

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 / EPFA / 01 /2024

Between:

M/s. Shivnagar Vidya Prasarak Mandals Institute,

Malegaon (BK), Tal: Baramati,

Dist: Pune.

- APPELLANT

V/s.

1) The Regional Provident Fund Commissioner-II,

EPFO, 2nd & 3rd Pune Cantonment Board Building,

Near Golibar Maidan,

Camp, Pune- 411001.

- RESPONDENT NO. 1

2) Central Board of Trustees (CBT),

through Central Provident Fund Commissioner, EPFO,

Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place,

New Delhi.

- RESPONDENT NO. 2

JUDGMENT

(Delivered on 03-09-2024)

M/s. Shivnagar Vidya Prasarak Mandals Institute, Malegaon (BK) / Appellant has challenged the legality and propriety of the order dated 20-10-2023 passed by the RPFC-II Pune/ respondent, in present appeal u/s. 7-I of The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for-short "the EPF Act").

2. The appellant is an educational institute providing education to the poor students in rural areas at concessional fees and providing scholarship funds, educational loans and financial aid to the needy students, to promote education in rural areas. The institute depends upon the scholarship funds received from Social Welfare Department, Pune. The appellant added that, on summons dated 01.06.2022, the Authority of the respondent initiated enquiry in respect of damages for the period from November 2019 to November 2021 on the basis of delayed payment of contribution and passed an order on 20.10.2023 U/S. 14-B of the EPF Act the same is under challenge in the present appeal.

The appellant further added that, delay occurred due to financial crises and Pandemic situation created by Covid-19 Virus, still the Authority of the respondent imposed damages at the maximum rate prescribed under the scheme. The Authority ought to have considered the facts and circumstances like loss suffered by beneficiaries. The delay was not willful and there was no Mens-rea. The order under appeal is non-speaking order. In fact as per the settled position of Law, adequate and intelligent reasons must be given for Judicial decisions. The respondent failed to consider the various aspects including reasons for such as delay in paying contribution failed to disclose the reason and the circumstances which were beyond control as such the order under appeal is illegal, improper against the principles of natural Justice thus prayed for setting aside the order

dated 20.10.2023 passed u/s. 14-B of the EPF Act with equitable relief.

3. The respondent no. 1 resisted the appeal by counter reply and denied all the contentions of the appellant in appeal memo in totality and ultimately prayed for dismissal of appeal.

None present for the respondent no. 2.

Heard Mr. Borkar Advocate for the appellant

and Mrs. Humne Advocate for the respondent.

4. The following points arise for my determination my findings and reasons to them are as below-

POINTS

FINDINGS

- | | |
|--|----------------|
| 1) whether the order under appeal suffers from illegality? | -Yes. |
| 2) Whether the appellant is entitled for relief as prayed? | - Yes, Partly. |

REASONS

5. **POINT NO. 1-** After carefully scanning the oral submissions of the parties in the light of the copy of order under appeal, it reveals that, the Provident Fund contribution in respect of employee employed by the appellant was delayed during the period mentioned in the order, therefore the respondent ordered penal damages from 01.04.2020 to 31.05.2022 for the wage month from November 2019 to November 2021 amounting to Rs. 59,25,385/-.

6. It has sufficiently come on record before the Authority that, the appellant is an educational institute providing education to the poor students in rural areas and mainly depends on scholarship funds received from the Social Welfare Department Pune. It was specific case of the appellant before the Authority that, the institute cannot sustain totally on its own funds, they submitted scholarship bills on regular basis as per norms stated by the respective Government Departments, however the funds were received beyond unreasonable period which caused delay in the payment of salary of the employees of the establishment.

7. It reveals that, the appellant submitted reply before the Authority on 22.12.2022 & 19.01.2023, and this fact was brought to the notice of the Authority, in which it was mentioned that, the salary of the employees was mainly depends on the scholarship Grants received from the Government and in absence of Grants the appellant was not in a position to pay salaries of their employees during that period and this fact was beyond control of the appellant however this fact was not considered by the Authority however except mention about replies in the order, there is no discussion on the points raised by the appellant in their reply nor reasons for not considering the same, as such it will be difficult to say that there is any application of mind by the Authority as such the order under appeal can be termed as non-speaking order.

8. Furthermore it also seems that, the period of delayed payment was from 01.04.2020 to 31.05.2022 and

undisputedly this period was of Covid-Pendamic and the appellant has specifically pointed out in reply about the same and it was well aware that, during that period the Central Government announced Lock-Down in India from 24.03.2020 and it was in existence during May 2020 to July 2020. Admittedly during that period, the school and colleges remained closed as such it can be believed that, there was no collection of fees from the students and due to that there was delay in receiving Grants which resulted delay in paying salaries of employees and the payment of contribution of Provident Funds to the respondent.

9. True it is that, the exemption of 03 months was given due to Covid-19 period, while calculating the damages, however other facts such as delay in receiving the Grants from the Government due to Covid was not considered in the order under appeal as such the ground raised by the appellant in the enquiry was not only about financial crises but the circumstances was beyond the control of the appellant institution. This fact was well supported by the report of Chartered Accountant also but there is no whisper in the order about the same, as such the order under appeal also seems to be perverse as not based on material available before the enquiry.

From the above discussion it is clear that, the authority failed to consider the above discussed factors while passing the order. Similarly while passing the order in respect of damages, the Authority has levied the maximum damages mentioned in the Act. In fact in the light of these points raised

on behalf of the appellant and the reason for delay was not only because of financial recession or about financial ground but the delay was due to reasons which were beyond the control of the appellant in such circumstances it was expected from the Authority to take lenient view however the Authority failed to take lenient view while assessing damages by using discretion.

10. Mr. Borkar has put his reliance on the various decisions mentioned below-

1. Employees' State Insurance corporation V/s. HMT Ltd. & Anr. on 11 January, 2008.
2. Popular Saw Mills V/s. Regional Provident Fund Commissioner on 25 January, 1995.
3. M/s. Kranti Shanthi Garments Pvt. Ltd. V/s. Regional Provident Fund Commissioner on 25 October, 2002.
4. Regional P.F. Commissioner V/s. Taylor Instrument Co. (India) Ltd. On 17 July, 1992.

11. On careful perusal of these decisions it seems that, it has been appreciated that, the statute itself does not say that, the penalty has to be levied only in the manner prescribed. It is not the case where the Authority is left with no discretion. The legislation does not provide that, the adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion.

While imposing the damages, the Court has to take consideration of various aspects including the reasons for delay and assessment must be made after proper application of mind and must not be arbitrary and non-specific order shall also be regarded and bad order of levying damages.

The explanation or excuse for such delay good or bad, will be relevant for the purpose of recovery and assessment of damages varying from 100% to nil. The RPFC is given discretion only to reduce a percentage of damages.

12. Needless to say that in the light of these observations coupled with legal position discussed about it is clear that, the Authority has to passed speaking order and considering the reason for delay, the Authority was competent to use discretion while accessing the damages however without using the same the Authority levied maximum damages as such the order under appeal certainly suffers from illegality, hence I answer this point in affirmative.

13. **POINT NO. 2-** Once it is established that, the order under appeal suffers from illegality therefore it is certainly liable to be quashed and set aside.

Moreover even otherwise also as per EPF Act, the employer needs to pay damages for the delayed payment or Provident Fund contribution therefore considering the facts and circumstances of the matter in the light of reasons which were beyond control as per discretion, which was not used by Authority it will be just to direct the appellant to pay 20% amount or accessed damages to the opponent and

it will be in accordance with the law also, hence I answer this point partly affirmative.

In the result, I proceed to pass the following order-

ORDER

1. The order of damages dated 20.10.2023 passed u/s. 14-B of the EPF Act by the respondent is quash & set aside.
2. The appellant is directed to pay 20% of amount accessed in the order to the respondent within a period of Eight Weeks from the date of this order.
3. Both the parties bear their own cost.

Sd/-

Date: 03-09-2024

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai

