

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

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

EPFA NO. 02 OF 2024

M/s.Mihijam Vanaspati Limited, Jamtara**Appellant**
Vs.

(i) Central Board of Trustees under EPF&MP Act **Respondent No. 1**
(ii) Assistant Provident Fund Commissioner, Deoghar**Respondent No. 2**

O R D E R

Dated 31st July, 2025

Mr. D. K. Verma, and
Mr. Mukteshwar Prasad, learned advocates for the Appellant
Smt. Mousumi Ganguli, learned advocate for the Respondent

1. Appellant preferred this appeal under section 7-I of Employees' Provident Funds and Miscellaneous Act, 1952 (hereinafter referred as EPF Act) against the impugned order dated 15/02/2024 passed under section 14-B of the EPF Act levying damages of Rs. 6,09,542 against the respondent for delayed payment of Provident Fund dues in respect of its employees for the period from 01/07/2022 to 14/09/2023 and an interest of Rs. 4,33,488 under section 7-Q of the Act passed by the Respondent No. 2.

2. A brief profile of the appellant case as disclosed in the Memo of Appeal is

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that the appellant establishment is covered under EPF Act and a PF code No. JH/10544 is allotted to it. A Notice dated 21/09/2023 was issued to the appellant establishment disclosing that under provisions of Section 6, 6-A and 6-C of the Act to be read with Para 38 of Employees' Provident Funds scheme 1952 (hereinafter referred as EPF scheme), 3 of Employees Pension Scheme, 1995 and 8(1) of Employees Deposit Linked Insurance Scheme 1976, the employer of the establishment is required to remit the contributions along with the administrative charges within fifteen days of the close of every month and having defaulted in making such contribution, the Provident Fund Commissioner is required to recover such damages. It was further disclosed in the Notice that during scrutiny of the records maintained by the respondent office it was found that certain payments were made after the respective due dates during the period from 01/07/2022 to 14/09/2023 and total amount of damages including interest was assessed as Rs. 10,43,030. Date of hearing was fixed on 20/10/2023. The appellant submitted representation before the Provident Funds authority on 15/12/2023 which has been produced as Annexure-2 to the Memo of Appeal. After considering the case of appellant, the Provident Funds authority passed an impugned order levying damages and interest against the establishment. According to the appellant order dated 15/02/2024 was not served upon him and the same was communicated through e-mail on 23/04/2024. The appeal was preferred on 25/06/2024 i.e. within the statutory period.

3. In the Memo of Appeal it is contended that the appellant had no liability and Notice has been issued claiming damages after lapse of three years. The appellant inter alia contended that there was no arrears of dues on the date of issuance of Notice and as per Section 14-B of the EPF Act, the central Provident Fund Commissioner or such other officer as may be authorized on their behalf

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cannot recover by way of penalty from the employer any damages if there is no amount of arrear on the date of Notice. It is the case of the appellant that the establishment suffered huge financial loss from the year 2012 to 2018 amounting to Rs. 19,44,05,628. Further case is that fire broke out in the establishment on 10/01/2014 which was published in the Newspaper 'Prabhat Khabar'. The appellant on receiving demand Notice dated 09/04/2024 came to know that the respondent No. 2 passed an order under sections 14-B and 7-Q of the Act. On submitting petition before the Respondent No. 2 to the effect that copy of order dated 15/02/2024 was not served, they communicated the same through e-mail dated 23/04/2024. According to the appellant, the impugned order passed by the Respondent No. 2 is not tenable as no reasonable opportunity was granted to the appellant and the same is illegal and liable to be set aside.

4. Grounds of Appeal as disclosed in paragraph seven (7) of the Memo of Appeal, in short is that the respondent is authorized only to recover damages and it is not vested with power to levy damages. It is claimed that Notice issued for assessing damages is illegal and submission made by the appellant establishment was not considered by the Respondent authority before passing the impugned order. It is contended that respondent has not considered the representation dated 15/12/2023 filed by the appellant mentioning that all outstanding dues have already been paid before issuance of Notice and the appellant establishment was not a defaulter. It is their case that alleged dues for the period from 08/2013 to 04/2019 is time barred and could not be recovered under section 14-B of the Act, furthermore the enquiry proceeding was conducted by the respondent in violation of the principle of Natural Justice and no reasoned order has been passed as mandated in the decision of **Organo Chemical Industries Vs. Union of India (1979) 4 SCC 573**. It urged that mens

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rea is an essential element for levying penal damages but the respondent authority on relying upon the judgment in the case of **Horticulture Experiment Station Vs. Provident Fund Organisation (2022) 4 SCC 516** held that mens rea is not an essential element. It is asserted that the respondent failed to pass a speaking order and that there was non-application of mind while passing the order. The appellant has prayed for setting aside the impugned order as illegal and arbitrary.

5. The RPFC-II, EPFO Regional Office, Ranchi filed reply on behalf of the respondent. According to the respondent, contribution towards Provident Fund is required to be deposited by the employer by the fifteenth day of the following month. It is the case of respondent that after the establishment was brought under the purview of EPF&MP Act, 1952, any delayed remittance would attract a levy of damages under section 14-B of the Act. It is contended that deposits made after due date provided in the Act would make the employer liable for payment of damages. The sum and substance of the reply is that the respondent passed a reasoned order and provided ample opportunity to the establishment to file their representation. It is claimed that the Tribunal has no jurisdiction to entertain the appeal against the impugned order passed under section 7-Q of the Act. After issuance of Notice dated 21/09/2023 under section 14-B of the Act several hearings were held on various dates and the representatives of the appellant establishment participated in the same. After considering all facts and circumstances, the impugned order has been passed levying damages and an interest for delayed remittance. The respondent claimed that there is no merit in the appeal and the same is liable to be dismissed.

Point for consideration in this appeal is whether the impugned order suffers from any illegality, calling for interference.

6. Mr. D. K. Verma, learned advocate appearing for the appellant argued that the appellant establishment had no mens rea in delayed remittance of Provident Fund dues for its employees. It is claimed that there was an incident of fire in the establishment of the appellant on 10/01/2014, resulting in huge loss to the establishment as a result some delay occurred in paying Provident Funds amount within time. The employer establishment however, has deposited the amount due under provisions of Section 6, 6A and 6C of the EPF Act and there was no arrear of Provident Funds dues on the date the Notice was issued by the establishment on 21/09/2023. Mr. Verma argued that the Respondent No. 2 has issued Notice for delayed payment of Provident Funds dues for the period from 01/07/2022 to 14/09/2023 and a proceeding was initiated after lapse of three years. In course of hearing of the appeal, Mr. Verma produced several documents like copy of FIR dated 10/01/2014 regarding the incident of fire, lodged before Mihijam Police Station, copy of police report, audit report, income tax returns (ITR) for the Assessment Year- 2013-2014 to 2018-19 of Mihijam Vanaspati Limited, claim of loss due to fire against the policy issued by Future Generali India Insurance Company Limited and document of Future Generali India Insurance Company Limited showing assured loss of Rs. 7,50,00,000 and amount paid to the insured appellant establishment, amounting to Rs. 7,12,32,068. Ld. Advocate for the appellant submitted that the Provident Funds authority assessed damages under section 14-B of the EPF Act without taking into consideration the loss sustained by it and prayed for waiver of damages assessed against the appellant as per impugned order passed under section 14-B of the Act. In support of his argument, ld. Advocate relied upon the decision in the case of **Assistant Provident Fund Commissioner Vs. Salem Textiles Limited, 2025 LLR 349**, wherein the Madras High Court held that mens rea or willfulness is not an essential ingredient in invoking section 14-B and levying damages and further held that the appellate Tribunal did not exceed its jurisdiction or that there was any statutory bar in reducing damages to 17% of

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damages originally levied. Reliance was also placed upon the decision of Hon'ble High Court of Kerala where in a case of **M/s. Kerala State Cashew Development Corporation Ltd. Vs. RPFC, EPFO (WP(C) No. 23180 of 2021)**, the Hon'ble Court on going through the financial crisis the petitioner was undergoing at the material time and other mitigating circumstances reduced the damages by Rs. 2,12,631. The appellant cited another case between **RPFC, EPFO and M/s. Bilaspur Spinning Mills and Industries Ltd. (WPL No. 177 of 2013)**, wherein the Hon'ble High Court of Chhattisgarh, Bilaspur held that "*the authority while passing the impugned order has not taken into consideration the relevant circumstances namely number of defaults, the period of delay, frequency of default and the amount involved, before imposing damages to the extent of 100%. The learned Tribunal has also recorded the finding that the petitioner while imposing huge penalty damages has not exercised its discretions, viz a viz the actual reason for delay in remittance of provident fund dues, as such, the orders suffer from reasons and the circumstances in which the default in remittance of provident fund dues occurred, has restricted the damages to the tune of 15% only.*"

7. Smt. Mousumi Ganguli, learned advocate appearing for the respondent authority in reply argued that the appellant establishment is admittedly covered under EPF Act. It is undisputed that the employer establishment delayed in depositing Provident Fund contributions in respect of its employees beyond the stipulated period, within fifteen days of the following month under para 38 of EPF scheme. Due to delay in remittance of Provident Fund dues from 01/07/2022 to 14/09/2023 a Notice dated 21/09/2023 was issued to M/s. Mihijam Vanaspati Limited at Mihijam directing the establishment to show cause within 20/10/2023, by appearing in person or through the authorized representatives to explain such default or produce documents to show that payments were made within time. A proceeding was initiated and the respondent

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authority after providing opportunity to the appellant to participate in the enquiry passed an order dated 15/02/2024 where damages were assessed as Rs. 6,09,542. Ld. Advocate argued that order passed under section 7-Q of the Act assessing an interest of Rs. 4,33,488 is not an appealable order. It is inter alia argued that at the time of hearing before the Provident Fund authority, the appellant establishment did not substantiate any incident of fire, causing loss to the establishment. It is submitted that the appellant for the first time raised the issue of financial loss due to fire at the time of preferring this appeal without elucidating the same. It is contended that such ground cannot be entertained at this stage and the appellant establishment is required to deposit the entire amount assessed towards damages and interest. Ld. Advocate for the respondent argued that on the date of computation of damages under section 14-B of the Act it is not necessary that there should be outstanding arrears of Provident Fund dues. Ld. Advocate relied upon the decision of **Apex Public School Vs. Central Board of Trustees, EPF Organisation [W.P. (C) 2313/2011]**. Regarding the appellant's argument that in absence of mens rea, 100% damages cannot be assessed, it is submitted that mens rea is not a necessary element for determining damages against the employer establishment, it can serve only as a mitigating factor. Ld. Advocate to fortify the argument of the appellant relied upon the decision of **Horticulture Experiment Station, Gonikoppal, Coorg Vs. the Regional Provident Fund Organisation [(2022) 4 SCC 516]** where it was held that it is not necessary for the Provident Fund Organisation to consider mens rea of the employer for imposing damages for breach. Ld. Advocate for the respondent argued that fair opportunity was given to the appellant establishment but it failed to establish that it was suffering from financial loss at the relevant time or that it has been declared a sick industry under BIFR. It is argued that the appeal preferred is without merit and the same is liable to be dismissed.

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8. I have considered the argument advanced by the learned advocates for the appellant and respondent and also considered the Memo of Appeal, reply filed thereto and the impugned order. There is no doubt that the appellant establishment is covered under EPF Act, 1952 and EPF code has been allotted to the establishment bearing No. JH/10544. Provident Fund Department had issued a Notice to the appellant establishment on 21/09/2023 in respect of delayed remittance during the period from 01/07/2022 to 14/09/2023. It is stated in the summons that certain payments have been made after the due date and total damages for the belated payment was assessed as Rs. 6,09,542 and an interest under section 7-Q as Rs. 4,33,488. Instant appeal has been preferred against the impugned order dated 15/02/2024 passed under sections 14-B and 7-Q of the Act. I find from the impugned order that though a composite Notice for payment of damages and interest was issued, order dated 15/02/2024 is only in respect of damages under section 14-B assessed as Rs. 6,09,542. Appellant did not produce any copy of order passed under section 7-Q of the Act. In the Memo of Appeal it is stated that the appeal preferred is against order dated 15/02/2024 passed under sections 14-B and 7-Q of the Act but the same does not transpire from the impugned order that it is a composite order under sections 14-B and 7-Q of the Act. Law regarding the appeal against order under section 14-B and 7-Q is settled in the case of **Arcot Textile Mills Limited. Vs. RPFC and Others [(2013) 16 SCC 1]** where the Hon'ble Supreme Court held that order under section 7-Q of the EPF Act, when passed along with an order under section 7-A of the EPF Act or any other appealable order under section 7-I of the EPF Act, for example an order under section 14-B would be appealable under section 7-I of the Act. Be that as it may, in this impugned order, section 7-Q of the Act does not figure, therefore same cannot be considered specially because the appellant did not mention particulars of the order by appending a copy of order passed under section 7-Q.

9. Next point for consideration is whether the existence of mens rea is necessary for giving rise to a liability under Section 14-B of the Act. In this context it would be appropriate to refer to the decision of Hon'ble Supreme Court is a case of **Horticulture Experiment Station Gonikoppal, Coorg Vs. the Regional Provident Fund Organisation [(2022) 4 SCC 516]** where the Supreme Court in a section 14-B proceeding observed that it is the delinquency of the defaulter itself which establishes his blameworthy conduct without further proof of existence of mens rea. The law laid down in the above judgment is the guiding principle and holds good in the instant case. Therefore, I am of the considered view that it is immaterial if the appellant establishment had any mens rea or willfulness in committing default and delay in payment of Provident Fund dues. Fact remains that there was a breach of the statutory provisions, giving rise to liability of the employer establishment for payment of damages and interest on delayed remittance.

10. Mr. Verma, Ld. Advocate for the appellant asserted that at the time of issuing Notice for damages and initiating under section 14-B proceeding, there was no "arrears" of dues therefore, section 14-B of the Act could not be attracted. Contention of the appellant can be set at rest by referring to the settled position of law, laid down in the case of **Apex Public School Vs. Central Board of Trustees, EPF Organisation [W.P. (C) 2313/2011]** wherein the Hon'ble High Court of Delhi held that *"It is thus not mandatory on the date of computation of damages under Section 14-B of the EPF Act that the provident fund dues must still be in "arrears". The expression used under section 14-B of the Act is "when an employer makes default in payment of any contribution to the Fund" and the requirement of arrears on the date of computation is not provided under the said section. In such a case, the court cannot include something which is not provided by law. Otherwise also, if the contention of the petitioner is permitted then in all cases the defaulter would make provident fund contributions after a delay and*

would claim that since on the day of notice under Section 14-B of the EPF Act no arrear were pending hence, he is not liable to damages. This would clearly have an effect of making the provisions of this section nugatory which cannot be permitted.” It therefore transpires that existence of arrears of Provident Fund dues is not necessary on the date of computation of damages for the purpose of attracting section 14-B of the Act. Therefore, this argument advanced by the learned advocate for the appellant cannot be accepted.

11. Thrust point of the appeal is that delay in remittance of Provident Fund dues was due to financial stringency, the appellant establishment was undergoing due to an incident of fire in the establishment on 10/01/2014. Learned advocate for the appellant relying upon several documents argued that the appellant suffered a huge financial loss due to the incident of fire but the respondent authority did not consider such fact before levying damages. Counter argument of the respondent’s advocate is that no such representation was made before the authority at the time of hearing as such there was no scope for the Provident Fund authority to consider such facts disclosed for the first time in the appeal. Let me now consider the arguments pitted against each other in the backdrop of the facts of the case. In the Memo of Appeal, the appellant stated that copy of representation dated 15/12/2023 (Annexure-2) was filed before the authority. On a perusal of Annexure-2 it appears that representation addressed to the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Regional Office, Bhavishya Nidhi Bhawan, Hinoo, Ranchi was submitted by the Director of M/s. Mihijam Vanaspati Ltd. The grounds disclosed in the representation are that there was no arrear on the date of issuance of summon/Notice in connection with certain period from 08/2013 to 14/09/2023. It was further disclosed that the establishment suffered huge financial loss

amounting to Rs. 19,44,05,628 from the year 2012 to 2018. There was an incident of fire on 10/01/2014 which was reported in the Newspaper 'Prabhat Khabar'. Further contention is that claim in respect of default from 08/2013 to 04/2019 was barred by limitation. The appellant establishment thereafter referred to various case decisions and denied its liability to pay damages and interests. In the matter of Provident Fund dues there is no period of limitation for raising the claim. In this context it would be appropriate to cite the decision of Hon'ble Supreme Court of India in a case of **Hindustan Times Limited Vs. Union of India and Others [(1998) 2 SCC 242]**, wherein it was held that the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. Therefore, it can safely be held that claim of the appellant that alleged dues for the period from 08/2013 to 04/2019 is barred by limitation for the action under section 14-B is not tenable.

12. Let us now consider the impugned order passed by the Assistant Provident Fund Commissioner dated 15/02/2024. In the said order it is clearly stated that summon/Notice was issued under section 14-B of the Act and demand order dated 21/09/2023 was issued under section 7-Q of EPF Act along with statement of belated remittance. The establishment failed to appear on 18/10/2023, 07/11/2023 and 19/12/2023, the dates fixed for hearing. Sh. Suchit Kumar Verma, Manager of the establishment appeared and represented it on 03/01/2024 and submitted that penalty may be waived as the financial condition of the establishment is not very sound. Mr. Verma reiterated the same on 07/02/2024. It is stated that no representation was received from the establishment and after considering all materials, the Provident Fund authority has imposed penalty for delay in depositing Provident Fund dues. On a clear reading of the impugned order, I find that it is only in relation to the imposition of damages under section 14-B of the Act and the amount assessed as interest

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has not been mentioned. It is strange to find that the order has been mechanically passed and it is evident that while passing the order one sentence has been repeated in toto, in a mechanical manner. Under such facts and circumstances, I hold that the impugned order is not wholly tenable and requires some modification. I find that the last paragraph, in page two (2) of the order and the last paragraph in page three (3) of the order are same and identical. This fact indicates that the concerned authority did not apply his mind to the fact and circumstances of this case in a proper manner. It is simply mentioned in the impugned order that Mr. Suchit Kumar Verma, representative of the establishment had prayed for waiver of damages on the ground of financial condition. In reply to the Memo of Appeal, the respondent did not deny that Annexure-2 dated 15/12/2023 was not submitted before the Provident Fund authority. Notice to show cause dated 21/09/2023 was issued by the Provident Fund authority from their address at Employees' Provident Fund Organisation, Bhavishya Nidhi Bhawan, Hinoo, Ranchi, Jharkhand and the representation of the appellant dated 15/12/2023 was also addressed to the authority at Hinoo, Ranchi but in the impugned order, it is mentioned in the contrary that no representation was received from the establishment even when the representative of the establishment appeared on 03/01/2024 and 07/02/2024. In course of hearing of the appeal several documents were produced by the appellant establishment in support of their claim that the appellant establishment was under a financial constraint resulting in delay in payment of Provident Fund dues. From several documents it appears that fire occurred in the establishment of Mihijam Vanaspati Ltd. on 10/01/2014 and the appellant raised an insurance claim before the Future Generali India Insurance Company Limited. Loss was assessed as Rs. 7,50,00,000 and insurance company made a payment of Rs. 7,12,32,068 on 09/08/2014 i.e. within a period of seven months from the occurrence of financial loss sustained by the company and the loss was covered and compensated within a short span of time. However, Provident Fund authority should have taken this fact into consideration and provided

opportunity to the appellant establishment to place relevant matter instead of taking a decision or imposing 100% of damages as per rates provided in sliding table of the paragraph 32A of the EPF scheme. It is true that the appellant establishment was not a sick industry nor did it claim any waiver of damages on such grounds. Learned Advocate for the appellant in support of their claim for reducing the damages under section 14-B, relied upon the decision in the case of **The Assistant Provident Fund Commissioner Vs. Salem Textiles Limited [2025 LLR 349]**, Hon'ble Madras High Court held that there cannot be any distinction between a declared sick industry and a company which is otherwise sick on account of financial difficulty, in respect of 100% waiver of damages and further held that the Tribunal has jurisdiction to reduce damages originally levied. Placing reliance upon the facts of the case and the decisions relied upon, I am of the considered view that this is an appropriate case where the appellant establishment, which suffered financial set back and loss due to an incident of fire in the establishment and recovered from loss on being compensated after seven months, certainly faced a financial crisis for seven months. Under such circumstances, I find it essential, just and appropriate to reduce the quantum of damages imposed on the appellant by fifteen percent (15%) of the assessed amount. The appellant establishment after being compensated should have paid the Provident Fund dues in time in which they failed. Therefore, the appellant is not entitled to full waiver. The appellant establishment therefore shall have benefit of waiver of fifteen percent (15%) of damages assessed against them under section 14-B of the Act and the rest amount shall be paid in favour of the respondent No. 2 within one month from the date of communication of order. The impugned order is accordingly modified to such extent. The appeal is therefore allowed in part against the Respondent No. 2 on contest and ex-parte against the Respondent No. I. The damages imposed against the appellant establishment by order dated 15/02/2024 under section 14-B of the Act is waived to the extent of fifteen percent (15%) of the assessed damages of Rs.

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6,09,542. The Impugned Order is accordingly modified. The appellant is directed to deposit the balance amount in favour of the respondent No. 2 within one month from the date of communication of order in default, respondent can levy the same.

Hence,

ORDERED

that the appeal is allowed in part against the Respondent No. 2 on contest and ex-parte against the Respondent No. I. The damages imposed against the appellant establishment by order dated 15/02/2024 under section 14-B of the Act is waived to the extent of fifteen percent (15%) of the assessed damages of Rs. 6,09,542. The impugned order is accordingly modified. The appellant is directed to deposit the rest amount in favour of the respondent No. 2 within one month from the date of communication of order. Let copies of the order be communicated to parties under Rule 20 of the Tribunal (Procedures) Rules, 1997.

Sd/-

(Ananda Kumar Mukherjee)
Presiding Officer
CGIT-cum-LC, Asansol