

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****W.P. No. 4664 of 2023****Between:**

M/s Indian Security Force

... 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?

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 4664 of 2023****% 15.04.2024****Between:**

M/s Indian Security Force

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&lt; 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. 4664 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 7Q of EPF and Miscellaneous Provisions Act 1952 and the subsequent order passed in EPF Appeal No 3 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 14B as well as Rs. 39,61,362/- towards interest U/s 7Q 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.3 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.39,61,632/- 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.39,61,632/-. Petitioner had filed copy of the order dated 04.08.2022 No.AP/HYD/2052725/PD-517/T-1/2022-23/325 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' reported in 2016 LLR 55.

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.39,61,632/- 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 respondent filed counter affidavit and in particular, paras XIII, XIV, XV, XVI, XVII, XVIII, XIX read as under :**

"XIII. It is respectfully submit that, the Hon'ble Delhi High Court in the decision in M/s Atlantic Engg. Services Vs Union of India, 1979 Lab. I.C 695 observed that "The damages are to be imposed. The word "imposed" is more akin to the imposition of penalty rather than the determination of damages as is done in a case under the contract or torts. The reason is that in section 14-B the default in payment itself is sufficient to enable the Government to recover damages from the employer without proof of loss since such loss to the fund must have been implied by the legislature when this provision was made. That may be the reason why the word "damages" instead of the word "penalty" was used in Section 14-B. It is for the legislature to give

meaning to the word "damages" as it may think fit. In the context of the scheme of the Act as a whole, the use of the word "damages" in section 14-B cannot be said to be in the same sense in which the word is used in the law of contract or torts.

XIV. Hence a notice was issued to the employer vide this office letter No. AP/HYD/2265544/000/Enf.517/Damages/231 dated 20.05.2022 duly advising the employer to appear for virtual inquiry under Section 14-B of the EPF & MP Act, 1952 on 09.06.2022.

XV. The Inquiry was adjourned from time to time on the request of the employer's representative, Sri G. Raju, HR Consultant. In order to meet the ends of natural justice, on 19.07.2022, a final adjournment/hearing was given to the employer's representative to represent their case on 26.07.2022. The inquiry was held on 26.07.2022. None appeared for the virtual inquiry nor any communication was received from the employer/establishment.

XVI. In view of ample number of opportunities been extended to the employer's representative, the inquiry was concluded, duly levying damages

under Section 14B and Interest under Section 70 of the Act at the rates specified in the Scheme.

XVII. The employer being aggrieved by the Orders dated 04.08.2022, appealed in the Central Government Industrial Tribunal cum Labour Court at Hyderabad and the interim order was delivered by the Hon'ble CGIT in this Appeal No.02 of 2023. The Hon'ble CGIT in its interim order dated 13.01.2023 has made the reference of the law laid down by the Hon'ble Apex Court in the matter of Horticulture Experiments Station Gonikoppal, Coorg Vs RPF (Civil Appeal no.2136 of 2012) that any default or delay in payment of EPF Contributions by the employer under the Act is sine qua non for imposition of levy of damages under Section 14 B of the EPF & MP Act, 1952 & mens rea or actus reus is not essential element for imposing penalty/damages for breach of civil obligation/liabilities.

XVIII. The Hon'ble CGIT therein has brought in stay in operation of order dated 04.08.2022, subject to the following conditions: The appellant shall remit 20% of amount of impugned order imposed under Section 14B within four weeks from the date of order and he shall also submit proof of remittance on record.

XIX. 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 07.04.2023. It is to submit that, the establishment failed to comply with the conditions laid by the Hon'ble CGIT. Aggrieved by the above conditions laid, the establishment has approached the Hon'ble High Court of Telangana and filed the Writ Petition against the 7Q Order dated 04.08.2022 and also against the interim order dated 13.01.2023 given by the Hon'ble CGIT in Appeal no.2 of 2023."

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.48,67,502/- and also an amount of Rs.39,61,632/- towards interest and in total an amount of Rs.88,29,134/-. 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.39,61,632/- 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.48,67,502/-. Accordingly the Respondent Authority passed orders directing the Petitioner to pay an amount of Rs.88,29,134/- 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.3/2023 aggrieved by the order dated 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 dated 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.39,61,632/- 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.9,73,900/- out of Rs.48,67,502/- towards damages in addition to the interest amount of Rs.39,61,632/-. 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 in 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."

**7.0 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 in Section 7-A provided that the Tribunal may, for reasons to be recorded in writing, waive or educe 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 14B 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 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."

**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 moneys 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 7I. 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. 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 also the averments made in the counter affidavit filed by the respondent in particular, paras XIII, XIV, XV, XVI, XVII, XVIII AND XIX (referred to and extracted above), 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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