

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES  
PROVIDENT FUND APPELLANT TRIBUNAL, JABALPUR**

**EPFAppeal No.- 196/2017**

**Present – P.K. Srivastava**

**H.J.S. (Retd.)**

**Netaji Subhash Chandra Bose  
Safai Kamgar Sahakari Samiti**

**Appellant**

**Vs.**

- 1. Assistant Provident Fund Commissioner,  
Jabalpur**
- 2. Municipal Corporation Jabalpur**

**Respondent**

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**Shri Uttam Maheswari : Learned Counsel for Appellant.**

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**Shri J.K. Pillai : Learned Counsel for Respondent.**

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**JUDGMENT**

**Passed on 26<sup>th</sup> March, 2025**

**Feeling aggrieved by order dated 11.07.2016, passed by the Respondent Authority Respondent No. 1, the Appellant Establishment has preferred this appeal.**

**The Skeletal facts** relevant to the appeal are mainly that the Appellant Establishment is a Cooperative Society registered as such. Provisions of the **Employees Provident Funds and Miscellaneous Provisions Act, 1952** (in short the 'Act') were made applicable on the Appellant Establishment including the Respondent No. 2 which is the Municipal Corporation, Jabalpur. The Appellant Establishment was awarded work of cleaning some Wards of Respondent No. 2. It submitted an application with the Respondent No. 1 for the allotment of PF code, after getting the contract. As there was no response from Respondent No. 1, the Appellant Establishment submitted another application in prescribed format with required demand draft.

Respondent No.1 informed the Appellant Establishment that Bank Accounts of all the Employees working was required. The Appellant Establishment submitted various representations to Respondent No. 1 for allotment of PF Code. They were informed by Respondent No. 1 about the change in mechanism for application of progress, thereafter as it is the case of Appellant Establishment, they again filed the application after fulfillment of all the formalities and requested for allotment of PF Code. The PF code was allotted by Respondent No.1 on 30.07.2014. Thereafter, the Appellant Establishment deposited the PF Contributions for the period from April, 2012 to September, 2014 with the Respondent No.1 within 45 days of allotment of PF Code. A notice under Section 7(Q) and 14(B) of the Act was issued by the Respondent No.1 requiring the Appellant Establishment to show cause why interest and damages on delayed deposit not be recovered from them. The Appellant Establishment submitted reply of the show cause notice in which it took a stand that the delay in deposits of PF dues was only due to delay in allotment of PF Code by Respondent No.1. The Respondent No.1 passed the impugned order under Section 14(B) without considering the reply of the Appellant Establishment and without pressing the points raised hence committed error in law in passing the Impugned Order.

**Grounds of appeal**, as demanded in memo of appeal are mainly that, the Respondent No.1 committed error in law in overlooking the fact that delay in deposit of PF dues was only due to delay in allotment of PF Code by Respondent No.1. The finding of the Respondent No. 1 that the Appellant Establishment has committed default in remittance of PF contributions is against fact and law.

**The case of Respondent No.1** in the counter to the appeal is mainly that the Act is beneficial legislation. The Appellant Establishment applied for issuance of PF Code on 31.05.2012 which was received in the office of Respondent No.1 on 04.06.2012, this application was not completed therefore, it was returned to the Appellant Establishment vide letter of Respondent No.1 dated 06.06.2012 requiring them to file it with all necessary documents. The Appellant

Establishment again filed a coverage proposal on 06.08.2012 requesting issue of PF Code to them with demand draft but this proposal was also not accompanied with necessary documents and was returned to the Appellant Respondent vide letter of Respondent No.1 dated 12.09.2012 with a request to file it with all documents and after compliance of all the requirements mentioned in letter dated 12.09.2012 sent by Respondent No.1 to the Appellant Establishment on 15.09.2012. The Appellant Establishment further requested by communication dated 16.04.2014 referring their coverage proposal dated 31.05.2012 thus the Appellant Establishment kept sitting till 16.04.2014 and did not comply with the requirements resulting into two times return of the proposal. The Appellant Establishment resubmitted application for allotment of PF Code on 04.06.2014 with documents. Since the application was not completed, the Appellant Establishment was informed by office of Respondent No.1 telephonically to attend their office and correct the mistakes. The Appellant Establishment requested the Respondent No.1 to permit them to correct the application for vide their communication dated 10.07.2014.

**It is further the case of the Respondent No.1** that, the Appellant Establishment requested for allotment of Provisional PF Code on the ground that the principle employer that is the Respondent No.2 have challenged the notification regarding the applicability of the Act on the assessment made upon them prior to the date of notification before Hon'ble High Court of M.P. in W.P. No. 8395/2011. The Appellant Establishment further undertook that their request for Provisional PF Coverage will be subject to the final outcome of the Writ Petition. It is after their undertaking dated 10.07.2014 as stated above, PF Code was challenged on 30.07.2014 on the basis of application of Appellant Establishment dated 24.07.2014, also it is the case of the Respondent No.1 that under the instructions issued by the headquarter the Enforcement Officer was directed to inspect the documents submitted by Appellant Establishment and fulfilling the same, as the Appellant Establishment was covered under the Act w.e.f. 11.04.2012. It was found

that since the Appellant Establishment was covered under the Act, w.e.f. 11.04.2012 and it deposited the EPF dues of its employees for the period between 04/2012 to 09/2014 only and 08/09/2014, hence it was taken as late deposit of EPF dues holding the Appellant Establishment to pay damages as well interest. According to the Respondent Authority the Act is beneficial legislation, the interest recovered is distributed among the contributors. Respondent No.1 have taken a case that there is no error of fact or law in the Impugned finding and impugned assessment.

**The Appellant Establishment has filed** a rejoinder wherein they have controverted the case of the Respondent No.1 as put up by them in their counter and retreated their case.

I have heard argument of Learned Counsel for Appellant Establishment Mr. Uttam Maheswari and Mr. J.K. Pillai for Respondent No.1. I have gone through the record. Party have filed Written Arguments also. I have gone through the written arguments as well.

**On perusal of record in the light of rival arguments following points arise for determination:-**

1. *Whether the finding of Respondent No.1 that there is default in deposit of EPF dues of its employees of the Appellant Establishment attracting penal damages u/s 14B of the Act is correct in law and fact?*
2. *Whether the finding of Respondent No.1 that there is late deposit of EPF dues of its employees of the Appellant Establishment attracting penal damages u/s 7Q of the Act is correct in law and fact?*
3. *Whether the amount under impugned order assessed is correct in law and fact?*

**Point for determination No. 1 :-**

As it has been submitted from the side of Appellant Establishment that, the delay in allotment of PF Code to them was due to Respondent No.1 hence the Appellant Establishment should not be punished for late deposit of EPF dues. Learned Counsel for the Respondent No.1 have submitted on this point that the Act is a Beneficial Legislation and the delay in allotment of PF Code was caused by the Appellant Establishment. He has narrated to chronology of evidence as mentioned above in the counter to the appeal. Thus the picture which arises is a prayer made for allotment of PF Code in 2012, was ultimately done by Respondent No. 1 in 2014. Both the sides blame each other in the delay.

Learned Counsel for Appellant Establishment has referred to a judgment of *Division bench of Hon'ble Calcutta High Court in the Case of RPFC & Others V.s. Kanchrapana Harnett English Medium School, reported in MANU/WB/2899/2019*. The question which came for determination before the Bench was whether the School was exempted from levy of damages for pre discovery period by Circular of the Department issued on June 16, 2004. The said circular, reproduced in the judgment, where certain directions were issued. The Bench further observed that this Circular was to be applicable upon fulfillment of following three conditions by a Establishment.

1. Code No. was allotted lately by the Provident Fund Authorities to a Establishment.
2. The Establishment was covered with retrospective effect; and
3. The establishment was prevented from paying the PF dues in absence of the Code .

*The Bench held that whether the delay in allotment of Code No. was attributable to the School or to the Provident Fund Authorities was irrelevant in context of the said circular. Such interpretation by the department defeats the every object of the Circular. The facts of the referred case are identical to the Case in hand.*

The Learned Counsel for Appellant Establishment has further referred to following Judgments : -

1. **Abhijat Samayadarshika Maharashtra Limited V.s. Union of India , MANU/MH/0234/1995, (DB).** In this case company applied for allotment of PF Code in September, 1982 after various communications it was ultimately issued in November, 1984 by way of allotment of Provisional Code. Hon'ble High Court held that damages could not be levied under Section 14(B) of the Act in such a case.
2. **EPFO V.s. Sihor Mercantile Co-op Bank, MANU/GJ/0473/2013 (DB).** In this case there was a dispute whether the company was covered in the Act or not, which was settled by the department after hearing both the sides and a PF Code was allotted. The Hon'ble High Court held that the Department was not liable to Penal damage under Section 14(B) for the period before allotment of Code.
3. **EPFO V.s. Pahwa and Pahwa Press, MANU/MH/5563/2023.** In this case the Establishment applied for PF Code which was granted after 15 months, the same view was taken.
4. **MANU/MH/0816/2003, Navnilal K. Shah V.s. Union of India & Others.**
5. **District Project Officer Vs. APFC, MANU/KE/1112/2024.**

The Learned Counsel for respondent No.1 has referred to judgment of Hon'ble the Apex Court in the Case of *CIVIL APPEAL NO(S). 2136 OF 2012 WITH CIVIL APPEAL NO(S). 2121 OF 2012 WITH CIVIL APPEAL NO(S). 2135 OF 2012 WITH CIVIL APPEAL NO(S). 2141 OF 2012 Horticulture Station Coorg Vs RPFC* in which it was held that imposition of Penal Damages under Section 14(B) of the Act is a Civil Liability for which no *mens rea* is required. The relevant paragraphs of this judgment are being reproduced as follows:

“12. The three-Judge Bench of this Court in *Union of India v. Dharmendra Textile Processors and others (supra)* while examining the scope and ambit of Section 271(1)(c) of the Income Tax Act, 1961 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, *mens rea* or *actus reus* is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and Another* and approved the view expressed by a two-Judge Bench of this Court in *Chairman, SEBI (supra)* and held in paras 18 and 20 as under:

“18. The Explanations appended to Section 271(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in *Dilip N. Shroff case [(2007) 6 SCC 329]* has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(c) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act.

20. Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. *Dilip Shroff case [(2007) 6 SCC 329]* was not correctly decided but *SEBI case [(2006) 5 SCC 361]* has analysed the legal position in the correct perspectives. The reference is answered. The matter shall now be placed before the Division Bench to deal with the matter in the light of what has been stated above, only so far as the cases where challenge to vires of Rule 967-Q(5) are concerned. In all other cases the orders of the High Court or the Tribunal, as the case may be, are quashed and the matter remitted to it for disposal in the light of present judgments. Appeals except Civil Appeals Nos. 3397 & 7 (2007) 6 SCC 329 13 3398-99 of 2003, 4096 of 2004, 3388 & 5277 of 2006, 4316, 4317, 675 and 1420 of 2007 and appeal relating to SLP

(C) No. 21751 of 2007 are allowed and the excepted appeals shall now be placed before the Division Bench for disposal.”

13. Taking note of the exposition of law on the subject, it is well settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

14. The judgment on which the learned counsel for the appellant(s) has placed reliance i.e. **Employees State Insurance Corporation(supra)**, the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85B of the Employees State Insurance Corporation Act, 1948 which is pari materia to Section 14B of the Act 1952 placing reliance on the judgment of Division Bench of this Court in Dilip N. Shroff (supra) held that for the breach of civil obligations/liabilities, existence of mens rea or actus reus to be a necessary ingredient for levy of damages and/or the quantum thereof.

15. It may be noticed that Dilip N. Shroff(supra) on which reliance was placed has been overruled by this Court in Union of India and Others v. Dharmendra Textile Processors and 14 others (supra). For the aforesaid reasons, the view expressed by this Court in Employees State Insurance Corporation (supra) may not be of binding precedent on the subject and of no assistance to the appellant(s).

16. Learned counsel for the appellant(s) further placed reliance on the judgment of this Court in Mcleod Russell India Ltd. (supra), wherein the question emerged for consideration was as to whether the damages which has been charged under Section 14B of the Act 1952 would be recoverable jointly or severally from the erstwhile as well as the current managements. At the same time, the judgment relied upon in Assistant Provident Fund Commissioner, EPFO and Another (supra) was decided placing reliance on the judgment of this Court in Mcleod Russell India Ltd. (supra), which may not be of any assistance to the appellant(s).

*17. Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. Dharmendra Textile Processors and others (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 15 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.*

**There is no discrimination with the preposition** that no *mens rea* is required in a Civil Liability. It has to be kept in mind that Section 14(B) of the Act provides discretion with respect to fixing the amount of Penal damage to be exercised by the department when there is discretion to be exercised, the Authority exercising such discretion is under legal obligation to consider the aggravating and mitigating circumstances.

**It is also not disputed that the PF Code** was allotted on 30.07.2014 and EPF dues were deposited on 08.09.2014. The letter of allotment of PF issued on 30.07.2014 does not specifically mention the date before which the PF dues were to be deposit by Appellant Establishment but, taking cognizance of the provisions that PF dues are to be deposited by the Employer by the 15<sup>th</sup> day of next month in which his wages payment payable, the EPF dues should have been deposited till 15.08.2024. Thus there is delay of 45 days in deposit of EPF dues from the date of allotment of EPF Code by Respondent Authority No.1. The case of the Appellant Establishment is that since they were paid the wages of the employees by the Principle Employer by way of cheque only on 06.09.2014 and EPF dues were deposited on 08.09.2014, at last the Appellant Establishment could not be held responsible for delay in Deposit of EPF dues for 45 days also as mentioned at the words. The respondent No.1 is at liberty to recover Penal damages for this period of 45 days from the principle employer who made delayed payment of wages to the Appellant Establishments.

*On the basis of above discussion, holding the finding of the Respondent No.1 that Appellant Establishment has defaulted the deposit of EPF dues of its employees recorded incorrectly in law and facts, it is set-aside with finding that the delay in deposit of EPF dues was not on the part of Appellant Establishment.*

**Point for determination No. 1 is answered accordingly.**

**Point for determination No.2-**

**Perusal of the Impugned order shows** that it is a composite order under Section 7(Q) and 14(B) of the Act. As regards assessment under Section 7(Q), since the Act is a beneficial legislation and the interest is to be passed over ultimately to the beneficiaries, the Appellant Establishment cannot be absorbed from its liability to pay interest on the EPF contributions. Hence, the part of the Impugned order imposing interest under Section 7(Q) of the Act and amount assessed under Section 7(Q) is upheld.

**Point for determination No. 2 is answered accordingly**

**Point for determination No. 3-**

On the basis of findings recorded on point for determination No.1 the Impugned Assessment dated 11.07.2016 with respect to penal damages under Section 14(B) is held to have been recorded it incorrectly in law and fact.

**Point for determination No. 3 is answered accordingly.**

No other points were pressed.

On the basis of the above discussion and findings the Appeal deserves to be partly allowed.

## ORDER

Appeal is allowed partly. Impugned order dated 29.06.2016 is modified partly in the sense that findings and assessment to extent of the liability of the Appellant Establishment to pay interest under Section 7(Q) of the Act is upheld. Findings and assessment by Respondent Authority No. 1 in the impugned order with respect to liability of the Appellant Establishment to pay penal damages under Section 14(B) of the Act is set- aside. The Appellant Establishment is held entitled to refund of any deposit made by them under Section 14(B) of the Act in compliance of the impugned order with interest @ 10% per annum from the date of deposit till refund.

No order as to cost.

Date:-26/03/2025

P.K. Srivastava  
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:-26/03/2025

P.K. Srivastava  
(Presiding Officer)

