

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9089 of 2023

Central Board of Trustees, Employees Provident Fund Organization through the Regional Provident Fund Commissioner-II (Legal), Regional Office, Patna having his Office at R.Block, Road No. 6, P.S. - Sachivalaya, District-Patna.

... .. Petitioner/s

Versus

M/S Urmila Info Solutions 31/A, 1st Floor, Banke Bihari Sadan, S.K. Puri, Boring Road, P.S. - S.K. Puri, District- Patna through its authorized representative Jai Krishan Singh.

.. ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Prashant Sinha, Adv.

For the Respondent/s : Mr.Deo Prakash Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT

Date : 07-05-2025

Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“(i) For issuance of writ in the nature of certiorari for quashing of the order dated 28-03-2023 passed by the learned Central Government Industrial Tribunal-2, Dhanbad (hereinafter to be referred as CGIT only) in IT No. 2/9/2022 whereby the learned Tribunal has allowed the appeal preferred by the respondent against two separate orders passed under section 14B and 7Q and has directed to refund the entire amount of Rs. 1,02,18,489/- to the respondent.

(ii) For holding that the order dated 28-03-2023 passed by the learned CGIT-II,



Dhanbad is against the order passed by this Hon'ble Court in CWJC No. 10921/2022 whereby the matter was remanded to the Tribunal with an observation that no appeal is provided against an order passed under section 7Q, yet the Tribunal has not only decided upon the order passed under section 7Q but has also set aside the order passed under section 7Q.

(iii) For holding that the order passed by the Tribunal on 28-03-2023 is against the judgement of the Hon'ble Supreme Court in the case of Horticulture Experiment Station Vs. Regional Provident Fund Organization (2022) 4 SCC 516 wherein the Hon'ble Supreme Court has held that mens rea or actus reus is not an essential ingredient for imposition of damages for violation of the civil obligation. Going against Article-141 of the Constitution of India, the learned Tribunal has wrongly held that the said judgement is not applicable because it was not delivered at the time of passing of the order under section 14B and 7Q. Thus, the order passed by the Tribunal is against Article-141 of the Constitution of India.

(iv) For staying the operation of the order dated 28-03-2023 passed by the learned Central Government Industrial Tribunal-2, Dhanbad (hereinafter to be referred as CGIT only) in IT No. 2/9/2022 during the pendency of this writ application.



(v) For any other order, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. The Central Board of Trustees, Employees Provident Fund Organization is the petitioner before this Court. It is the case of the petitioner that the respondent company is covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (The Act for short). That the authority duly taking into consideration, the fact that the respondent company had defaulted in making the necessary contributions for the period 01.04.2017 to 30.09.2021, has taken necessary steps for passing the orders dated 09.12.2021 under Section 7Q and 14B of the Act, 1952. Learned counsel has stated that the authority duly putting the respondent on notice has passed the order dated 09.12.2021 under Section 7Q of the Act levying a penalty of Rs.63,72,264/- (Rs. Sixty three lakhs seventy two thousand two hundred and sixty four only) towards interest and Rs.38,46,225/- (Rs. Thirty eight lakhs forty six thousand two hundred and twenty five only) towards damages under Section 14B of the Act. Thereafter, the respondent company had approached the CGIT-2, Dhanbad, and the CGIT-2, Dhanbad had passed an ex-parte order dated 01.07.2022 (Annexure 7) setting aside the order dated 09.12.2021 under



Section 7Q and 14B of the Act without hearing the petitioner. Thereafter the petitioner has approached this Hon'ble Court by way of CWJC No. 10921 of 2022 and this Hon'ble Court vide order dated 30.11.2022 while setting aside the order dated 01.07.2022 passed by CGIT No.2, Dhanbad has remanded the matter back to the CGIT No.2, Dhanbad for passing orders afresh duly putting on notice to the petitioner and the respondent herein. Thereafter the CGIT No.2, Dhanbad has passed the impugned orders dated 28.03.2023 setting aside the order of the original authority passed under Sections 7Q and 14B of the Act and directed the petitioner to refund the amounts. Aggrieved by the same, the present writ petition is filed.

4. Learned counsel appearing on behalf of the petitioner has stated that the CGIT No.2, Dhanbad contrary to the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and also the law laid down by the Hon'ble Supreme Court in a catena of cases has passed the impugned order setting aside the orders dated 09.12.2021 passed by the original authority under Sections 7Q and 14B of the Act. Learned counsel has stated that the authority did not take into consideration the observations made by this Hon'ble Court in CWJC No. 10921 of 2022 in the earlier round of



litigation wherein it was observed that the appeal could not had been entertained by the CGIT No.2, Dhanbad against the orders passed under Sections 7Q of the Act. Further the authority contrary to the provisions of the Act and the Judgments of the Hon'ble Supreme Court has held that unless and until the mens rea is proved no penalty by way of damages can be levied. The said finding is contrary to the settled principles of law as laid down by the Hon'ble Supreme Court in the case of *Horticulture Experiment Station Gonikoppal, Coorg v. The Regional Provident Fund Organization* reported in (2022) 4 SCC 516. Learned counsel has stated that the authority without proper appreciation of the provisions of the Act or the Judgments of the Hon'ble Supreme Court has passed the impugned order setting the orders of the original authority passed on 09.12.2021 under Sections 7Q and 14B of the Act. Learned counsel has therefore prayed this Hon'ble Court to set aside the impugned order by allowing the present writ petition. Learned counsel for the petitioner has relied on the following Judgments:-

- 1) *Organo Chemical Industries v. Union of India* reported in 1979 AIR 1803.
- 2) *Horticulture Experiment Station Gonikoppal, Coorg v. The Regional Provident Fund Organization* reported in (2022) 4 SCC 516.
- 3) *Arcot Textile Mills v. Regional Provident Fund*



Commissioner reported in (2013) 16 SCC 1

4) Central Board of Trustees Employees Provident Fund Organization v. M/S Urmila Info Solutions passed in CWJC No. 10921 of 2022.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the primary authority without providing an opportunity to the respondent has passed the orders dated 09.12.2021. That the learned CGIT No.2, Dhanbad, has rightly set aside the orders passed under Section 7Q and 14B of the Act which was passed in a hasty manner. That without providing ample opportunity to the respondents herein, the authority has passed the impugned orders levying interest and penalty by way of damages vide order dated 09.12.2021 under Sections 7Q and 14B of the Act respectively. Learned counsel has stated that the notices on the respondent were served 10.10.2021, fixing the date of hearing on 29.10.2021. That on 29.10.2021, the case was not taken up due to visit by the Hon'ble Minister. Thereafter, the case was posted on 18.11.2021, on which date the respondent could not be present due to illness and the next date of hearing was fixed on 30.11.2021. That on 30.11.2021, due to technical problem in computer the respondent could not get the link for virtual



hearing, though the representative of the respondent company was physically present, the authority did not accept the request of the representative of the respondent company for adjournment and the order dated 09.12.2021 was passed. Learned counsel has stated that sufficient opportunity was not given to the respondents for filing its objections/explanation. Further learned counsel for the respondents has stated that the authority did not take into consideration the COVID-2019 pandemic period and the letter issued by the head quarters of the Provident Fund dated 15.05.2020. That the Central Provident Fund had directed all the authorities to duly take into consideration the COVID-2019 pandemic situation and not initiate proceeding for levying penalty of damages for the said period. The said letter dated 15.05.2020 was not taken into consideration before passing the orders dated 09.12.2021 under Sections 7Q and 14B of the Act. That the authorities have put undue pressure on the petitioner and some amounts were recovered prior to the passing of the order dated 09.12.2021 and subsequently the balance amounts were also recovered after passing of the orders under Sections 7Q and 14B of the Act. Learned counsel has stated that the order dated 28.03.2023 passed by the CGIT No.2, Dhanbad, is well reasoned order



which do not require any interference and prayed this Hon'ble Court to dismiss the present CWJC. Learned counsel has relied on the following Judgments in support of the case:-

- 1) *M/S Rajiv Gandhi Cancer Institute v. Regional Provident Fund reported in AIR ONLINE 2021 DEL 1488.*
- 2) *Arcot Textile Mills v. Regional Provident Fund Commissioner reported in (2013) 16 SCC 1.*
- 3) *Central Board of Trustees Employees Provident Fund v. Bake "N" Joy Hot Bakery (WP (C) No. 35163 of 2019).*
- 4) *Vodafone Idea Limited v. Regional Provident Fund Commissioner- II (WP (C) 5531 of 2020.*

6. In order to resolve the issue involved in the present writ petition, it is necessary to extract some of the provisions of the act, more particularly, Sections 7A, 7Q and 14 B of the Employees Provident Funds and Miscellaneous Provisions Act which read as under:-

“Section 7A. Determination of moneys due from employers-

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any



employer under any provision of this Act, the Scheme or the Pension. Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:



Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.— Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

Section 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.

Section 14B: Power to recover damages. Where an employer makes default in the payment of any contribution to the Fund 31, the 2[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, 6 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



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.”

7. A bare reading of the above provisions of the Act, the impugned order and the pleadings makes it abundantly clear that the respondents organization is covered under the provisions of the Act. Once it is established that provisions of the Act cover the organization, the organization is obligated to contribute the monthly provident contributions without fail. In case of any default or delay in remitting the contributions, the rigorous Section 7 Q will automatically get attracted and the authorities are bound to levy the interest on the delayed payment. This Hon’ble High Court in *Central Board of Trustees Employees Provident Fund Organization v. M/S Urmila Info Solutions* passed in *CWJC No. 10921 of 2022* has held as under:-

“Petitioner-EPF authorities proceeded against respondent M/s Urmila Info Solutions, Patna under Section 14B and 7Q of the Act, 1952. Both the proceedings decided by common authority on the same date namely 09.12.2021. Perusal of Annexure-



2A and 2B it is crystal clear that order has been passed by the EPF authorities under Section 14 B and 70 of the Act. Perusal of Section 7A read with Section 7Q of the Act there is no appeal against the proceedings against Section 7Q the Tribunal should not have entertained appeal against 7 Q proceedings.”

8. Further the Hon’ble Supreme Court in *Arcot Textile Mills v. Regional Provident Fund Commissioner* reported in (2013) 16 SCC 1 has held as under:-

“21. At this stage, it is necessary to clarify the position of law which does arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the establishment concerned. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order.

To elaborate, it is an order passed under Sections 7-A and 7-Q together. Such an order shall be amenable to appeal under Section 7-1. The same is true of any composite order a facet of which is amenable to appeal and Section 7-1 of the Act. But,



if for some reason when the authority chooses to pass an independent order under Section 7-Q the same is not appealable.

9. Therefore, the contention of the respondent counsel that the delay in making the contributions were not deliberate and beyond the control of the respondents is without any legal substance. Irrespective of the fact as to whether the respondent had received the bill amounts from the Government or not, the fact remains that the organization is obligated under law to make the monthly provident fund contributions without fail. In case there is any delay, the provisions of Section 7Q of the Act will automatically get attracted. A plain reading of provisions of Section 7Q of the Act makes it amply clear that the authorities do not have any option but to impose interest for the delayed period.

10. Therefore, the order of the CGIT setting aside the order dated 09.12.2021 in so far as Section Section 7 Q of the Employees Provident Funds Act is concerned is without any legal basis. The impugned order dated 28.03.2023 passed by the CGIT No.2, Dhanbad setting aside the order dated 09.12.2021 under Section 7Q of the Act is contrary to the law laid down and the provisions of the Act. The act makes it mandatory for the authorities to levy the interest on the organization which has



failed to pay the monthly provident fund contributions within the stipulated time frame and on this ground alone the impugned order dated 28.03.2023 to the extent of setting aside the order passed under Section 7 Q is liable to be set aside and the same is accordingly, set aside.

11. That in so far as the order pertaining to setting aside the order passed under Section 14 B is concerned, the Hon'ble Supreme Court in *Organo Chemical Industries v. Union of India* reported in 1979 AIR 1803 has held as under:-

“37. The power under the section permits award of “damages” and that word has a wealth of implications and limitations, sufficient to serve as guideline in fixing the impost. In Avinder Singh case¹ this Court upheld an otherwise unbridled power to levy tax by importing a variety of factors gathered from the statute and relied on many precedents. Likewise, in Radhakrishnan case this Court rejected the plea that a power in the Commissioner to choose one of the two remedies was invalid in the absence of guidelines and observed, on a review of the case-law:

“When power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties and the circumstances under which they



will choose either of the remedies available should be left to them. The vesting of discretionary power in the State or public authorities or an officer of high standing is treated as a guarantee that the power will be used fairly and with a sense of responsibility. It has been held by the Privy Council in Province of Bombay v. Bombay Municipal Corporation that every statute must be supposed to be for public good at least in intention and therefore of few laws can it be said that the law confers unfettered discretionary power since the policy of law offers guidance for the exercise of discretionary power.”

12. Further the Hon’ble Supreme Court in *Horticulture Experiment Station Ganikopal, Coorg v. The Regional Provident Fund Organization* reported in (2022) 4 SCC 516 has held as under:-

“15. 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.

16.

17.....



18.....

19. Taking note of the three-Judge Bench judgment of this Court in Union of India v. Dharamendra Textile Processors, 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 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”

13. However it is to be noted that the CGIT No.2, Dhanbad while setting aside the order ought to had remanded the matter back to the primary authority concerned for passing orders afresh duly taking into the circular issued by the Central Provident Fund Commissioner, Employee Provident Fund Organization dated 15.05.2020 whereby all the Commissioners were directed to pass necessary orders duly taking into consideration the COVID-2019 pandemic situation. The appellate authority has simply set aside the entire order passed by the Primary authority under Section 14 B. The letter issued by the Central Provident Fund Commissioner, Employee Provident Fund Organization reads as under:-



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कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार, संज्ञालय, भारत सरकार)

EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No. C-I/Misc./2020-21/Vol.1/1112 Date: 15.05.2020

To,

All Addl. CPFCs in charge of Zones
All RPFCs in charge of Regional Offices
All OICs in charge of District Offices

Sub: Relief to establishments and factories covered under EPF and MP Act, 1952 from levy of penal damages for delay in deposit of dues during Lockdown to prevent COVID-19.

Sir,

In view of the prolong lockdown announced by the Government to control the spread of COVID-19 pandemic and other disruptions due to Pandemic situation, the establishments covered under EPF & MP Act, 1952 are distressed and not able to function normally.

The Hon'ble Apex Court of India in McLeod Russel India Limited Vs RPFC (2014)15 SCC 263 has underlined the broad contours and essential elements of section 14B of the Act and held that *mens rea*, or culpable state of mind of the employer, is a *sine-qua-non* for inviting damages under section 14B. In other words, the provisions of section 14B would get attracted only when there is a positive evidence of *mens rea* on the part of the employer while committing default in timely remittances. This legal position has later been reaffirmed in Assistant Provident Fund Commissioner vs. Management of RSL Textiles. (CA 96-97 of 2017)

Considering the difficulty faced by the establishments in timely deposit of contributions during the period of lockdown due to operational and economic reasons, it is evident that such delays are without *mens rea* of the employer. Thus, the delay in deposit of contributions during the period of lockdown announced in terms of the Disasters Management Act, 2005 cannot be attributed to any culpable state of mind of the employer and will not, therefore, attract the provisions of section 14B of the EPF Act.

Therefore, for any delay in payment of any contributions or administrative charges due for any period during the lockdown, no proceeding should be initiated for levy of penal damages in such cases.

(This issues with the approval of the Central P F Commissioner)

Yours faithfully,


(Jag Mohan)
Addl. CPFC (Hqrs.) Compliance & Legal

Copy to: FA & CAO, CVO, All Addl. CPFC (Hqrs) at HO, Director, PDNASS, Addl. CPFC (IS)

14. The CGIT-II, Dhanbad instead of remanding the matter back to the Primary authority has set aside the entire order passed under Section 14 B, which it ought not to have done. The provisions of the Act are beneficial in nature and any amounts levied under Section 14 B are used for the benefit of the employees. The provident fund has every right to levy and collect the damages under Section 14 B. Though discretion is there, the same is not absolute.

15. Therefore this Court is of the opinion that the



ends of Justice would be met if the order dated 28.03.2023 passed by the CGIT No.2, Dhanbad in so far as setting aside the order of the Primary authority dated 01.07.2022 pertaining to Section 14 B is concerned is set aside. The matter is remanded back to the primary authority concerned for passing orders afresh duly taking into consideration the letter dated 15.05.2020 issued by the Central Provident Fund Commissioner, Employee Provident Fund Organization.

16. Having regard to the above facts and circumstances, the present CWJC is allowed. The impugned order dated 28.03.2023 passed by the CGIT 2 to the extent of 14B is set aside. The matter is remanded back to the primary authority for passing order afresh under Section 14B of the Act. It is needless to observe that the authority before passing any order shall put the respondent company on notice and give them an opportunity of filing explanation/calculation chart and hearing and thereafter pass a reasoned order. The entire exercise shall be completed as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order. The amounts paid by the respondent company under Section 14 B shall be kept intact and will be adjusted depending on the fresh order likely to be passed under



Section 14 B of the Employees Provident Funds Act.

17. With the above directions, this Writ Petition is
allowed to the extent indicated above.

(A. Abhishek Reddy , J)

Bhardwaj/-

AFR/NAFR	NAFR
CAV DATE	29.07.2024.
Uploading Date	06.06.2025
Transmission Date	NA

