14(B) of the Act.
 - ii. Employer has a right to prefer an Appeal, but the condition pre-deposit before entertaining an Appeal is not covered U/s.7(Q) of the Act.
 - iii. The Petitioner had been victimised with the punishment of interest and damages as well which amount to double jeopardy.
- e) It is further the case of the Petitioner that the EPF Tribunal after hearing submissions passed an order dt. 13.01.2023 directing Petitioner firm to remit 20% of amount imposed towards damages U/s.14(B) and also deposit an amount of Rs.31,62,339/- towards interest levied U/s.7(Q) of the Act within a period of 4 weeks from the date of order. As a consequence the Petitioner became liable for Rs.5,71,623/- out of Rs.28,58,119/- towards damages in addition to the interest amount of Rs.31,62,339/-. Aggrieved by the same the Petitioner filed the present writ petition.

5. The learned counsel for the Petitioner mainly put-forth the following submissions :

- a) The EPF Tribunal ought not have directed the Petitioner firm to deposit the total interest amount within a stipulated time.
- b) The delay in remittance of EPF does not amount to default in EPF remittance and the said delay in remittance was not deliberate and due to circumstances beyond Petitioner's control due to financial crisis suffered during Covid-19 and other consequential circumstances and hence the Petitioner is entitled for the relief prayed for in the present writ petition.

6. The learned counsel Smt. Bala Jayasree appearing on behalf of the Respondents mainly placing reliance under the averments made in the counter affidavit contends that the Petitioner is not entitled for the relief as prayed for in the present writ petition, since the Employees Provident Funds Miscellaneous Provisions Act, 1942 is a Social Welfare Legislation to meet the constitutional requirement to protect the employees.

DISCUSSION AND CONCLUSION :

7. The relevant Sections of the Act 1952 are extracted hereunder regarding filing of an Appeal in a Tribunal and pre-deposit of amounts.

7.(1) Appeals to Tribunal : “(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, order the proviso to sub-section (3), or sub-section (4) of Section 1, or section 3, or sub-section (1) of section 7A, or section 7-B (except an order rejecting an application for review referred to in sub-section (5) thereof), or section 7C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order, (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

7.O Deposit of amount due, on filing Appeal : “No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent, of the amount due from him as determined by an officer referred to provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

8. The Apex Court in the judgment dated 23.02.2022 in Horticulture Experiment Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organisation (Civil Appeal

No.2136/2012) reported in (2022) 4 SCC 516 held that *mensrea* is no more the required condition for levy of damage. The Head Note and paras 4, 10, 15 and 19 of the said judgment, read as under :

“Held, any default or delay in payment of EPF contribution by employer is sine qua non and sufficient for imposition of damages under S. 14-B *Mens rea* or *actus reus* is not essential for imposing penalty/damages for breach of civil obligations/liabilities - Impugned judgment holding that once default in payment of contribution is admitted, damages under S. 14-B are consequential and employer is liable to pay damages for delay in payment of contribution of EPF, thus, held, calls for no interference - Employees' State Insurance Act, 1948 - S. 85-B - Income Tax Act, 1961, S.271(1)(c).

4. Thereafter, the authorities issued a notice under Section 14B of the Act 1952 to charge damages for the delayed payment of provident fund amount which was levied for the period January 1978 to September, 1988 and called upon the appellant(s) to pay damages of Rs.85,548/-. The High Court under the impugned judgment held that once the default in payment of contribution is admitted, the damages as being envisaged under Section 14-B of the Act 1952 are consequential and the employer is under an obligation to pay the damages for delay in payment of contribution

of EPF under Section 14B of the Act 1952, which is the subject matter of challenge in the present appeals.

10. The question that emerges for our consideration in the instant appeals is that what will be the effect and implementation of Section 14B of the Act 1952 and as to whether the breach of civil obligations or liabilities committed by the employer is a sine qua non for imposition of penalty/damages or the element of *mens rea* or *actus reus* is one of the essential elements has a role to play and the authority is under an obligation to examine the justification, if any, being tendered while passing the order imposing damages under the provisions of the Act 1952.

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 and Others v. Dharmendra Textile Processors and others (supra), 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 Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities."

9. This Court opines that the plea of the Petitioner that the delay in EPF remittances had not been intentional, but due to the circumstances beyond Petitioner's control does not hold ground since it is breach of a civil obligation which attracts "penalty" irrespective of the fact whether the contravention was made by the petitioner/defaulters with any "guilty intention" or not.

10. The Apex Court in the judgment dated 18.10.2013 in Arcot Textile Mills Ltd., vs. Regional Provident Fund, Commissioner & Others, reported in (2013) 16 SCC 1 and in particular, at paras 17, 21, and 29 observed as under :

"17. On a perusal of the aforesaid provision it is evident that an appeal to the tribunal lies in respect of certain action of the Central Government or order passed by the Central Government or any authority on certain provisions of the Act. We have scanned the anatomy of the said provisions before. On a studied scrutiny, it is quite vivid that though an appeal lies against recovery of damages under Section 14B of the Act, no appeal is provided for against imposition of interest as stipulated under Section 7Q. It is seemly to note here that Section

14B has been enacted to penalize the defaulting employers as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements but at the same time it is meant to provide compensation or redress to the beneficiaries, i.e., to recompense the employees for the loss sustained by them. The entire amount of damages awarded under Section 14B except for the amount relating to administrative charges is to be transferred to the Employees' Provident Fund.

21. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7-I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when

the authority chooses to pass an independent order under Section 7Q the same is not appealable.

29..... There is no cavil for the fact that it is social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty.....

11. The Hon'ble Supreme Court in the case of M/s Organo Chemicals and another Vs. Union of India, 55 FLR 283 has ruled that damages u/S 14-B of the Act are punitive in nature to act as a deterrent for defaulter employer.

12. In case of Organo Chemical Industries & Anr vs Union of India &Ors on 23 July, 1979(1979 AIR 1803, 1980 SCR (1) 61), Hon'ble Supreme Court, while explaining meaning of word damages under section 14B held as under:-

"....the essentials are (a) detriment to one by the wrong-doing of another (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law...

... The object and purpose of the section is to authorize the regional Provident Fund Commissioner to impose exemplary or punitive damages and thereby to prevent employers from making default...

...The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the Scheme would be damnified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralization of the miserable beneficiaries why they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers' share. "Damages" have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual."

13. Taking into consideration of the aforesaid facts and circumstances of the case and the view of the Apex Court in (1) The judgment dated 23.02.2022 in Horticulture Experiment Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organisation (Civil Appeal No.2136/2012) reported in (2022) 4 SCC 516 and (2) judgment dated 18.10.2013 of the Apex Court in Arcot

Textile Mills Ltd., vs. Regional Provident Fund, Commissioner & Others, reported in (2013) 16 SCC 1 (referred to and extracted above) and duly considering the averments made in the counter affidavit filed on behalf of the respondent in particular at paras VII to XI and duly considering the orders of this Court dated 20.02.2024, passed in I.A.No.2 of 2023 in W.P.No.4648 of 2023, the writ petition is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 15.04.2024

Note: L.R. copy to be marked

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