CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 29/2022
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s. Ramkrishna Sharda Seva Ashram
(Registered as Public Trust No. 16 dt.20.2.2006
by Public Trust and
Sub Divisional Officer (Revenue) Jagdalpur)
(Registered under MP Societies
Registration Act of 1959,
No. 1959 dt. 16.01.1970)
PO Dharampura,
District Bastar (CG) - 494005

Through: its Secretary
Shri Swami Vimuktananda,
S/o. Shri Swami Vireswarananda (Guru)

Appellant

V/s

Regional Provident Fund Commissioner (II)
Office of the Employees Provident
Fund Organization,
Regional Office,
Block "D",
Scheme No. 32, I.G.V. Parisar,

Respondent

Shri Subodh Agrawal	:	**Learned Counsel for Appellant.**
Shri Jubin Prasad	:	**Learned Counsel for Respondents.**

JUDGMENT

(Passed on 14th day of July, 2026)

The present appeal is directed against two orders dated 22.04.2022, passed by the Respondent Authority under Section 7Q and 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act'). The Respondent Authority has recorded a finding in the two impugned orders that the Appellant Establishment has defaulted in deposit of PF dues of its employees for the period 01.05.2017 to 31.03.2021 and is thus liable to pay penal damages u/s 14B as well interest u/s 7Q, has assessed amount of penal damages under Section 14B at Rs. 80,85,020/- and amount of interest under Section 7Q of the Act at Rs. 4,29,868/- and has directed the Appellant Establishment to deposit the same.

Facts connected are mainly that, the Appellant Establishment is a registered trust under M.P. Societies Registration Act, runs a charitable Hospital in the name and style of Vivekanand Chikitsalaya Dharampura. It receives grant from the Government, issued by Tribal and Schedule Caste Development Department and also runs its activities including administration of the Hospital with this grant. The Government discontinued the grant from November, 2016. Hence, the Appellant Establishment was not in a position to pay the wages of its employees. They did inform about this state of affairs to the Respondent Authority and requested the Respondent Authority not to take any action against them in this respect. Copy of these communications is ***Annexure A-2 & A-3*** to the memo of Appeal. A Writ Petition was filed by the employees of the Appellant Establishment, who were not paid wages, because of lack of grant from Government, Hon'ble High Court issued direction vide its order dated 30.08.2018, to the Department to sanction grant for salary and it is after the Department sanctioned the grant, the Appellant Establishment could pay salary of its employees from November, 2016 to March, 2017 and from April, 2017 to 28.10.2017, i.e. total 12 months. The necessary PF contributions were also deposited between 16.07.2019 to 17.07.2019, deposit receipts (copy) are ***Annexure A-4*** to the memo of the Appeal.

It is further the case of the Appellant Establishment that, the Respondent Authority issued a show cause notice dated 06.09.2019, requiring the Appellant Establishment to explain as to why an enquiry under Section 7A of the Act not be initiated against them. The Appellant Establishment submitted a reply to this notice on 17.09.2019 (copy) as ***Annexure A-7*** to the memo of appeal. The Respondent Authority directed vide its communication dated 11.11.2020 (Copy) ***Annexure A-8*** to the memo of appeal, to deposit an amount of Rs. 8,87,045/- towards damages, the Appellant submitted their reply vide its letter dated 25.11.2020 ***(Annexure A-9)*** to the memo of appeal, explaining the reasons as stated above and requested the Respondent Authority to discharge the notice and the recovery of damages as well interest. The Respondent Authority again issued a show cause notice dated 07.12.2021, which was replied by the Appellant Establishment vide its reply dated 16.12.2021 (***Annexure A-10***) to the memo of Appeal, in which they stated that since they did not get grant from November, 2017 till date, hence they were not in a position to pay wages and deposit any PF dues and as well damages and interest. They sent a communication to the department of Tribal Welfare vide their communication dated 23.02.2022 and requested them to deposit the damages and interest with the Respondent Authority. This communication is ***Annexure A-12*** to the memo of appeal. The Respondent Authority without considering all the facts, passed two impugned orders and assessment hence this appeal.

Grounds of appeal have not been mentioned in the memo of appeal.

In their counter to the Appeal, the Respondent Authority has taken a case that, the Act is of social security legislation, it is applicable on establishment engaging 20 or more persons on any day, which do not have adopted any other PF scheme equally beneficial. The dues are to be deposited by the Employer, by the 15^{th} of the next month with respect to the employees who have worked in the establishment and has earned the wages. In failure to deposit the legitimate dues of the workers, the Authority initiates assessment and recovery proceeding under Section 7A, 8B and 8G of the Act. After deposit of principle amount, action is initiated for levy of interest under Section 7Q and 14B of the Act on the amount which was not paid within time recovered by the Appellant

Establishment. Since, it is a beneficial legislation, hence any provision capable of two interpretation, one favoring the beneficiary shall be accepted. It is further the case of Respondent Authority that, the Appeal against order under Section 7Q is not maintainable, as it is a separate order. Also that, the impugned finding under Section 14B of the Act as well Assessment has been recorded by the Respondent Authority after an enquiry, in which the Appellant Establishment participated. He never raised any objection during the enquiry. He was granted full opportunity to have his say. Hence, the impugned order is correct in law and fact and does not warrant any interference.

I have heard arguments of learned counsel for the Appellant Establishment Mr. Subodh Agrawal and Mr. Jubin Prasad, Learned Counsel for Respondent Authority. I have gone through the record as well.

On perusal of record in the light of rival arguments, following point comes up for determination –

1. ***Whether, the present appeal is maintainable against order under Section 7Q of the Act?***
2. ***Whether, the impugned finding of Respondent Authority with respect to default in deposit of Pf dues of its employees by the Appellant Establishment by way of late deposits of Pf dues as ell finding with regards to liability of the Appellant Establishment to pay penal damages under Section 14B of the Act as well assessment has been recorded correctly in law and fact?***

<u>Point for determination No.1-</u>

Section 7Q of the Act is being reproduced as follows –

7Q. Interest payable by the employer.—

The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of

interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

The Act does not provide any appeal against order under Section 7Q. The order under Section 7Q is a consequential order under Section 7(A) of the Act, which determines the responsibility to deposit PF dues till the order under Section 7(A) of the Act is binding on the parties, and consequential order regarding levy of interest for late deposits cannot be challenged. ***Hence, accepting the submissions from the side of Respondent Authority that, the appeal is not maintainable so far as it relates to impugned order under Section 7Q of the Act, the appeal against finding and assessment under Section 7Q of the Act is held not maintainable***. The Appellant Establishment, however, is at liberty to pursue remedy before proper forum in this respect.

Point for determination No.1 is answered accordingly.

<u>Point for determination No. 2 -</u>

Mr. Subodh Agrawal, Learned Counsel for the Appellant Establishment has submitted that, the conditions with respect to deposit of Pf dues were beyond the control of the Appellant Establishment as it receives and runs on the grants made available to it by the Government Department, which was discontinued. The budget was released by the Department for 12 months for the period from November, 2016 to 28.10.2017 under orders and direction of Hon'ble High Court dated 30.10.2018. The wages were paid to its employees for the period of 12 months as mentioned above, and their PF dues were also deposited for the same period. This mitigating factor was not considered by the Respondent Authority, hence he failed to exercise its jurisdiction according to law and acted mechanically in recording the finding as well the assessment. Learned Counsel has referred to ***Annexure 2 to 13*** to the memo of appeal in this respect, referred to above.

It has been submitted by the Learned Counsel for the Respondent Authority that this Act is a beneficial legislation, hence any provision, which is capable of two interpretations, the interpretation in favour of the beneficiary will be accepted. The Appellant Establishment is covered under the Act, hence it is under obligation to deposit PF dues of its employees within a period as provided under Para 38.1 of the Provident Fund and Pension Scheme, 1952 (in short the '*scheme*'). It failed to pay PF dues of its employees for the period 01.07.2017 to 31.03.2021, hence proceeding under Section 14B and 7Q of the Act were initiated, the department passes interest to the beneficiaries. The sole ground taken by the Appellant Establishment is late remittance to funds by the Government department, it cannot be said to deny ground of bad financial conditions of a Establishment is legal obligation, hence the impugned finding as well assessment are recorded correctly. They did not warrant nay interference.

Section 14B of the Act is being reproduced as follows –

14B. Power to recover damages.—

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 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 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 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.

Learned Counsel for the Respondent Authority has submitted that the Act is status for welfare of its employees hence any provision which may be capable of two interpretations, the one which favours the employee will be preferred. It is further submitted that in case of civil liability, *mens rea* looses its significance.

Para 32-A and Para 38 (1) of The Employees' Provident Fund (EPF) Scheme, 1952 (in short the ***Scheme***) are also being reproduced as follows-

"32A Recovery of damages for default in payment of any contribution

(1) Where an employer makes default in the payment of any contribution to the 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 of the Act or in the payment of any charges payable under any other provisions of the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such 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, damages at the rates given below: —

TABLE

S.No. (1)	Period of default (2)	Rates of Damages (percentage of arrears per annum) (3)
(a)	Less than two months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty-five

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

38 Mode of payment of contributions

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an

administrative charge of such percentage of the pay basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund electronic through internet banking of the State Bank of India or any other Nationalized Bank or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge."

Learned Counsel for the Appellant Establishment has further submitted that the opening words of section 14-B, show that imposition of damages is not mandatory rather it is discretionary and inspite of the principles of law laid down by ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability, the mitigating and aggravating circumstances with respect to late deposit were required to consider by the Respondent Authority by not considering these factors, the Respondent Authority has committed error in law in recording the finding and assessment.

As regards, impugned finding and assessment with respect to order under section 14-B of the Act, Learned Counsel for the Appellant Establishment has referred to judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., (2022), SCC Online CHH 635,*** in this case, the Single Bench of Hon'ble High Court of Chhattishgarh has after considering the legal effect of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, and Judgment of ***Hon'ble High Court of Kerala in the case of Regional Provident Fund Commissioner v/s Bake 'N' Joy Hot Bakery & Anr., (2024) SCC online Ker 11,*** in this respect, in these two cases the order of this Tribunal reduced the amount of damages was upheld.

In another judgment ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221,*** following principles of law have been laid down with respect to 14-B after considering the judgment of ***Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516,*** relevant paragraphs are being reproduced as under:-

19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."

In other judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is

held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-

"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :

(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of seizable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial

operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum.

Thus, in light of judgments, it is established that this Tribunal as well the Authority will be within their powers to look into the mitigating and aggravating circumstances while considering the penal damages under section 14-B of the Act.

Now coming to the facts and circumstances of the case in hand, in the light of above settled proposition of law, the facts undisputed are that, the Appellant Establishment survives on grants only, which were discontinued from November, 2016. Grant for one year was released in between 01.07.2019 to 16.07.2019 under order of Hon'ble High Court dated 23.10.2018. As the impugned order under Section 14B of the direction reveals that it is with respect to period from 01.05.2017 to 31.03.2021. It is the case of the Appellant Establishment before the Respondent Authority and this Tribunal also that, after they received grant under order of Hon'ble High Court, no grant was further released to them. Hence, naturally, they were not in a position to deposit the PF dues of their employees. The Respondent Authority has observed that, at Page 2 of the impugned order that, delay for 12 months in willful manner, no reason for delay beyond control of the Establishment was communicated any defense or during course of hearing, there was no evident effort by the Establishment to rectify the process and it was found that the establishment is habitual in making a delayed remittances. The basis of the impugned findings is this observation of the Respondent Authority, when it is established that **firstly,** the Appellant Establishment undisputedly runs on the grants released to it by the Government and, that Government did not released amount in time, this is a situation which is beyond control of the Appellant Establishment. **Hence, the observation recorded by the Respondent Authority in the impugned order is against record**. Since this observation is the basis of impugned finding and assessment, the impugned finding and assessment are also held to have been recorded without considering the mitigating circumstances and details, Learned Counsel for the Appellant Establishment has further submitted that the opening words of section 14-B, show that imposition of damages is not mandatory rather it is discretionary and in spite of the principles of law laid down by ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund***

Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516, wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loses significance in the case of breach of civil liability, the mitigating and aggravating circumstances with respect to late deposit were required to consider by the Respondent while recording the impugned finding and assessment Authority by not considering these factors, the Respondent Authority has committed error in law in recording the finding and assessment.

Point for determination No.2 is answered accordingly.

No other point was pressed

In the light of above discussion and findings, the appeal succeeds.

ORDER

Appeal is allowed so far as it relates to order under Section 14B of the Act. The impugned order and assessment, passed by the Respondent Authority under Section 14B of the Act is set aside.

No order as to cost.

Date:- 14/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 14/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)