

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice Ananda Kumar Mukherjee (Retd.),
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 02 of 2021

Mining – Allied Machinery Enterprise, Sanctoria. Appellant.

Vs.

Regional Provident Fund Commissioner - II, Durgapur. Respondent.

O R D E R

Dated: 22nd June, 2023

Mr. Soumitra Sengupta, learned advocate for the Appellant.

Mrs. Mousumi Ganguli, learned advocate for the Respondent.

1. The appellant establishment has preferred this appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) being aggrieved and dissatisfied with the impugned order dated 20.01.2021 passed by the respondent under Section 14-B of the EPF Act. In gist, the fact of the case leading to this appeal is that, the appellant is admittedly covered under the EPF Act and have been allotted with EPF code WB/DGP/0042568. The establishment made belated remittance of Provident Fund and allied dues for the period from 02.05.2017 to 31.08.2019. The Provident Fund authority issued summons dated 16.09.2019 to the

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appellant for appearance and hearing under Section 14-B of the EPF Act and for payment of interest under Section 7-Q of the EPF Act, fixing 01.10.2019 for appearance. The respondent assessed damages of Rs.3,54,312/- (Rupees three lakh fifty-four thousand three hundred and twelve only) payable by the appellant under Section 14-B of the EPF Act and quantified the interest payable under Section 7-Q of the EPF Act as Rs.1,73,109/- (Rupees one lakh seventy-three thousand one hundred and nine only). The amount was required to be paid within fifteen days from receipt of the Notice. Learned advocate for the appellant establishment appeared on 17.12.2020 and sought for adjournment. On 20.01.2020 a Demand Draft bearing No. 382008 dated 26.12.2019 for Rs.1,73,109/- was deposited by the appellant before the respondent for payment of interest under Section 7-Q of the EPF Act.

2. The appellant has preferred this appeal on 06.02.2021 i.e. within the period of limitation set out in Rule 7(2) of The Tribunal (Procedure) Rules, 1997. It is urged that the respondent did not provide any basis for calculation of damages nor has he shown the details of calculation by which damages have been assessed. The damages register maintained by the office of the respondent has not been produced as such the appellant cannot be fastened with the liability of payment of damages. It is contended that the respondent failed to consider the words “may recover” damages under Paragraph - 32A of the Employees’ Provident Fund Scheme, 1952 (hereinafter referred to as EPF Scheme) without exercising any discretion. According to the appellant mens rea and actus reus of the employer in not remitting the contribution is a determinative factor in imposing damages under Section 14-B of the EPF Act. Relying upon the decision of the Hon’ble Supreme Court of India in the case of **The Assistant Provident Fund Commissioner, EPFO and Another vs. The Management of RSL Textile India Pvt. Ltd. [(2017) 3 SCC 110]**, it is argued that imposition of damages under Section 14-B of the EPF Act is not an inflexible rule. Learned advocate for the appellant rested his argument on absence of mens rea of the employer in

delayed remittance and that at the relevant time the financial condition of the appellant establishment was not good and the same was not considered by the respondent authority. It is argued that the respondent had imposed the damages in a mechanical manner and the respondent is not authorized to levy damages at the rate of 37% from the employer. In their Memorandum of Appeal the appellant has prayed for quashing and setting aside the impugned order and to pass such order which may be deemed fit and proper.

3. Though the appeal has been preferred against order of the Regional Provident Fund Commissioner, S.R.O. Durgapur, the reply has been filed by the Assistant Provident Fund Commissioner, Durgapur without impleading himself as Respondent. It is demonstrated that the statutory provisions of the EPF Act apply to the employees working in any establishment engaging twenty or more persons on any day. It provides for compulsory deduction of Provident Fund from employees and a contribution from the employer which is deposited in the workers account in the office of the Employees' Provident Fund Organization. It is contended by of the respondent that after the appellant establishment came under purview of the EPF Act, any delayed remittance would attract levy of damages under Section 14-B of the EPF Act. It is urged that after expiry of the date for deposit of dues, the employer is liable to pay the damages under Section 14-B of the EPF Act and any failure to make such contribution within the stipulated period under Paragraph – 38 of the EPF Scheme would make the employer liable to pay the damages under Section 14-B of the EPF Act.

4. The respondent urged that mens rea of the employer in making delayed payment does not have any bearing on assessment of damages. It is contended that the employer establishment did not raise any plea before the respondent at the time of hearing under Section 14-B that the establishment was facing any financial stringency. Learned advocate for the respondent relied upon a decision of the Hon'ble Supreme Court of India in the case of **Horticulture Experiment Station Gonikoppal, Coorg vs. the Regional Provident Fund Organization**

[(2022) 4 SCC 516], and contended that taking note of the judgement in the case of the **Union of India and Others vs. Dharmendra Textile Processors and Others [(2008) 13 SCC 369]** the Hon'ble court has laid down 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 EPF Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”

Learned advocate for the respondent argued that the impugned order suffers from no illegality and the appeal is liable to be dismissed.

5. The points for consideration before us is whether the impugned order under Section 14-B of the EPF Act suffers from any illegality or impropriety, calling for any interference.

6. The two main aspects on which learned advocate for the appellant advanced his argument is that at the time of assessing damages under Section 14-B the respondent authority did not take into consideration the financial difficulty though with the establishment was passing and for which the delay was caused in depositing Provident Fund dues. The second aspect of his argument is that there was no intentional delay caused in remitting the Provident Fund dues in respect of its employees. It is argued that without having mens rea the appellant establishment should not have been penalized for payment of Rs.3,54,312/- as damages.

7. Having considered the impugned order dated 20.01.2021 passed against the appellant assessing damages of Rs.3,54,312/- (Rupees three lakh fifty-four thousand three hundred and twelve only), Notice dated 16.09.2019, Memorandum of Appeal and reply, it appears to me that advance notice was given to the appellant establishment for appearing before the respondent

authority on 01.10.2019 for hearing. There is no qualm over the period of delay for depositing the dues. At the time of argument learned advocate for the appellant submitted that the delay in remittance of Provident Fund dues was due to some financial stringencies faced by the appellant establishment at the relevant time. On traversing the impugned order, I find that no such contention was raised by the learned advocate at the time of hearing before the respondent. No representation was made before the respondent authority that the establishment was facing financial difficulties. The appellant has failed to demonstrate that any statement of account was placed before the respondent authority to establish that due to financial compulsion the company had failed to deposit the Provident Fund dues within the stipulated period laid down in the Paragraph – 38(1) of the EPF Scheme. The second limb of the argument is that the appellant had no mens rea in respect of delay in the payment of Provident Fund dues. Therefore, the respondent authority has acted arbitrarily in imposing penalty in the form of damages. Per-contra argument of learned advocate for the respondent is that mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities. It is vehemently argued that mere contravention of the provision of the Act or default in making compliance of the mandate of law as regards the civil liabilities are concerned, mens rea or actus reus is not the requirement of law to be considered, while imposing damages. In the case of **Horticulture Experiment Station Gonikoppal, Coorg vs. the Regional Provident Fund Organization [(2022) 4 SCC 516]**, the Hon'ble Supreme Court of India noted that it is the delinquency of the defaulter itself which establishes his blameworthy conduct without further proof of existence of mens rea. The judgment in **Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and Another, [(2007) 6 SCC 329]** was overruled by the Hon'ble Supreme Court in the decision of **Union of India and Others v. Dharmendra Textile Processors and others [(2008) 13 SCC 369]**, wherein the Hon'ble Supreme Court held :

“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.”

Applying the extant principles of law, I hold that the existence of mens rea cannot be a guide for the imposition of damages in the event of breach of civil liabilities. The delayed payment of Provident Fund and allied dues were in respect of period from 02.05.2017 to 31.08.2019. The rate of damages applied for the assessment has been laid down in the Notice under Paragraph - 32A of the EPF Scheme i.e. between 5% to 25%. The respondent authority therefore did not commit any error or illegality by imposing damages against the appellant after giving reasonable opportunity of hearing.

8. In my considered view I find no illegality in the impugned order whereby damages of Rs.3,54,312/- has been imposed against the appellant. The amount assessed as interest under Section 7-Q of the EPF Act has already been deposited by the appellant. Under such facts and circumstances, I find no merit in the appeal and the same stands dismissed.

Hence,

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that the appeal under Section 7-I of the EPF Act is dismissed on contest. The impugned order dated 20.01.2021 passed by the respondent authority is affirmed. All pending applications stand disposed of. The appellant is directed to deposit the damages in favour of the Fund within fifteen days from communication of this order. In default, the Provident Fund authority shall be entitled to recover the same. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.