

**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 2019**

<b>Life Insurance Corporation of India, Asansol</b>	..... Appellant.
Vs.	
<b>Assistant Provident Fund Commissioner, Durgapur</b>	..... Respondent.

**O R D E R**

**Dated: 26.09.2024**

Mr. Ashis Mukherjee, Advocate.	..... for the Appellant.
Mrs. Mousumi Ganguli, Advocate.	..... for the Respondent.

1. The appellant 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) challenging impugned order dated 16.09.2019 passed by the respondent in a proceeding under Section 14-B and 7-Q of the EPF Act. The respondent thereby levied damages of Rs. 1,86,86,399/- (Rupees one crore eighty-six lakh eighty-six thousand three hundred ninety-nine only) under Section 14-B of the EPF Act and interest of Rs. 1,30,24,314/- (Rupees one crore thirty lakh twenty-four thousand three hundred fourteen only) under Section 7-Q of the EPF Act for delayed remittance of Provident Fund dues by the appellant

for the period from 12/2007 to 12/2018. The respondent issued Demand Notice to the appellant on 16.09.2019 stating that Life Insurance Corporation of India (hereinafter referred to as LIC) is covered under the EPF Act bearing Provident Fund Code WB/DGP/1047715 and failed to pay Provident Fund contribution under Section 6 of the EPF Act, Employees' Family Pension Contribution under Section 6-A of the EPF Act, Administrative Charges, Employees Deposit Linked Insurance Contribution / Employees Deposit Linked Insurance Administrative Charges under Section 6-C of the EPF Act for the period from 12/2007 to 12/2018 within stipulated time. It is the case of the appellant establishment that respondent passed the impugned order ignoring the submissions made and document produced by the appellant establishment. It is asserted that LIC remitted the employees contribution from 04/2016 to 03/2019 to Employees' Provident Fund Organization, Durgapur. A Demand Notice dated 16.09.2019 was issued by the respondent for payment of interest of Rs. 1,30,24,314/- and damages of Rs. 1,86,86,399/-, total amounting to Rs. 3,17,10,713/- (Rupees three crore seventeen lakh ten thousand seven hundred thirteen only) for the period from 12/2007 to 12/2018. The appellant made employer's contribution as per the Provident Fund Rules at the rate of ten percent (10%) of the Basic Salary of Financial Service Executives (hereinafter referred to as FSEs). Since the employer contribution was twelve percent (12%) of the basic salary, as a special case additional two percent (2%) of contribution for FSEs were remitted. The appellant made contribution towards Provident Fund from 12/2007 to 03/2018 along with administrative charges along with Employees Deposit Linked Insurance and Administrative charges. From 04/2018 employer's contribution has been made at the rate of twelve percent per month. It is the case of the appellant establishment that actual payment of Rs. 2,81,38,321/- (Rupees two crore eighty-one lakh thirty-eight thousand three hundred twenty-one only) was made but in the impugned order the respondent has assessed damages of Rs. 3,17,10,713/- which was more than the contribution made. It is further case of

the appellant that the default on its part was not intentional and it has deposited the amount voluntarily without receiving any Notice from Employees' Provident Fund Organization. The appellant made payment of Rs. 2,81,38,321/- for the period from 12/2007 to 06/2018 and prayed for exempting it from payment of any interest and damages. Employer's contribution at the rate of ten percent was initially deposited from 12/2007 to 03/2016. The LIC extended coverage of Provident Fund to FSEs and remitted the entire Provident Fund contribution of FSEs from 12/2007 to 03/2016 in compliance with the order of the Hon'ble High Court of Kerala in Writ Petition No. 9608 of 2014. The appellant also deposited employer's and employees' contribution of Provident Fund of FSEs from 04/2016. After receipt of Notice LIC paid interest of Rs. 81,69,743/- for delayed remittance of Provident Fund dues and requested for waiver of damages but the same was not considered.

2. The appellant on the aforesaid grounds prayed for setting aside the impugned order passed by the respondent on 16.09.2019 and grant any relief as may be deemed fit and proper.

3. Respondent contested the appeal by filing reply on 30.03.2023. In gist, the objections raised by the respondent inter-alia are that the proceeding has been initiated against the appellant for belated payment of Provident Fund dues for the establishment for the period from 12/2017 to 12/2018 and that the respondent has no discretion to waive the interest and damages amount which is provided under Paragraph – 32B of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the EPF Scheme, 1952). It is further contended that the damages have been imposed considering the situation at the relevant time, after application of mind and keeping in view the due date for deposit and the period of delay in making contribution of Provident Fund and allied dues. It is the case of the respondent that no difference has been made out in respect of

intentional and unintentional default for the purpose of levying damages under Section 14-B of the EPF Act. It is asserted that the liability commences due to non-remittance of the Provident Fund dues within fifteen days of the following month as prescribed in the Paragraph 38 of the EPF Scheme, 1952. Referring to the 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]**, it is urged that the existence of mens rea or actus reus is not an essential element in deciding the liability in payment of damages under Section 14-B of the EPF Act. The respondent contended that under the Amended Act of 1988 an authority under Section 14-B is required to follow the sliding table in Paragraph 32-A of the EPF Scheme, 1952 by applying the rates of damages according to the periods specified therein. Citing a decision of the Hon'ble Supreme Court of India in the case of **Organo Chemicals Industries and Another Vs. Union of India and Others [1979 (4) SCC 573]**, it is urged that the object and purpose of imposing damages under Section 14-B of the EPF Act is to impose penalty on the employer for breach of statutory obligation and the penalty assessed under Section 14-B of the EPF is not only meant to penalize the defaulting employer but is also to provide reparation for the amount of loss suffered by the employees. It also serves as warning to employers in general not to commit a breach of the statutory requirements of Section 6 of the EPF Act. It is also meant to provide compensation or redress to the beneficiaries. The respondent contended that there is no substance in the appeal filed by the appellant and the same is liable to be dismissed with cost.

4. The point for consideration in this appeal is whether the impugned order dated 16.09.2019 passed by the respondent suffers from any illegality, calling for interference.

5. Mr. Ashis Mukherjee, learned advocate for the appellant argued that

though the Provident Fund authority in the impugned order has assessed damages and interest against the appellant for delayed remittance of Provident Fund dues for the period from 12/2007 to 12/2018, LIC, Asansol Division has voluntarily remitted Rs. 2,77,47,483/- (Rupees two crore seventy-seven lakh forty-seven thousand four hundred eighty-three only) for the period from 12/2007 to 02/2018 along with Rs. 3,90,808/- (Rupees three lakh ninety thousand eight hundred eight only) for the period from 03/2018 to 06/2018. It is further submitted that the appellant has remitted the entire employer's contribution towards Provident Fund in respect of FSEs from 12/2007 to 03/2016 and complied the order of the Hon'ble High Court of Kerala. The appellant also deposited the employer's and employees' contribution of FSEs from 04/2016 to 03/2019. Learned advocate submitted that there was no intentional delay on the part of the appellant establishment but the delay has crept up due to the pendency of Writ Petition No. 9608 of 2014 and Writ Appeal No. 1707 before the Hon'ble High Court of Kerala. It is vehemently argued that the entire Provident Fund dues have been deposited by the appellant and prayed for waiver of damages and interest assessed by the respondent authority in the impugned order.

6. Mrs. Mousumi Ganguli, learned advocate for the respondent argued that a Notice dated 11.04.2019 was issued to the appellant for levying of damages under Section 14-B and interest under Section 7-Q of the EPF Act and the proposed statement of damages and interest were also issued to the appellant, directing the appellant to appear before the Provident Fund authority on 08.05.2019. Learned advocate submitted that none appeared on the date and it was only on 13.05.2019 the respondent authority received a letter dated 02.05.2019 wherein it was stated that LIC has paid the entire employer's share of Provident Fund contribution of FSEs from 12/2007 to 03/2016 to comply the order of the Hon'ble High Court of Kerala and deposited the employer's and

employees' share of Provident Fund contribution of FSEs from 04/2016 to 03/2019. Learned advocate for the respondent augured that the appellant has made a decisive admission regarding delayed remittance of Provident Fund dues for the period from 12/2007 to 03/2016 only after the order was passed by the Hon'ble High Court of Kerala on 09.03.2015. It is asserted that merely by disputing a statutory obligation before a court of law, the appellant cannot be absolved of its liability, as such the respondent authority, in the impugned order, rightly held the appellant establishment is liable to pay damages under Section 14-B and interest under Section 7-Q of the Act and there is no reason to interfere with the impugned order.

7. Having considered the arguments advanced by learned advocates for both parties and the materials on record, I find that LIC, Asansol Division had delayed in making Provident Fund contribution in respect of its FSEs for the period from 12/2007 to 03/2016 after order passed by the Hon'ble High Court of Kerala in connection with Writ Petition No. 9608 of 2014. The statutory liability of payment of Provident Fund dues were therefore not fulfilled within 15<sup>th</sup> of the following month according to Paragraph – 38 of the EPF Scheme, 1952. Section 14-B of the EPF Act lays down that 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. It further provides that before levying and recovering such damages,

the employer shall be given a reasonable opportunity of being heard. The averment made by the appellant in their Memorandum of Appeal qualifies the fact that the employer made default in payment of contribution to the fund within time. A dispute may be raised in respect of the obligation created by the statute. However, the employer company cannot attribute their delay to the pendency of legal proceeding which has been raised at its instance and therefore would not be entitled to reap the benefit of such delay.

8. I have considered the impugned order passed by the respondent where it has taken into consideration the plea of the appellant that contribution towards FSEs were made in compliance with the order of the Hon'ble High Court of Kerela and there was no intention to delay the remittance. The respondent pointed out in the impugned order that in the written submission dated 22.09.2017 the appellant stated that they had filed a petition before this Tribunal for waiver of damages amounting to Rs. 1.66 Crores and also filed a Writ Petition vide W.P. No. 16174(W) of 2018 which was pending before the Hon'ble High Court at Calcutta. The respondent authority after considering the submission observed that the said case related to a prior period and it had nothing to do with the notice period for levy of damages and interest from 12/2007 to 12/2018. The respondent authority has also taken into consideration the issues related to absence of mens rea and the fact that the waiver can be made only under Section 32-B of the EPF Act and the statute did not vest the respondent with such jurisdiction.

9. Considering all these aspects I am of the view that the respondent authority committed no illegality in assessing the damages and interest against the appellant and the impugned order has been passed consistent with the provisions of law. Accordingly, there is no reason to interfere with the impugned order and the appeal is dismissed on contest without cost.

Hence,

**O R D E R E D**

that the appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 challenging the the impugned order dated 16.09.2019 is dismissed on contest. 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.