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. 04 of 2016
[ATA 821(15)2016]

Hindustan Cables Limited, Rupnarainpur Unit ..... Appellant.

Vs.

Regional Provident Fund Commissioner - II, Durgapur ..... Respondent.

O R D E R

Dated: 26.06.2025

Mr. P. K. Das, Adv.
Mr. Puspal Chakraborty, Adv.
Mr. Subhojit Das, Adv. ..... for the Appellant.

Mr. Ganesh Roy, Adv. ..... for the Respondent.

1. Instant appeal has been preferred by the appellant under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) assailing the impugned order dated 27.04.2016 passed by the respondent under Section 14-B of the EPF Act, assessing Rs. 5,51,71,344/- (Rupees five crore fifty-one lakh seventy-one thousand three hundred forty-four only) towards damages. Initially the appeal

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was preferred before the Employees' Provident Fund Appellate Tribunal, New Delhi on 30.08.2016 and the appeal was registered as ATA 821(15)2016. The appeal was subsequently transferred to this Central Government Industrial Tribunal -cum- Labour Court, Asansol for disposal. On receiving, the same the appeal has been registered as EPFA No. 04 of 2016.

2. Brief fact of the case giving rise to this appeal is that the appellant establishment is a Public Sector Unit under the Ministry of Heavy Industries, Government of India. A Provident Fund Code was allotted to the establishment bearing No. WB/1651 covering the employees under Employees' Provident Funds Scheme, 1952. The respondent authority issued a Notice to Show Cause to the appellant establishment bearing No. WB/DGP/0001651/000/Enf 502/Damages/10163(i) dated 09.12.2015 for delayed remittance of Provident Fund dues in respect of to its employees for the period from March, 2010 to March, 2015,

3. According to the appellant the Rupnarainpur Unit of Hindustan Cables Limited, within the district of Paschim Bardhaman, West Bengal is suffering acute financial crisis since 2003 and is not in a position to pay salary or statutory dues to its employees for months and no financial assistance has been received from the Government of India. The assets of the company showed negative balance during the year 1995-96 and it approached the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR) in the year 2002 and a case was registered bearing No. 505/2002. Further case of the appellant is that it was declared a Sick industry and the Government of India provided only salary / wages and other statutory liabilities to the employees through non-planned loan which was sanctioned from time to time. Since there was no production in the company, accordingly it had no internal resource to clear the dues. The appellant company accordingly had no control over the delay. After

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receiving financial support from the Government of India, the employer company the deposited employer and employee's contribution towards Provident Fund and additionally deposited interest under Section 7-Q of the EPF Act for delay. The appellant in their written representation dated 25.02.2016 informed the respondent authority that the appellant establishment was registered as a sick industry by BIFR. It is asserted that on receipt of funds from the Government of India, the appellant deposited the Provident Fund dues before the respondent authority but the damages calculated by the respondent are erroneous and excessive. It is contended that the appellant is not liable to deposit the damages and the impugned order dated 27.04.2016 is liable to be set aside.

4. The appeal has been preferred on the ground that the appellant is not responsible for failure to in depositing Provident Fund dues within time. In support of their claim appellant relied upon a case of **Employee's State Insurance Corporation Vs. HMT Limited and Another [2008 (1) LLJ 814]** and decision of the Hon'ble High Court of Madras in the case of **Terrace Estate unit of United Plantation Limited Vs. Assistant Provident Fund Commissioner, Coimbatore [2010 (12) FLR 367]**, where it was held that the existence of mens rea or actus reus to contravene the statutory provisions must be a necessary ingredient for levy of damages or the quantum thereof and in absence of mens rea no damages could be levied.

5. The appellant expressed its discontent with the impugned order on the ground that the respondent authority has not passed a reasoned and speaking order and it does not indicate at what rate the damages have been imposed. It is urged that the rate of damages provided in paragraph no. 32 of Employees' Provident Funds Scheme, 1952, cannot be imposed mechanically without considering the period and reason of default. In support of such contention the appellant relied upon the decision of the Hon'ble Supreme Court of India in the

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case of **Organo Chemical Industries and Another Vs. Union of India and Others [1979 AIR SC 1803]**, where in paragraph no. 38 it is observed that :

" Having regard to the punitive nature of the power exercisable under s. 14B and the consequences that ensue therefrom, an order under s. 14B must be a 'speaking order' containing the reasons in support of it."

It is urged that the impugned order is bad in law since the respondent has imposed damages along with interest. According to the appellant the power of the Regional Provident Fund Commissioner to impose damages under Section 14-B of the EPF Act is quasi-judicial and discretion to award damages needs to be exercised within the limits fixed by the statue. Further case of the appellant is that an order under Section 14-B of the EPF Act perceives that a speaking order is passed containing reasons in support of the same, though damages can go up to the extent of hundred percent (100%) laid down in the statute. The appellant therefore prayed for setting aside the impugned order under Section 14-B and 7-Q of the EPF Act or modifying the same under the mitigating circumstances disclosed in the Memorandum of Settlement.

6. Respondent contested the appeal by filing reply. It is contended that the appeal is liable to be dismissed since the appellant has admitted the delay in remitting the Provident Fund contribution. Respondent authority asserted that delayed remittance attracts levy of damages under Section 14-B and mere depositing of dues after lapse of specified time period does not absolve the employer of the liability to pay damages. It is claimed that before passing the impugned order under Section 14-B of the EPF Act, the Respondent Authority considered all the submission made by the appellant and the department and sufficient opportunities were provided to both the parties. In reply to the appellant's claim that existence of mens rea is an essential ingredient for imposing damages, respondent urged that Section 14-B of the EPF Act does not speak or differentiate between intentional or unintentional default and every defaulter attracts damages.

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7. In response to appellant's plea that it was suffering from financial crisis for a long period, the respondent contended that non-availability of fund or running in loss is not a valid reason for delaying Provident Fund remittance. Furthermore, when a composite order is passed the Tribunal cannot interfere with the quantum of interest determined under Section 7-Q of the EPF Act which stipulates the rate at twelve percent per annum. Respondent urged that the appellant had sufficient opportunity to remit the Provident Fund dues but delayed payment has fastened the liability for payment of damages under Section 14-B of the EPF Act as per the statute. The present appeal has no merit and the same is liable to be dismissed.

8. The point for consideration in this appeal is whether the impugned order dated 27.04.2016 suffers from any illegality, calling for interference.

9. Mr. Puspal Chakraborty, learned advocate for the appellant advanced his argument on two specific counts. At the outset it is submitted that the appellant establishment was declared a sick industry by BIFR in the year 2002 and a case was registered bearing Case No. 505/2002. It is admitted by the learned advocate that there had been delay in remitting Provident Fund dues for the period from March, 2010 to March, 2015 and a Show Cause Notice dated 09.12.2015 was issued to the establishment proposing levy of damages under Section 14-B of the EPF Act as per rates mentioned in paragraph no. 32-A of Employees' Provident Funds Scheme, 1952. Referring to the impugned order learned advocate submitted that representatives of the appellant establishment appeared before the Regional Provident Fund Commissioner – II, Durgapur on 12.01.2016 and submitted a request letter for allowing them two months' time for producing records. The respondent allowed six weeks' time to the establishment to submit their statement and documentary evidence by fixing the case on 25.02.2016. It is submitted that on 25.02.2016 the representative of the appellant

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establishment filed their written submission in respect of the order under Section 14-B and 7-Q of the EPF Act. Taking me through the written representation, said to be a reply against the Notice to show cause, learned advocate pointed out that the appellant had categorically stated before the Provident Fund authority that Hindustan Cables Limited, Rupnarainpur Unit has been registered as a sick company by BIFR in the year 2002 and since 2003 there is no production in the company as such disbursement of salary / wages and statutory dues had been paid with the financial assistance received from the controlling Ministry in the form of non-plan loan, approved by the Cabinet Committee on Economic Affairs, which got delayed by nine / ten months on an average. It is further argued that delayed remittance of statutory dues was not willful on their part and prayed for waiver and reconsideration of penal charges under Section 14-B of the EPF Act. Mr. Chakraborty, learned advocate argued that the Regional Provident Fund Commissioner – II did not take into consideration the fact that the appellant establishment was declared sick industry and could not be made liable for payment of damages due to delayed remittance of Provident Fund dues. It is urged that the impugned order is a non-speaking order passed without assigning any reason and is not sustainable. Learned advocate in support of its argument relied upon a decision of the Hon'ble High Court of Judicature at Allahabad in **State Project Director, UP Education for All Project Board and Others Vs. Saroj Maurya and Others [(2024) 8 SCR 733]**, where it was held that :

" *3. We are of the opinion that in the absence of any reasoning in the impugned judgment, the same cannot be sustained. In this regard, we are benefitted by the following observations made by this Court in CCT v. Shukla & Bros [(2010) 4 SCR 627 : (2010) 4 SCC 785] The relevant paragraphs of the judgment are extracted hereinbelow: -*

> ***"****……. 24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers*

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the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments / orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.

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> *27. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. [1974 ICR 120 (NIRC)] there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove." "*

Learned advocate on the basis of his argument advanced and relying upon the cited decision prayed for setting aside the impugned order.

10. Mr. Ganesh Roy, learned advocate for the respondent, in reply, argued that there is no dispute of the fact that the appellant has delayed in remittance of Provident Fund dues in respect of their employees for the period from March, 2010 to March, 2015. Section 14-B of the EPF Act mandates 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 authorized by the Central Government, by notification in

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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 is submitted that before levying and recovering such damages the employer has been given reasonable opportunity of being heard and the second proviso of Section 14-B of the EPF Act further provides 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.

11. Learned advocate further argued that in the present case reasonable opportunity of being heard was given to the appellant establishment by fixing specific dates and it is further asserted that the Regional Provident Fund Commissioner considered the materials submitted before it has passed a reasoned order which states that copies of challans and detailed statement submitted by the establishment were examined by the department for levy of damages under Section 14-B of the EPF Act. It has been observed that there was delay in payment of statutory dues without any valid reason accordingly to cover the loss of interest caused to the fund and to deter the employer from repeating such violation of rules in future had levied the damages. It is argued that simply by declaring an establishment as sick industry by BIFR cannot absolve the liability of the establishment from paying damages for delayed remittance. For the purpose reduction and waiver of damages by the Central Board a scheme framed under Sick Industrial Companies (Special Provisions) Act, 1985 should be sanctioned by the BIFR. In the instant case no such fact was disclosed by the appellant establishment in their representation as such there was no scope for the respondent authority to consider that the damages levied against the

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appellant establishment for delayed payment of Provident Fund dues was required to be waived on the plea that it was a sick industry since 2002. Learned advocate argued that reasons assigned are sufficient and the appeal is liable to be dismissed.

12. I have considered the arguments advanced by the learned advocates of the appellant and respondent in the light of the facts and circumstances and the provisions of law governing levy of damages under the EPF Act. The appellant establishment simply has stated that the appellant establishment was declared a sick unit by BIFR in November, 2002 and a case bearing No. 505/2002 was registered in this matter. In their written submission dated 25.02.2016 appellant tried to raise a plea that Hindustan Cables Limited was registered as a sick company at BIFR in November, 2002. No particulars have been submitted in support of such claim of being declared a sick industry. It is admitted in the Memorandum of Appeal of the appellant that they have delayed in making payment of Provident Fund dues for the period from March, 2010 to March, 2015. The provision of Section 14-B entails that the employer making default in payment of contribution to the fund is liable to pay damages as may be specified in the scheme. Paragraph 32-A of the scheme lays down the different rates of damages applicable which came into effect from 26.09.2008. In the Show Cause Notice the rates of damages have been mentioned as five percent (5%) to twenty-five percent (25%) and the calculation sheets have been annexed. In their written submission they did not raise any objection against the rate or quantum of damages calculated. Therefore, I find no incongruity in the findings of the respondent authority in the matter of levying of damages.

13. It is beneficial to consider the settled law relating to the procedure to be adopted in case of a Sick Industry. In the case of **M/s. Gowri Spinning Mills (P) Ltd. vs Assistant Provident Fund Commissioner and another (W.A. No. 173**

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of 2006), the Hon'ble High Court at Madras in paragraph no. 36 of the judgement held that:

" 36. ..... The levy of interest for delayed payment as well as the administrative charges are very much part of provident fund under the scheme framed under the EPF Act. As far as damages under Section 14-B is concerned, it would be open for a sick industrial company to request the authorities under the EPF Act, to postpone the determination of damages till the reference is finally decided by the BIFR and or the Appellate Authority, as the case may be. In case such a request is made, the concerned authority shall pass appropriate orders in the light of the provision of Section 14-B of the EPF Act. ....."

In the instant case the appellant company simply disclosed that it was declared as a sick industry by BIFR in November, 2002. However, no representation was made to postpone the determination of damages till pending reference was finally decided. It also appears that no scheme for revival was framed for waiver of damages, therefore, there was no reasons for the respondent authority to waive the damages in favour of the appellant.

14. In another case, **TTG Industries Limited vs Regional Provident Fund Commissioner and two others (W.A. No. 1577 of 2011)** the Hon'ble High Court at Madras in paragraph 19 held :

" *By the Amendment of 1988, the second proviso came to be inserted in Section 14-B as a result of which the Central Board constituted under Section 5A of the Act was empowered to reduce or waive damages 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 under the provisions of the S.I.C.A., 1985 subject to the terms and conditions of the scheme. In order to render the second proviso applicable, it is thus necessary that (i) the establishment must be of a Sick Industrial Company, (ii) that in respect of the Sick Industrial Company a scheme should have been*

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sanctioned by the B.I.F.R., under the S.I.C.A., 1985 for its rehabilitation and (iii) the reduction or waiver of damages would be subject to the terms and conditions as may be specified in the scheme framed under the S.I.C.A., 1985. Para 32 of the Employee's Provident Fund Scheme, 1952 expounds upon the second proviso to Section 14-B. Clause (b) of para 32-B postulates that the Central Board may allow a waiver of damages up to 100 per cent in cases where the B.I.F.R., for the reasons to be recorded in the scheme recommends such waiver. **"**

It is gathered from the settled law that under the provision of Section 14-B the Central Board has been empowered to reduce the quantum of damages that may be required to be paid under the same sub-Section. It has been emphasized that there has been no provision by which liability of Employer to pay the contribution of the Employer or contribution of the employee has been excused or exempted. Even in the case of a Sick Industrial Undertaking, the obligation of the Employer to deduct and pay the employee's contribution together with its own contribution continues.

15. Under the facts and circumstances of this case and in view of settled provision of law I have no hesitation to hold that the appellant establishment is liable to pay damages assessed by the respondent in the impugned order. In the instant appeal the impugned order has been challenged where only damages of Rs. 5,51,71,344/- has been levied against the employer establishment under Section 14-B of the EPF Act as per amended rates of damages in paragraph no. 32-A of Employees' Provident Funds Scheme, 1952. The said amount does not include any interest assessed under Section 7-Q of the EPF Act which is a separate entity and the rate is fixed at twelve percent (12%).

16. It is to be borne in mind that the appellant establishment in their grounds of appeal contended that the employer is not liable to pay damages unless it is proved that the mens rea existed in committing the default. In this context it

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would be rewarding to refer to 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]**, where it was 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 judgement is the guiding principle and holds good in the instant case. Therefore, I am of the considered view and hold that presence of intention or existence of mens rea for default on the part of the appellant establishment is not essential for the purpose of assessing damages against it. Levy of damages is sine qua non, once the employer has failed to deposit the contribution of EPF or committed default as mandated in the provisions of the EPF Act.

17. Learned advocate for the appellant relying upon a decision in the case of **State Project Director, UP Education for All Project Board and Others (Supra.)** argued that the impugned order was bereft of reason and the same is not sustainable under the law. Having considered the contents of the impugned order it appears to me that the Provident Fund authority had taken into consideration the essential factors, necessary for ascertaining the liability of the appellant establishment. There can be innumerable manner in which an order can be passed citing reasons but at the time of assessing acceptability and tenability of the order it is essential to consider whether the reason assigned, disclose a rational nexus between the material which are placed before it for consideration and the conclusion reached. In order to reach its conclusion involving liability of the appellant, the Provident Fund authority need to consider some essential factors which have been reflected in the impugned order, making the appellant liable for payment of damages. In the case of Kranti associates **Kranti Associates Private Limited and Another vs Masood Ahmed Khan and Others [(2010) 9 SCC 496]**, the Hon'ble Supreme Court of India observed that,

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the quasi-judicial forum for deciding lis between the parties, it was emphasized that there was necessity to give reasons by a body or authority in support of its decision and that reasons must reveal a rational nexus between materials which are considered and conclusion reached. In the instant case the reasons disclosed in the impugned order are appropriate and in accordance with the conclusion reached.

18. In the light of my forgoing discussion, I find and hold that in passing the impugned order the respondent authority considered relevant facts and had arrived at a logical conclusion, which is also consistent with the legal provision laid down in the law governing Employees' Provident Fund scheme. I therefore, find no illegality in the impugned order. The present appeal appears to have sustainable merit, the same is accordingly dismissed on contest. The appellant is directed to make payment of damages assessed against it within a month from communication of this order.

Hence,

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that the appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is dismissed on contest. Hindustan Cables Limited, Rupnarainpur Unit, the appellant is directed to deposit the damages assessed against it in the impugned order dated 27.04.2016 under Section 14-B of the EPF Act. 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.