

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

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

EPFA No. 03 of 2016
[ATA 783(15) of 2016]

Bharat Sanchar Nigam Limited, Asansol Appellant.

Vs.

Assistant Provident Fund Commissioner, Durgapur Respondent.

O R D E R

Dated: 15.03.2024

Mr. Rajib Mukherjee, Advocate.

Ms. Shreyasi Bhaduri, Advocate.

..... for the Appellant.

Mrs. Mousumi Ganguli, Advocate.

..... for the Respondent.

1. This appeal has been preferred under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) challenging the impugned order dated 08.06.2016 passed by the respondent under Section 14-B of the EPF Act for recovery of damages of Rs. 1,20,82,173/- (Rupees one crore twenty lakh eighty-two thousand one hundred and seventy-three only and interest of Rs. 4,24,001/- (Rupees four lakh twenty-four thousand and one only) under Section 7-Q of the Act.

(Contd. Page – 2)

2. In gist, the fact of the case leading to this appeal is that the appellant, a unit of Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL), a Government of India enterprise and a registered company under Companies Act, 1956, is functioning under the Department of Telecommunications, Ministry of Communications, Government of India. It was established on 01.10.2000. The employees of the Department of Telecommunications were absorbed by the appellant. Prior to 01.10.2000 the employees of the Department of Telecommunications were covered by the scheme of General Provident Fund (GPF) and even after absorption they are covered under the same scheme and not under the EPF Act. The employees were also entitled to pensionary benefits same as Central Government employees which would be paid by the Department of Telecommunications.

3. On the basis of a complaint made by BSNL Casual Mazdoor Union, Burdwan District Committee, Asansol before the Respondent regarding non-extension of Provident Fund benefits to the casual worker w.e.f. 01.10.2000, a proceeding under Section 7-A of the EPF Act was initiated against the appellant which was duly contested and an order was passed by the respondent on 27.07.2015 assessing dues of Rs. 1,20,75,407/- (Rupees one crore twenty lakh seventy-five thousand four hundred and seven only) on account of non-remittance of Provident Fund, Pension Fund, Insurance Fund and Administrative Charges for the casual and other workers for the period from 10/2000 to 01/2011. In addition to such sum the respondent also determined the component of interest under Section 7-Q of the EPF Act amounting to Rs. 1,10,47,989/- (Rupees one crore ten lakh forty-seven thousand nine hundred eighty-nine only) and directed the appellant to pay interest under Section 7-Q from the date of passing of order till the actual date of remittance of dues. The appellant deposited the assessed dues amounting to Rs. 2,31,23,396/- (Rupees two crore thirty-one lakh twenty-three thousand three hundred ninety-six only)

with the respondent vide Demand Draft dated 31.07.2015. Despite deposit of entire Provident Fund dues, the respondent issued fresh Summons on 30.10.2015 claiming damages under Section 14-B of the EPF Act for the period from 10/2000 to 06/2014 and additional interest under Section 7-Q of the EPF Act. It is contended that though there was no outstanding arrear in respect of the Provident Fund, the respondent proposed to impose damages against appellant to the tune of Rs. 3,34,37,138/- (Rupees three crore thirty-four lakh thirty-seven thousand one hundred and thirty-eight only). The calculation sheet enclosed with the Summons indicates that even before considering the explanation regarding delayed payment by the appellant, respondent had made up his mind to levy damages at the prescribed rate under Paragraph – 32A of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the EPF Scheme).

4. It is the case of the appellant that in course of hearing under Section 14-B on 19.04.2016, the respondent took into account the amount of Rs. 1,10,47,989/- deposited by the establishment on 04.08.2015 for the period from 10/2000 to 01/2011 and recalculated the dues under Section 14-B and 7-Q of the EPF Act. It is urged that though there were no outstanding arrears payable by the appellant on the date of Summons, the respondent by the impugned order dated 08.06.2016 directed the appellant to pay damages of Rs. 1,20,82,173/- under Section 14-B and an interest of Rs. 4,24,001/- under Section 7-Q for belated remittance.

5. The specific case of the appellant is that the proceeding under Section 14-B and 7-Q of the EPF Act could not have been initiated in the absence of any recoverable arrear on the date of commencement of the proceeding. Learned advocate for the appellant relying upon a decision of the Hon'ble High Court of Delhi in the case of **Hi-Tech Vocational Training Centre Vs. Assistant Provident Fund Commissioner [2011 LLR 231]**, urged that the proceeding for

imposition of penalty could be initiated only if there are arrears and then, maximum damages equal to arrears could be recovered. Referring to the aforesaid decision it was urged that since there were no arrears of Employees' Provident Fund and allied dues against the appellant on 30.10.2015, no damages or interest could have been levied against the appellant.

6. Second limb of the appellant's case is that the impugned order is ex-facie, illegal, arbitrary as no reason has been set out for arriving at such conclusion. It is claimed that the appellant already deposited the dues assessed for the period from 10/2000 to 01/2011. It is the further case of the appellant that respondent did not take into consideration the amounts deposited and the impugned order in respect of the same period i.e. from 10/2000 to 01/2011 is illegal, arbitrary and without any foundation. Even for the period from 01/2011 to 06/2014, there was no delay on the part of the appellant in depositing the EPF and allied charges and no proceeding under Section 7-A was initiated therefore, and no amount could be levied under Section 14-B and 7-Q of the EPF Act.

7. The appellant referring to the ratio of the decision of the Hon'ble Supreme Court of India in the case of **Employees' State Insurance Corporation Vs. HMT Ltd. and Another [(2008) 3 SCC 35]**, urged that the statute itself does not provide that the penalty has to be levied only in the manner prescribed or that the respondent is left with no discretion for the purpose of levying of penalty and that imposition of penalty is not mandatory. The appellant vehemently urged that the impugned order is not a reasoned or speaking order and cannot be sustained under the given facts and circumstances. According to the appellant there was no mens rea on the part of the appellant for delayed remittance. Accordingly, the appellant prayed for setting aside the impugned order.

8. Respondent contested the case by filing a written objection. The contrary

case of the respondent is that there is no requirement of any existing arrear on the date of initiation of proceeding under Section 14-B of the EPF Act. It is contended that when the Provident Fund dues are not paid in accordance with Paragraph 38 of the EPF Scheme it would amount to default and the employer establishment is liable for payment of damages under Section 14-B of the EPF Act. Respondent claimed that the impugned order is a speaking order and has been passed after application of mind and by providing opportunity to the petitioner to submit their reply. The contrary case of the respondent is that on 19.04.2016 the authorized representative of the appellant establishment appeared and verified the calculation sheets for the period from 10/2000 to 01/2011. After adjustment of 7-A and 7-Q amount for the period from 10/2000 to 01/2011, recalculations were made and no objection was raised by the respondent of the establishment regarding the assessed dues. It is urged that the appeal is devoid of merit and the same is liable to be dismissed.

9. The moot question of consideration before this Tribunal is whether the impugned order is tenable under the facts and circumstances and the law involved or the same calls for any interference.

10. Learned advocate for the appellant advancing his arguments, inter-alia submitted that the respondent had initiated a proceeding under Section 7-A against the appellant establishment for the period from 01.10.2000 to 31.01.2011 and by order dated 27.05.2015 held that the appellant failed to remit Employees' Provident Fund and allied dues in respect of the contractual employees of their establishment amounting to Rs. 1,20,75,407/- under Section 7-A of the EPF Act and an amount of interest of Rs. 1,10,47,989/- under Section 7-Q of the EPF Act. Direction was given to make payment within fifteen days from the date of passing of the order with a further direction that the establishment will be liable to pay interest under Section 7-Q from the date of

passing of the order till the actual date of remittance of dues. Learned advocate for the appellant with reference to the above proceeding argued that the appellant deposited the entire dues through Demand Draft on 31.07.2015 and the present proceeding under Section 14-B and 7-Q of the EPF Act for the period from 10/2000 to 06/2014 by Summons dated 30.10.2015 is not maintainable. It is vehemently argued that since there was no payable arrear on the date when the Show Cause Notice was issued to the appellant, the proceeding could not have been commenced even if there was delay in payment. In support of his argument Mr. Rajib Mukherjee, learned advocate relied upon a decision of the Hon'ble High Court of Delhi in the case of **Hi-Tech Vocational Training Centre Vs. Assistant Provident Fund Commissioner [2011 LLR 231]**, wherein it was held that mere default in payment or delay does not amounts to arrear.

11. In reply learned advocate for the respondent argued that the appellant by depositing the Provident Fund dues assessed under Section 7-A and 7-Q of the EPF Act has admitted its default in complying the provision of Paragraph 38 of the EPF Scheme where the employer is required to make the contribution of Provident Fund dues within fifteen days of the close of every month to the fund through internet banking. The employer is also responsible to forward a monthly abstract of such contribution to the commission within twenty-five days of the close of every month along with a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members. Learned advocate for the respondent argued that where an employer has defaulted in payment of any contribution to the fund, notwithstanding any belated contribution being made to the fund, the commissioner is empowered to initiate proceedings under Section 14-B of the EPF Act and it is not a precondition that there should be an outstanding due in respect of Provident Fund contribution for starting a 14-B proceeding. In support

of her argument learned advocate relied upon a decision of the Hon'ble High Court of Delhi in the case of **Ansal Housing and Construction Limited Vs. Regional Provident Fund Commissioner – II [W.P.(C) 6435/2011]**, which took into consideration a decision of the Hon'ble Division Bench of the Hon'ble High Court of Delhi in the case of **Assistant Provident Fund Commissioner Vs. Hi-Tech Vocational Training Centre [LPA 629/2011]** and observed that in the event the employer made default in payment of any contribution to the EPF, the Provident Fund Commission under Section 14-B of the EPF Act would have the power to recover damages and initiate proceeding under Section 14-B and there is no requirement of having an outstanding arrear for the purpose of initiating a proceeding for realizing damages.

12. Perused the Memorandum of Appeal, reply submitted by the respondent and the impugned order dated 18.06.2016 passed in a proceeding under Section 14-B and 7-Q of the EPF Act as well as the earlier order dated 27.05.2015 under Section 7-A of the EPF Act. Considered the argument advanced by the learned advocates for the rival parties. The admitted position in this appeal is that BSNL, Asansol failed to make Provident Fund contribution in respect of its casual mazdoor working for the establishment since 01.10.2000 till 01/2011, whereof a proceeding under Section 7-A of the EPF Act was initiated against the appellant establishment. An amount of Rs. 1,20,75,407/- was assessed as outstanding dues under Section 7-A of the EPF Act and Rs. 1,10,47,989/- was assessed as interest under Section 7-Q of the EPF Act. The amounts were paid in favour of the Regional Provident Fund Commissioner, Durgapur by Demand Draft dated 31.07.2015. The impugned proceeding under Section 14-B and 7-Q of the EPF Act stemmed out of the default committed by the appellant establishment and a Show Cause Notice dated 30.10.2015 was issued against the appellant establishment for the period from 10/2000 to 06/2014 accompanied by the calculation sheet laying a claim of Rs. 1,20,82,170/- as damages under Section

14-B of the EPF Act and Rs. 2,13,54,968/- as interest under Section 7-Q of the EPF Act, fixing 23.12.2015 for appearance and making payment of dues. It transpires from the averments made in the Memorandum of Appeal that the amount assessed under Section 7-A and 7-Q were already paid and there was no arrear as on the date of issuance of the Summons. Learned advocate for the appellant tried to make out his case that without identifying the unpaid amount (arrears) towards dues under Section 7-A of the EPF Act no proceeding under Section 14-B could commenced. In support of his argument learned advocate relied upon the case of **Hi-Tech Vocational Training Centre Vs. Assistant Provident Fund Commissioner [2011 LLR 231]**, wherein the Hon'ble High Court of Delhi held that:

“The proceedings for imposition of penalty thereunder can be initiated only if there are arrears and then, maximum damages of equal to arrears can be recovered. However, the proceedings cannot be commenced if there are no arrears on that date, even if there has been delay in payments.”

13. The contrary case of the respondent is that a proceeding under Section 14-B can be initiated whenever an employer makes any default in payment of contribution to the fund or delay in transfer of accumulation required to be transferred by him under sub-Section (2) of Section 15 of the EPF Act or sub-Section (5) of Section 17 of the EPF Act or in payment of charge payable under any other provision of the Act. It has been argued with emphasis that there is no pre-condition of having arrear for commencement of proceeding under Section 14-B of the EPF Act. To appreciate the arguments, it is worthwhile to consider the provisions of Section 14-B of the EPF Act which lays down:

“Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-Section (2) of Section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other

provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.”

The word “may” in this Section indicates that the discretion has been vested in the respondent commission. It enables the respondent to impose or not to impose damages. The expression “not exceeding the amount of arrears” suggests that the section prescribe maximum rate of leviable damages at 100% of the arrears and that the provisions are subject to the scheme of paragraph 32 of the EPF Scheme. Therefore, it is essential that the respondent authority should pass a reasoned order and not simply impose such damages to deter the employee from repeating violation of rules. The provision of Section 14-B of the EPF Act has to be read together with the provisions of Paragraph 32A of the EPF Scheme which lays down that rate of recovery of damages for default in payment of contribution. There is no embargo upon the Central Provident Fund Commissioner or other authorized officers to recover damages by way of penalty from the employee under Section 14-B of the EPF Act if it is established that the employer has made default in the payment of contribution to the fund. The term “arrears” has been used in Section 14-B of the EPF Act only for the purpose of laying down the

maximum limit of damages which could be recovered. In the case of **Ansal Housing and Construction Limited Vs. Regional Provident Fund Commissioner – II [W.P.(C) 6435/2011]**, relied on by the respondent, it would appear that the Hon'ble High Court of Delhi in a later decision in the year 2019 noted that the Hon'ble Division Bench of the High Court of Delhi in the case of **Assistant Provident Fund Commissioner Vs. Hi-Tech Vocational Training Centre in LPA 629/2011**, had set aside the findings of the learned Single Judge of the Hon'ble High Court in the case of **Hi-Tech Vocational Training Centre Vs. Assistant Provident Fund Commissioner [2011 LLR 231]** which had earlier laid down that if the proceedings under Section 14-B of the EPF Act were initiated and if on that date, the arrears in making contribution to the fund had been deposited, the order of the EPF Authorities could not survive. It has been observed by the Hon'ble Division Bench that a proceeding under Section 14-B of the EPF Act is triggered if the employer make default in payment of contribution to the fund, notwithstanding belated contribution being made to the fund, the Commissioner is empowered to initiate a proceeding under Section 14-B of the EPF Act. Furthermore, 14-B of the EPF Act is not worded, where an employer continues to be in default in the payment of any contribution to the fund. It is a well settled principle that there need not be any arrear in respect of Provident Fund contribution for the purpose of starting a proceeding under Section 14-B of the EPF Act. Placing reliance upon a decision of the Hon'ble High Court of Delhi in the case of **Ansal Housing and Construction Limited (supra.)**, I am unable to accept the argument advanced by the learned advocate of the appellant. In my considered view the proceeding under Section 14-B of the EPF Act is maintainable against the appellant establishment for their default in payment of their Provident Fund contribution which was made only in July 2015.

14. Another pertinent point for consideration is whether the impugned order is a speaking and sufficiently reasoned order. Learned advocate for the appellant

has argued that the impugned order is ex-facie, illegal, arbitrary, and non-reasoned. It is argued that the order is bereft of any discussion as to why maximum penalty has been imposed despite the fact that the outstanding dues, that is amount assessed under Section 7-A and 7-Q of the EPF Act were already deposited in favour of the respondent. Learned advocate inter-alia argued that the appellant establishment is a non-profiting body and there was no intention on the part of the appellant to make delayed payment. It is urged that the respondent did not exercise its discretion for the purpose of imposing the damages which was pre-determined and intimated to the appellant at the time of issuance of Show Cause Notice. Learned advocate argued that the respondent failed to exercise its quasi-judicial function by imposing maximum damages without disclosing any reason and by not passing any speaking order and failing to take into consideration various factors regarding period of delay, amount involved, and number of defaults. In course of his argument learned advocate emphatically referred to the provision of Section 14-B of the EPF Act which laid down that the Central Provident Fund Commissioner or such other officers “may recover”, which connotes that the Provident Fund Commissioner has discretion and whenever any discretion has been exercised, reason require to be suggested as to why the discretion has been exercised in such manner. In support of such argument learned advocate for the appellant relied upon the ratio of the decisions of the Hon’ble Supreme Court of India in the case of **M/s. Hindustan Times Limited Vs. Union of India & Others [AIR 1998 SC 688]**, wherein it was held that statute does not say that penalty has to be levied only in the manner prescribed. In the case of **M/s. Prestolite of India Limited Vs. The Regional Director and Another [AIR 1994 SC 521]**, wherein it was held by the Hon’ble High Court as follows :

“ Even if the regulations have prescribed general guidelines and the upper limits at which the imposition of damages can be made, it cannot be contended that in no case, the mitigating circumstances can be taken into consideration by the

adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the upper most limit of the table.”

Furthermore, reliance has been placed upon the decision of the Hon’ble Supreme Court of India in the case of **Organo Chemical Industries and Another Vs. Union of India and Others [1979 AIR SC 1803]**, and it is argued that the power to impose damages under Section 14-B of the EPF Act is a quasi-judicial function and it must be a speaking order after taking into consideration various factors, namely, the number of defaults, the period of delay, the frequency of defaults and the amounts involved.

15. To meet the argument regarding necessity of passing a reasoned order Learned advocate for the respondent urged that after issuance of Notice and providing reasonable opportunity to the appellant and after hearing the representative of the appellant establishment, assessment of damages and interest have been made but no dispute was raised by the appellant against the calculation made for recovery of damages. It is pointed out that mens rea or actus reus have no role in matters of statutory default. Learned advocate relying upon the decision of the Hon’ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organization [Civil Appeal Numbers. 2136 of 2012, 2121 of 2012, 2135 of 2012 and 2141 of 2012]**, submitted that once the default in payment of contribution is admitted, the damages as envisaged under Section 14-B of the EPF Act are consequential and the employer is under an obligation to pay the damages for delay in payment of contribution of EPF.

16. On a close examination of impugned order, I find that the same runs into three pages. The material portion of the order is in paragraph 5 and 6 of page 2, where it is stated as follows:

“ On 19.04.2016 Sri Prabal Pal Choudhury appeared on behalf of the

establishment and seen the recalculation sheet of 14B and 7Q for the 7A period 10/2000 to 01/2011. As the month 10/2000 shown in Annexure-A was actually for the 7A period 10/2000 to 01/2011, which was recalculated on month to month basis and after adjustment of 7Q amount Rs. 11047989/- deposited by the establishment on dated 04/08/2015, calculation of dues u/s 14B and 7Q done by the department. Further Sri Choudhury did not raise any objection regarding calculation sheet and the date of deposit, which was handed over to him by the department. On the basis of available records dues assessed u/s 14B and 7Q and the hearing concluded accordingly.

As such, I consider that the establishment has delayed in payment of statutory dues without any valid reason. Not only to cover the loss of interest caused to the fund required to be taken into account, but also to deter the employer from repeating violation of Rules, required to be levied so that in future dues are paid in time.”

17. At the outset, I hold that the element of mens rea or actus reus on the part of the appellant establishment has no role to play in a proceeding for determination of damages under Section 14-B of the EPF Act. It is a settled principle of law that as far as the penalty inflicted is a civil liability, mens rea or actus reus is not an essential element for imposing civil penalties. In the appeal under consideration, it is evident that several facts and circumstances like casual employees of the Department of Telecom, Government of India being absorbed under the appellant establishment from 01.10.2000, the amount of Provident Fund dues already assessed against and deposited by the appellant before initiation of this proceeding were not been considered and finds no reflection in the impugned order. The maximum rate of damages which may be imposed against the defaulting employer has been laid down in the Paragraph 32A of the EPF Scheme and Section 14-B of the EPF Act specifies that the authority “may recover” from the employer by way of penalty such damages, not

exceeding the amount of arrears, as may be specified in the Scheme. It is evident from the aforementioned portion of the order that the respondent authority did not state any reason as to why the appellant establishment was burdened with a maximum penalty and it did not spare any reason, why the mitigating circumstances were not taken into consideration. Thus, the impugned order is passed in a mechanical manner without exercise of its quasi-judicial function by the respondent.

18. I have considered the ratio of the decision of the Hon'ble Supreme Court of India in the case of **M/s. Hindustan Times Limited Vs. Union of India & Others [AIR 1998 SC 688]**, wherein the apex court observed that in spite of all these amendments, over a period of more than thirty years, the legislature did not think fit to make any provision prescribing a period of limitation. Therefore, it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not be suit, the provisions of the Indian Limitation Act, 1963 are not attracted. The decision cited by learned advocate for the appellant goes to suggest that a proceeding under Section 14-B of the EPF Act is not barred by limitation. The aforesaid decision relied upon by the learned advocate for the appellant to strengthen their case on the scope that the statute does not lay down that the penalty has to be levied in the manner prescribed, is not the subject matter of the referred decision, which speaks about non-applicability of law of limitation and such objection has never been raised by the appellant in their representation nor in their Memorandum of Appeal. The principle of law laid down in the decision counters the case of the appellant.

19. Reverting to the discussion regarding passing of reasoned order, in the case of **Siemens Engineering and Manufacturing Co. of India Limited Vs. Union of India and Another [1976 AIR SC 1785]**, the Hon'ble Supreme Court

of India held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The Hon'ble Judges laid down that :

"....every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basis as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law."

20. The Hon'ble Supreme Court of India while considering a perimetria provision of **Employees' State Insurance Corporation Vs. HMT Limited and Another (supra.)**, held :

" When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavour should be made to construe such penal provisions as discretionary, under the statute is held to be mandatory in character."

It was further held that existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof. In similarly circumstanced cases under the EPF Act the statute provided a discretionary jurisdiction to the authority for assessing the damages which can range to the maximum limit of 100% of arrears.

21. The Hon'ble Supreme Court of India in the case of **M/s. Prestolite of India Limited Vs. The Regional Director and Another [AIR 1994 SC 521]**, also held that :

" Even if the regulations have prescribed general guidelines and the upper limits at which the imposition of damages can be made, it cannot be contended that in

no case, the mitigating circumstances can be taken into consideration by the adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the upper most limit of the table.”

22. In the case of **Organo Chemical Industries and Another (supra.)**, the Hon'ble Supreme Court of India held that the power to impose damages under Section 14-B of the EPF Act is a quasi-judicial function and must be exercised after Notice to defaulter and after giving it reasonable opportunity of being heard and the order under Section 14-B of the EPF Act is must be a speaking order.

23. Learned advocate for the respondent argued that after calculation of dues under Section 14-B and 7-Q were done by the department, Mr. Prabal Pal Choudhury, the representative of the appellant establishment did not raise any objection regarding calculation sheet and the date of deposit. On the basis of such facts the respondent held that there was delay in payment of statutory dues without valid reasons. It is to be noted that the establishment submitted a representation on 16.03.2016 explaining the delay but there is nothing to indicate what reasons were assigned for the delay which were not found valid by the respondent authority, leading the Commissioner to impose the maximum damages without assigning any reason while exercising its discretion.

24. Though a reasoned decision is the essence and backbone of a quasi-judicial adjudication, it appears to me that the respondent authority did not pass any reasoned order in support of its claim against the appellant except with an object to deter the employer from repeating such violation. The respondent authority thereby has failed to exercise its jurisdiction while passing the impugned order. The impugned order is found silent about the manner in which jurisdiction was exercised and reasons for imposing the maximum damages against the appellant. Being fortified by the ratio of the decisions discussed above

and the facts involved, I hold that the impugned order is arbitrary, violative of natural justice for want of reasons, hence, not found tenable. The impugned order dated 08.06.2016 is therefore set aside. The matter is remanded back to the respondent for passing a fresh order after giving reasonable opportunity of hearing to the appellant and pass a reasoned order taking into consideration the attending facts and circumstances.

Hence,

ORDERED

that the appeal under Section 7-I of the EPF Act is allowed on contest. the impugned order dated 08.06.2016 passed by the respondent under Section 14-B and 7-Q of the EPF Act is set aside. The matter is remanded back to the respondent authority with a direction to pass a reasoned order afresh after providing opportunity of hearing to the appellant. The proceeding be completed preferably within a period of six (6) months from the date of communication of this order. 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.