

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-21-2018

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

Dewas Municipal Corporation
Dewas

APPELLANT

Versus

The Regional Provident Fund Commissioner
Pradhikaran Bhawan ,8th Floor,
Race Course road,Indore.

RESPONDENT

Shri Uttam Maheshwari : Learned Counsel for Appellant.

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

(J U D G M E N T)

(Passed on 16-8-2022)

1. Under challenge in this appeal is order dated 17-9-2018 passed by the Respondent Authority under Section 14B of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act", whereby the Respondent Authority has held the Appellant Establishment guilty of late deposit of employees provident fund dues of its daily wagers within the period 1-10-2016 to 27-7-2018 and has further assessed the amount as Rs.62,65,688/- as damages/penalty.

2. Facts connected in brief are that the Appellant Establishment is a Municipal Corporation represented through its Commissioner and is covered under the Act. Its various activities are managed by its regular staff and approximately 1275 daily wager employees



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working with it at different levels in different departments of the appellants establishment. Payment of the daily wagers is made on the basis of allotment of fund given by the State Government. Very often the funds are not released in time resulting into delay in payment of wages and depositing the employees provident fund dues of its employees. Furthermore, payments are made to the daily wagers registered on the muster roll by way of vouchers in which much time is consumed in processing all the vouchers in different offices since the data of the Appellant Establishment was not computerized, it took further time for computation of data resulting into late deposit of employees provident fund dues, hence according to the Appellant Establishment, the delay in depositing the employees provident fund dues of its daily rated workers was not initiated and is without requisite mensrea. The Respondent Authority has wrongly held the Appellant Establishment liable for penalty.

3. The grounds of appeal taken in the Memo of Appeal are mainly that the Respondent Authority has committed error in law in applying the same yardstick with respect to the Appellant Establishment which is a Government Establishment to which the Respondent Authority has been applying on Private Establishments. The Respondent Authority has failed to consider the grounds of delay which shows that the delay was due to circumstances beyond the control of the Appellant Establishment, hence committed error in law. The Respondent Authority further committed error in law in considering the judgment of Hon'ble the Apex Court in case of **Terrace Estate Vs. Assistant Provident Fund Commissioner** reported in 2010 LLR 612 and **Solidare India Limited Vs. EPFAT** reported in 2011 3 CLR 646 wherein it has been held that mensrea is a must for levy of damages. The Respondent Authority has further committed error in law in not considering the provisions of para 32-B of the Scheme in proper perspective and also not considering the fact that levy of damages is discretionary depending on



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circumstances. Accordingly, the Appellant Establishment has sought that the Appeal be granted in their favour by setting aside the impugned order.

4. In its counter, the case of Respondent Authority is that since the Act is a judicial welfare legislation, it has to be interpreted in that way. Also that Section 14B of the Act does not differentiate between intentional and unintentional default. It is also the case of the Respondent Authority that the grounds taken by the Appellant Establishment as mentioned in the Memo of Appeal were considered by Respondent Authority before passing the impugned order. The Respondent Authority did not find any material to substantiate the grounds. Accordingly, it has been prayed that the appeal be dismissed affirming the impugned order.
5. I have heard arguments of Shri Uttam Maheshwari, learned counsel appearing for Appellant Establishment and Mr. J.K.Pillai, learned counsel appearing for the Respondent Authority. I have gone through the record as well.
6. Considering the material on record, in the light of rival arguments, following point comes up for determination:-

(1) Whether the finding of the Respondent Authority regarding default of payment of employees provident fund dues by the Appellant Establishment within the period in question and the assessment of damages can be faulted in law or not?

POINT NO.1:-

7. Perusal of impugned order reveals' that the Respondent Authority found that there was no dispute regarding late payment of employees provident fund dues. Defence for late payment pleaded by the Appellant Establishment before the Respondent Authority was procedural delay in compliance of attendance from different ward, delay in release of grant by State Government resulting into delayed

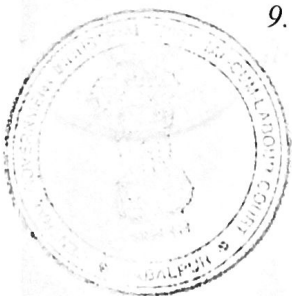


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payment of salary and subsequent delay in deposit of employees provident fund dues, hence the delay was not intentional. The Respondent Authority has further observed in the impugned order that the period of delay ranges from minimum 50 days to 777 days in most of the months the delay is more than 200 days. In past also the damages of Rs.28,23,051 was imposed on the same Appellant Establishment under Section 14B of the Act for earlier delayed deposits which was paid by the Appellant Establishment. The Respondent Authority has further recorded the finding that the ground taken by the Appellant Establishment regarding delay could not be substantiated.

8. The main argument of learned counsel for the Appellant Establishment is that firstly it is not a factory or industry indulging in profit, rather it is engaged in service sector providing service at Municipality level and is part of Government. Second argument is that since the delay was due to late release of funds by Government and procedural delay in computation of data there was no required mensrea in violation of statutory provisions regarding deposit of employees provident fund dues. Learned counsel has referred to case law in this respect, which have been mentioned earlier in this judgment. Learned Counsel has further referred to Judgement of **Prajatantra Prachar Samiti Vs RPFC** reported in 1979(1) LLJ 136(Orissa) and (1975) 1 LLN 250 Allahabad, wherein it has been held that "there may be cases where for good reasons Authority may decide not to assess damages and that imposition of penalty is not absolute rather it is discretionary."

9. ON the other hand, the learned counsel for the Respondent has defended the impugned finding with an argument that the Act does not differentiate between the intentional and unintentional delay. He has referred to judgment of case of **Bharat Heavy Electricals Ltd. Vs. RPFC** (1986).LAB.IC 282 and 1453 and judgement of Hon'ble the Apex Court in the case of **Oregano Chemical Industries and**



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Others Vs. Union of India (1979) 4 SCC 573. Learned Counsel further refers to another judgment of Hon'ble the Apex Court in the case of Director of Enforcement Vs. M.C.T.M. Corporation (1996) 2 SCC 471. Para-7 of this judgment is being reproduced as follows:-

“7. Mens rea “is a state of mind. Under the Criminal Law, mens rea is considerable as the guilty intention and unless it is found that the “accused” has the guilty intention to commit the “crime” he cannot be held guilty of committing the crime. An offence under Criminal Procedure Code and the General Clauses Act, 1897 is defined as any act or omission “made punishable by any law for the time being in force”. The proceedings under Section 23(1) (a) of FERA, 1947 are adjudicatory in nature and character and are not criminal proceedings. The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to adjudicate only. Indeed they have to act “judicially” and follow the rules of natural justice to the extent applicable but, they are not Judges of the Criminal Courts trying and accused for commission of an offence, as understood in the general context. They perform “quasi-judicial” functions and do not act as Courts but only as administrators and adjudicators. IN the proceedings before them, they do not try an “accused” for commission of any crime (not merely an offence) but determine the liability of the contravener for the breach of his obligations imposed under the Act. They impose penalty for the breach of the civil obligations laid down under the Act and not impose any sentence for the commission of an offence. The expressions penalty is a word of wide significance. Sometime, it means recovery of an amount as a penal measure even in civil proceedings. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender.”

10. Further argument of learned counsel for the Respondent is that reasons of delayed deposits were not substantiated by the Appellant Establishment with the Respondent Authority, as it has been mentioned by the Respondent Authority in the impugned order. Learned Counsel also submits that keeping in view the fact that the



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delay was recurring and it was huge, the Appellant Establishment does not deserve any discretion to be exercised in its favour.

11. IN recent Judgment in the case of HORTICULTURE EXPERIMENT STATION GONIKOPPAL, COORG VERSUS THE REGIONAL PROVIDENT FUND ORGANIZATION(2022) Live Law SC 202 Hon'ble the Apex Court has laid down that mensrea or actus reus is not an essential element in imposing penalty or damages for breach of civil obligation/liabilities and has laid down that mens rea is not a factor to be considered while holding the establishment liable for damages under Section 14B of the Act. Hon'ble the Apex Court has held in is Three Judge Bench Judgment in Union of India and Others Vs. Dharmendra Textiles Processors and Others (2008)13 SCC 369 on this point.

12. Since imposition of damages/penalty under Section 14B of the Act is a civil liability, mensrea is not a factor to be considered in the light of aforesaid recent judgment of Hon'ble the Apex Court. The conduct of the establishment in the light of the aggravating and mitigating factor may be considered in assessing the amount of damages because this discretion is left on the Respondent Authority.

13. Coming to the facts of the case in hand, in the light of the aforesaid judgment, a the perusal of record reveals that the Appellant has failed to substantiate the reasons behind the delayed deposits as taken by it before the Respondent Authority and before this Tribunal. Since the mitigating circumstances as pleaded by the Appellant Establishment with respect to delayed deposit of employees provident fund dues are not substantiated by any cogent evidence before the Respondent Authority or this Tribunal, I see no occasion to disagree with the finding of the Respondent Authority and the amount assessed in the impugned order. Accordingly the finding of the Respondent Authority regarding liability under



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Section 14-B of the Act and assessment are held justified in law and fact and is affirmed.


14. NO other point was pressed.

15. On the basis of the above discussion, the appeal lacks merits and is liable to be dismissed .


ORDER

Appeal stands dismissed.

No order as to costs.


(P.K.SRIVASTAVA)
PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.


(P.K.SRIVASTAVA) 16.08.2022
PRESIDING OFFICER

Date:16-8-2022

