

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1 MUMBAI

Present

Justice Ravindra Nath Kakkar

CGIT-1/EPFA/20/2017

M/s.Yashodeep Samajik Vikas Sanstha College of Agriculture
... Appellant

Vs

Assistant Provident Fund Commissioner
...Respondent

Thane

Presence:

For the Appellant : Mr.H.L.Chhedda (A.R)
For the Respondent : Mr. Suresh Kumar, Adv.

Mumbai, Dated 06/08/2021.

JUDGEMENT

- 1) This appeal is filed u/s 7-I of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act') against the order dated 26-10-2015 passed by Assistant Provident Fund Commissioner – Thane u/s 14-B and 7-Q of the Act for the period from 09/2001 to 02/2012 and from 06/2012 to 03/2013 directing Appellant to pay an amount of Rs. 25,25,325 towards damages u/s 14-B of the Act and Rs. 14,89,299 towards simple interest u/s 7-Q of the Act totaling to Rs. 40,14,624.



2) Brief facts of the case as stated by the Appellant are as follows. M/s Yashodeep Samajik Vikas Sanstha College of Agriculture (hereinafter referred to as 'Appellant') is into imparting education in rural and semi-rural areas in and around Saralgaon, Murbad from September 2001. The management of the establishment changed in June 2011 as old management was not able to pay the loan taken from the bank. The Appellant was unaware of the social security measures administered by the Employees Provident Fund Organization which was made aware by the visiting Enforcement Officer belonging to the regional office. The Appellant's educational institution was brought under the Act and the Scheme, 1952 with coverage memorandum number MH/THN/201805/INT/Circle/315 dated 08-08-2008 applying the provisions made under the Act and the Scheme retrospectively with effect from 01-09-2001 and the Appellant was provided with code number MH/THN/201805 for rendering compliance in respect of its employees.

3) Heard learned counsels for the parties at considerable length.

4) It is the case of the Appellant that it could not recover the employees share of provident fund contributions for the period from 09/2001 to 08/2008, the Appellant was restrained from making remittances to the fund in the absence of PF code number provided by the EPFO, the officers of the EPFO did not follow the guidelines issued by its own head office at New Delhi, and inquiry officers should also have considered the motives in addition to the facts and information available in the Appellant's records.

5) Summons u/s 14-B and 7-Q of the Act was issued to the Appellant dated 09-07-2015 enclosing proposed statement of damages and interest to be levied under the respective sections for the period 09/2001 to 03/2013 for the amount of

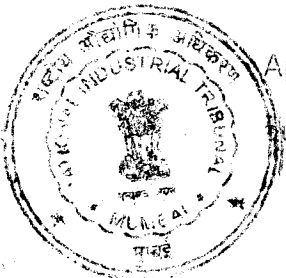


Rs. 25,25,325 towards damages u/s 14-B of the Act and Rs. 14,89,299 towards simple interest u/s 7-Q of the Act. It is the case of the Appellant that reasonable opportunity had not been provided by the Respondent commissioner.

6) Appellant claims the relief against levied damages u/s 14-B of the Act on the grounds that the Appellant could not cover the employees' share of the provident fund contributions for pre-discovery period from 01-09-2001 to 08-08-2008, and that Respondent didn't make Appellant aware that he is eligible to claim the exemption of employees' share, and also that as per statutory rules it is not allowed to collect employees' share of PF contribution even from the future wages of the employees. The Appellant realized the above facts belatedly and approach the local consultants who helped the Appellant to remit the sum of Rs. 23,09,344 in piece meal starting from April 2011 to November 2011 within a period of seven months during which Respondent commissioner first ordered attachment of the Appellant's account and then withdrew that order. Thereafter, Appellant was issued summons to participate in the inquiry proceedings u/s 14-B and 7-Q on 18-03-2014.

7) During inquiry proceedings, Appellant pointed out the differences between the date of remittances recorded in the Annexure to the summons and the actual date of remittances. Appellant submitted that Respondent issued afresh statement dated 09-07-2015 after correcting the errors pointed out by the Appellant. Appellant claims that reasonable opportunity of hearing was not provided to it to represent its matter and inquiry proceeding was closed abruptly and impugned order was passed.

Appellant states that the liability to pay the damages does not arise automatically but the same will have to be decided by the PF authorities by



applying mind to the merit of the case and not resorting to arithmetic calculations and in this case the Respondent resorted to the arithmetic calculations without application of mind to the merits of the case. Appellant further relied on Circular No. C.II/Misc./Inst./04/15921 dated 17-06-2004 to claim benefits since its establishment was prevented from making remittances in the absence of PF code number allocation by the EPFO which Appellant claims to have been ignored by the inquiry officer. Appellant further relied on judgment of Hon'ble Delhi High Court in System and Stamping vs EPF Appellate Tribunal [2008 LLR 485 (Del)(DB)] wherein it held that simple interest can be collected only once after enforcing section 7-Q with effect from 01-07-1997 and after which Government of India substituted the earlier GSR with GSR 689(E) dated 26-09-2008 revising the maximum rates permissible under Para 32-A of the Scheme. Furthermore, Appellant relied on the judgment rendered by Hon'ble Calcutta High Court in Kanchanpara Harnett English Medium School vs RPF & Ors [2012 1 CLR 258 (Cal. HC)] to state that it was entitled for waiver of penal damages for the pre-discovery period.

- 9) Appellant further submitted that discretion is vested in the PF authority to recover the damage by which authority may quantify the damages within the upper limit depending on the facts. Also, the Appellant referred to the judgment of Hon'ble High Court of Orissa in Prajatantra Prachar Samiti vs Regional Provident Fund Commissioner [(1979) ILLJ 136 Ori] wherein it was held that *"We are in full agreement with the view expressed by the Calcutta High Court that "damage" is different from "fine" and "penalty" and we are also inclined to agree with the view expressed by the Kerala High Court that damage under Section 14B of the Act is intended to compensate the loss to the beneficiaries of the Scheme."*



10) In reply to the above arguments, the Respondent stated the Appellant failed to remit Provident Fund Contributions/pension fund contributions/administrative charges/employees deposit linked insurance contributions/ employees deposit linked insurance administrative changes within 15 days of the close of every month for the period 09/2001 to 03/2013 and in order to compensate the loss of interest sustained by the Organization on the belated payments made by the petitioner and also to deter petitioner from recurrence of making belated remittance of Provident Fund dues, order dated 26-10-2015 was passed under section 14-B and section 7-Q of the Act. It is also submitted by the Respondent that reasons like financial crises, closure of the establishment, exigencies, and other reasons may not be accepted as reasons for not depositing the PF dues in time. In support of this submission, Respondent relied on the judgment of Hon'ble Supreme Court in case of Hindustan Times Ltd vs UOI reported in (1998) 2 SCC 242 wherein it was held, "*pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability;*".

11) With regard to contention of Appellant that it was not extended guidance by the Respondent, learned counsel representing Respondent contended that every establishment brought under the purview of the Act is liable for its act under the Act and moreover that at the time of coverage of the establishment the order under coverage specifically informs the duty of the employer and also that the information about the Act is available on the official website of EPFO. Respondent further argued that it was statutory responsibility of the Appellant to remit the dues as per Section 6 of the Act read with Para 30 of the Scheme. In reply to the Appellant's contention that reasonable opportunities of hearing was not provided to him, the Respondent's counsel pointed out several



adjournments in the impugned order during which Appellant was advised to submit original paid challans, bank statements, etc.

- 12) The learned counsel representing Respondent submitted that delay in remittances of dues has a double effect – firstly, it deprives the interest it could have earned on the deposit and secondly the employee would be deprived of the interest accruable to his account because employer has not deposited the money and to that extent the interest is lost. In reply to the contention of the Appellant that liability to pay damages does not arise automatically but with application of mind, the Respondent counsel stated that the Act empowers the Assessing Authority to pass the orders u/s 14-B and does not delegate upon him to reduce or waive the damages and he has to impose the damages in accordance with the rates specified under section 14B read with Para 32A.
- 13) Regarding the pre-discovery period, the Respondent counsel argued that the Act has self-application code and once the conditions satisfying coverage are met, a statutory obligation is cast upon the employer to suo moto inform the Regional Provident Fund Commissioner about this fact so as to facilitate him towards registration of the employees of any particular establishment under the Provident Fund Act as per Para 37 of the PF Scheme. Further, it was argued that application of act is automatic and no notice is necessary to apply the Act. Respondent relied on judgment rendered in Bajranglal Padia vs State of Orissa and Ors, 1975 Lab IC 830 (Ori)(DB) to state that the liability of to contribute to the Provident Fund is created the moment the Scheme is applied to a particular establishment by notification u/s 13 and not from the date of service of notice nor the date of membership of the provident fund.



- 14) Needless to mention, the subject matter of this appeal is only the levied damages u/s 14-B of the act as Section 7-Q is not appealable.
- 15) The major challenge to the impugned order is twofold – firstly, whether levying damages for the pre-discovery period is proper and justified, and if answer to the first issue is affirmative then whether imposing damages at maximum rate as levied in the impugned order is proper and justified.
- 16) In order to decide the opening challenge to the impugned order, i.e. whether levying penal damages u/s 14-B of the Act for the pre-discovery period in the present case is proper and justified, it is pertinent to mention that it is the statutory obligation on the part of employer to discharge his duties as provided under the Act. The remittances of the PF and other allied dues are legally required to be deposited within the stipulated period under the Act and the Scheme. There is no specific provision with regard to the remittances of the statutory dues for the pre-discovery period or otherwise. Moreover, there's important legal principle that "*ignorantia juris non excusat*" which means ignorance of law cannot be an excuse. Therefore, the grounds such as lack of guidance by the Respondent for the delayed remittances of the PF dues or not knowing that employees' share of the PF dues for pre-discovery period can be waived of with some procedure or any such argument based on ignorance of law as pleaded by the Appellant does not convince this Tribunal and thereby contentions in these regards are not sustainable in the eye of law.
- 17) So far as the arguments of the Appellant with regards to the late allotment of PF code number by the Organization is concerned based on which Appellant is claiming to waive off the damages for the entire pre-discovery period cannot be sustained in view of the fact that this is not the case where the Organization

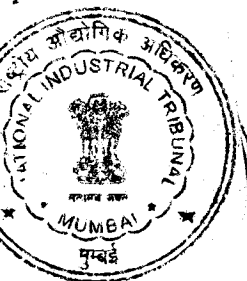


delayed the allotment of PF code number after it discovered the applicability of the Act on Appellant. Moreover, no material has been placed before this Tribunal to make it evident that Appellant invited the applicability of the Act on its establishment by itself approaching the Respondent Organization for this purpose but instead it was Respondent Organization who discovered the coverage of the Appellant's establishment under the purview of the Act.

18) Moreover, it would be relevant to refer to Para 14 of the judgment rendered by Hon'ble Bombay High Court in the case of Navnilal K. Shah (Dr.) vs Union of India And Another on 11 July 2003 reported in (2004) ILJ 632 wherein it held,

"...it cannot be heard to contend that merely because the decision under Section 7-A of the said Act was taken after the date from which the Act was applicable to the establishment that it would automatically postpone the date for imposition of the damages under Section 14-B of the said Act. Certainly, it does not mean to say that in a given situation, the authorities should not exercise their discretion under Section 14B while imposing the penalty but it cannot be said that the authorities cannot impose damages for pre-discovery period. This conclusion is clearly revealed from the above referred two decisions of the Apex Court in relation to the powers of the authorities under Section 14-B of the said Act and at the same time it is also revealed that such-authorities are duty bound to consider the issue of imposition of damages under the said provisions of law in accordance with the statutory guidelines."

In the light of aforementioned judgment and discussion, there is no doubt to this effect that PF authority is well within their power to levy damages



retrospectively for the pre-discovery period. However, this Tribunal takes the note that, even though due to ignorance of statutory procedures, the Appellant had remitted the employees' share of the PF dues along with its own share for the pre-discovery period which cannot be deducted from the employees' wages and in this way Appellant has already covered the loss suffered by the fund to some extent.

19) After dealing with preliminary objection of the Appellant to the impugned order, now it is relevant to address the next ground raised by the Appellant which is whether imposing damages at maximum rate as levied in the impugned order is proper and justified.

20) Ever since their enactments, this Act and the related schemes have gone tremendous changes from time to time especially with regard to the provisions to penalize such employers who commit delay in remittances of the PF dues so that very objective of this social welfare legislation is preserved. This Tribunal agrees that the purpose of levying damages or interests is twofold – one being reparations for the losses suffered by the fund due to delayed remittances and second to deter such employers from making delayed remittances in future. However, there is significant shift in the purpose of invoking damages under section 14-B of the Act which can be categorized in three eras. The first era is the period prior to 01-07-1997 when Section 14-B had not only to act as a deterrence for the employer to avoid their default in future but also compensate the ultimate beneficiaries who are employees; second era being between 01-07-1997 and 25-09-2008 when Section 7-Q was inserted with the purpose of compensating the ultimate beneficiaries by charging fixed interest at the rate of 12% whereas rate of damages under Section 14-B remaining unchanged left to the wisdom of Fund Commissioners with maximum rates capped at 37%; and the third era is post 26-09-2008 which is prevailing even today where compensation for loss of interest is charged on employer at the



fixed rate of 12% under Section 7-Q while along with that Fund Commissioners can impose damages under Section 14-B with the maximum rate capped at 25% under Section 14-B.

21) Keeping aside the question of determining whether Appellant's actions were deliberate or willful when it delayed the remittances of PF dues for time being, this Tribunal agrees to grant some leniency to the Appellant keeping in view the decision of division bench of Hon'ble Delhi High Court in System and Stamping versus EPF Appellate Tribunal [2008 LLR 485 (Del) (DB)] wherein it was held "*... Column 3 cannot be regarded as rate of damages after July 1, 1997, when interest became payable under Section 7-Q of the Act*" against which the SLP was dismissed by the Hon'ble Apex Court vide order dated 16.07.2009 as a considerable portion of the period in the present case falls in the era between 01-07-1997 and 25-09-2008.

22) This Tribunal, however, doesn't find any merit in the contention of the Appellant that its acts were devoid of any willful attempt to delay the remittances. It is clear from the face of the records that Appellant was served coverage memorandum dated 08-08-2008 but the payments were delayed till November 2011. Moreover, it appears from the impugned order that the Organization had to initiate prosecution u/s 14(2) and 14-A of the said Act before JMFC Mumbai for the amount assessed u/s 7-A of the Act. There is no satisfactory reason with regard to mitigating circumstances based on which leniency may be taken towards the Appellant for the period beyond September 2008 as maximum rates at which damages may be levied were slashed down with effect from 26-09-2008 and coverage memorandum was already served to the Appellant.




23) In the light of aforesaid discussions and views taken by this Tribunal on various submissions made by both the parties, this Tribunal finds reduction of damages originally imposed at maximum rates as prescribed in Para 32-A of the Scheme for different periods of the default as appropriate which should at least be 75% of the assessed penal damages in the impugned order. Therefore, this tribunal pass the following orders:

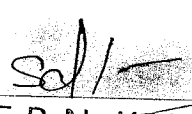
- a. Impugned order dated 26-10-2015 is set-aside and originally assessed damage at maximum rates is hereby reduced to 75% (seventy-five percent).
- b. If any amount has already been deposited by the Appellant for staying the execution of impugned order, the same shall be adjusted against the final amount
- c. Parties are left to bear their own costs

24) Office is directed to furnish copy of this order to both the parties and upload it on the official web-portal of this Tribunal. Further, file is to be consigned to the record room after the compliance.



सही प्रतिलिपि
TRUE COPY


Secretary to the Court
Central Government Industrial
Tribunal-cum-Labour Court No. 1
Mumbai


(JUSTICE R.N. KAKKAR)
PRESIDING OFFICER