IN THE HIGH COURT OF MEGHALAYA AT SHILLONG

: ORDER :

St Peters School Versus Union of India and Others

Writ Petition (C) No. 178 of 2015

Date of Order: :: 26.07.2016

HON'BLE MR. JUSTICE DINESH MAHESHWARI, CHIF JUSTICE

Mrs. PDB Baruah, Advocate, for the petitioner
Mr. R. Debnath, Advocate, for respondent No. 1
Mr. LD Choudhury, Advocate, for respondents No. 2 and 3
Mr. SP Sharma, Advocate, for the respondent No. 4

[AFR] **BY THE COURT:**

This writ petition is in the second round of litigation in this Court by the petitioner, essentially on its grievance against recovery of damages under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'/ 'the Act of 1952').

Shorn of unnecessary details, the relevant background aspects of the matter are as follows: The petitioner, an educational institution, got covered under the provisions of the Act of 1952 from the year 1982. On account of the alleged delay and default on the part of the petitioner in remitting the necessary contributions for the period from March, 1982 to September, 2002, enquiry proceedings were taken up by the Assistant Provident Fund Commissioner, Shillong and notices were issued to the petitioner. However, the petitioner failed to respond to the notices and did not make any representation against the proposed action. Ultimately, the learned Assistant Provident Fund Commissioner, by his order dated 12.02.2007, proceeded to order against the petitioner levy of interest under

Section 7-Q and damages under Section 14-B of the Act of 1952 for the alleged belated payment for the period in question The considerations adopted and directions issued by the learned Assistant Provident Fund Commissioner in the order dated 12.02.2007 read as under:

> *"On consideration of the records placed before me and in the light of my above findings, I have reason to affirm that the employer failed to remit the dues under EPF & MP Act' 52 in the respective funds on or before the due dates in respect of the dues for the period from Marh 1982 to Sep' 2002 as shown in the schedule of penalties as stated above without valid reasons. The total amount of interest U/S 7-Q & damages U/S 14-B of the Act' 52 payable in respect of the belated payments for the period from March' 1982 to Sep' 2002 as per the schedule of penalties are shown below:-*

TABLE 1. INTEREST U/S 7-Q

ACCOUNT NO.	*Interest Due U/S 7-Q (Rs.)*	*Interest deposited (Rs.)*	*Balance Rs.*
1	*102074.00*	*0.00*	*102074.00*
2	*9550.00*	*0.00*	*9550.00*
10	*55754.00*	*0.00*	*55754.00*
21	*2895.00*	*0.00*	*2895.00*
22	*41.00*	*0.00*	*41.00*
GRAND TOTAL	*170314.00*	*0.00*	*170314.00*

TABLE 2. PENAL DAMAGES U/S 14-B

ACCOUNT NO.	*Penal Damages Due U/S 14-B (Rs.)*	*Penal Damages deposited (Rs.)*	*Balance Rs.*
1	*768254.00*	*0.00*	*768254.00*
2	*42321.00*	*0.00*	*42321.00*
10	*273669.00*	*0.00*	*273669.00*
21	*23699.00*	*0.00*	*23699.00*
22	*987.00*	*0.00*	*987.00*
GRAND TOTAL	*1108930.00*	*0.00*	*1108930.00*

> *I, Shri S.D. Singh, Assistant Provident Fund Commissioner, in exercise power conferred upon me under section 14-B to the EPF & MP Act' 52 levy the penal damages Rs. 11,08,930.00 for the inquiry period as shown in the above table No. 2 alongwith the sum of Rs. 1,70,314.00 being interest U/s 7-Q as shown in above table No. 1.*
>
> *Thus the employer of M/s St. Peter's School, Mary Land, Shillong AS/1260 directed to deposit the interest and penal damage amount of Rs. 12,79,244.00 in the varied accounts as stated in the table No. 2 above within 15 days of receipt of this order.*
>
> *This order is without prejudice to the levy of penal damages for the subsequent period of default, if any."*

Thus, an amount of Rs. 1,70,314/- (Rupees one lakh seventy thousand three hundred and fourteen) was held recoverable from the

petitioner towards interest under Section 7-Q whereas an amount of Rs. 11,08,930/- (Rupees eleven lakhs eight thousand nine hundred and thirty) was held recoverable from the petitioner as penal damages under Section 14-B of the Act of 1952. The petitioner initially filed a petition seeking review of the aforesaid order dated 12.02.2007 that was rejected as not maintainable by the order dated 04.09.2008. It has been the case of the petitioner that after such rejection of the review petition, it had deposited an amount of Rs. 70,314/- (Rupees seventy thousand three hundred and fourteen) on 27.10.2008 and another amount of Rs. 1,00,000/- (Rupees one lakh) on 10.03.2009 towards the demand of interest under Section 7-Q of the Act and therefore, nothing remained due towards interest. It is further the case of the petitioner that it had made part payment against the amount of damages that had not been duly accounted for. Coming to the aspect relating to part payment towards damages a little later, relevant it is to notice at this juncture that earlier, the grievance of the petitioner had been that on 19.03.2010, in a mechanical manner, the respondents served upon it an old notice dated 10.10.2007 demanding the entire amount payable under the order dated 12.02.2007, i.e, a sum of Rs. 1,70,314/- under Section 7-Q and a sum of Rs. 11,08,930/- under Section 14-B of the Act of 1952.

While questioning the aforesaid notice dated 10.10.2007 (as received on 19.03.2010), the petitioner approached this Court by way of a writ petition (No. 83 of 2010) with the grievance that the respondents had issued the notice demanding entire amount under the order dated 12.02.2007 without accounting for the payment already made, only in order to harass and pressurise the petitioner. Another notice dated 02.02.2010, whereby the petitioner was asked to produce the complete record in

respect of dues for the period of March, 2008 to November, 2008, was also sought to be questioned in the writ petition.

While deciding the aforesaid writ petition by the order dated 10.04.2014, this Court found no reason to interfere with the notice dated 02.02.2010 in respect of the enquiry for the period of March, 2008 to November, 2008, but so far the notice dated 10.10.2007 (as received by the petitioner on 19.03.2010) was concerned, this Court found the process adopted by the respondents wholly unjustified and proceeded to quash the said notice while giving liberty to the respondents to calculate the actual amount payable by the petitioner after adjusting the amount already paid. This Court, inter alia, observed and held as under:

> *"5. Learned counsel for the petitioner drew attention of this Court to Annexure XV to the writ petition showing that for the period of 1982-1997, damages amounting to Rs. 43,109/- were deposited on 02.07.2009, and dues on account of damages for the month of April, 2000 to November, 2002 amounting to Rs. 35,153/- were deposited on 02.07.2009, apart from amount of Rs. 25,340/- paid towards damages for the period March, 1995 to February, 2002 separately on 02.07.2009. All these payments appear to have been made and received in cash as per copies of challans filed with Annexure XV. Apart from this, the petitioner has drawn attention of this Court to Annexures IV and V to the writ petition showing that towards outstanding dues on account of interest for the period of March, 1982 to September, 2002, amount of Rs. 70,314/- was deposited on 27.10.2008, and Rs. 1,00,000/- for the same period was deposited vide challan dated 09.03.2009 (Annexure VI to the writ petition).*
>
> *6. Learned counsel for the respondents failed to deny the deposits made by the petitioner as above. As such, on perusal of Annexure IV, Annexure V and Annexure VI to the writ petition, it is clear that before the impugned notice Annexure XIV was slapped on the writ petitioner on 19.03.2010, the amount of Rs. 1,70,314/- had already been deposited with the respondents. As such, attempt made by the respondents in the year 2010, in pursuance to the notice dated 10.10.2007, without making adjustment of the above amount which was paid before 19.03.2010 when said notice was served on the petitioner, is nothing but harassment of the petitioner. Apart from this, some part of damages also appears to have been paid as discussed in the previous paragraph. Therefore, the impugned notice dated 10.10.2007 is liable to be quashed with the observations that the respondents may calculate the actual amount payable by the petitioner after adjusting the amount already paid by it on account of interest and damages."*

After the decision aforesaid, the Regional Provident Fund Commissioner, Shillong proceeded to serve upon the petitioner a notice dated 22.04.2014, demanding the alleged revised arrear dues to the tune of Rs. 10,64,020/- ((Rupees ten lakhs sixty four thousand and twenty) towards damages under Section 14-B of the Act of 1952. Having received the demand notice thus, the petitioner made the representations on 10.06.2014 and 13.08.2014, seeking relief that it may be allowed to make payment of 25% of the total demand towards damages, inter alia, with reference to the decision of the Hon'ble Supreme Court in the case of *M/S K. Street Lite Electric Corporation Vs Regional Provident Fund Commissioner: AIR (2001) SC 1818* and amended Clause 32-A of the Employees' Provident Fund Scheme, 1952. The petitioner followed up such representations by a detailed representation dated 06.05.2015 with the same prayer while stating as under:-

> *"With reference to the above correspondence and in continuation of our earlier reply and request made, we would once again like to bring to your kind notice the judgments of the Hon'ble Supreme Court wherein the Apex Court has allowed to pay only 25% of the total damages u/s 14-B.*
>
> *In the light of the decision of the Hon'ble Supreme Court we request Your kind self to extend the same benefit to us and allow us to pay only 25% of the total damages as claimed by your office.*
>
> *Please note that as per record available with us a sum of Rs 35,153/-, Rs 43,109/-, Rs 25,340/- have already been paid vide challan towards damages. Copies of challan enclosed herewith for ready reference. As such, it is requested that the above amount already paid may be adjusted/deducted from the total amount of 25% of damages to be paid and allow us to deposit the balance amount and close the matter.*
>
> *We would also like to bring to your notice that by an order / direction of your office – the bank account in ..... A/C No ..... has been freezed without issuing any prior notices to us. Due to such freezing of the account we are facing lot of inconveniences.*
>
> *The account has more than the amount that will come as 25% of the total damages as such freezing of the account is causing lot of inconveniences.*
>
> *25% of the total damages as claimed will be:*
> *Damages u/s 14 B as claimed = Rs 11,08,930*
> *25% of the damages = Rs 2,77,232.5%*
> *(-) 1,03,602.5*
> *.....*
> *Rs 1,73,630.5*

Already deposited vide Challan (35,153 + 43109 + 25340 = 103602)

In view of the above, you are once again requested to kindly consider the above and allow the fees to pay 25% of the total damages. After deducting/adjusting the amount already paid earlier and close the matter once for all and defreeze our Bank account. For this act of kindness shall remain grateful."

The Regional Provident Fund Commissioner, however responded to the aforesaid representation by his letter dated 15.06.2015, purportedly stating the details of the payment made by the petitioner and demanding the remaining amount of Rs. 10,64,020/-. This letter of the Regional Provident Fund Commissioner dated 15.06.2015 reads as under:

"To,

The Principal,
Shri Patrick A Thorose,
M/S St Peter's School,
Maryland, Dhankheti, Shillong – 793001,
Meghalaya.

Sub:- ***Payment related only to 14-B of EPF & MP Act 1952-reg***

Sir,

With reference to your even letter dated 06/05/2015, it is seen from the Challan submitted by you that they are related only to the payment of 7-Q, which are as under:-

SL NO	*Period*	*Dues*	*U/S 7-Q*	*U/S 14-B*	*Date of deposits*
1	*03/1982 to 11/1997*	*NIL*	*Rs.43109/-*	*NIL*	*02/07/2009*
2	*03/1982 to 09/2002*	*NIL*	*Rs.100000/-*	*NIL*	*09/03/2009*
3	*03/1982 to 09/2002*	*NIL*	*Rs.70314/-*	*NIL*	*27/10/2008*
4	*03/1982 to 09/2002*	*NIL*	*NIL*	*Rs.21211/-*	*02/07/2012*
5	*03/1982 ot 09/2002*	*NIL*	*NIL*	*Rs.23699/-*	*21/07/2009*
6	*04/2000 to 11/2002*	*NIL*	*Rs.35153/-*	*NIL*	*02/07/2009*
7	*03/1995 to 02/2002*	*NIL*	*Rs.25340*	*NIL*	*02/07/2009*
8	*04/2003 to 02/2004*	*NIL*	*Rs.25987/-*	*NIL*	*02/07/2009*
9	*01/2005 to 06/2005*	*NIL*	*Rs.3757/-*	*NIL*	*29/05/2009*
10	*07/2005 to 06/2006*	*Rs.15642/-* *Rs.80909/-*	*Rs.14249/-* *NIL*	*NIL* *NIL*	*27/05/2008* *21/07/2009*
11	*07/2006 to 02/2008*	*Rs.165163/-* *Rs.37480/-*	*Rs.19317/-* *Rs.75661/-*	*NIL* *NIL*	*29/05/2009* *21/07/2009*

U/S 14-B Due Rs.1108930.00
U/S 14-B Paid Rs. 44910.00
Balance.....Rs.1064020.00, Therefore it is directed to remit the Balance dues u/s 14-B amounting to Rs.1064020.00 within 15 days in order to avoid legal complications."

The petitioner has stated the grievance herein that in an arbitrary and illegal manner, the respondents proceeded to issue directions to the Axis Bank, Shillong to freeze its Savings Bank Account and such an information was issued to the petitioner by the Bank on 27.04.2015 (Annexure XIV). While questioning the actions of the respondents and while asserting its right to pay 25% of the damages levied, the petitioner has averred, inter alia, as under:

> *"12 That the action on the part of the Respondent in directing the Respondent No 4 to freeze the account of the petitioner without serving notice to petitioner is highly illegal, arbitrary, malafide and in violation of the provision of law which requires to be set aside and quashed. After the Hon'ble High Court has set aside and quashed the demand notice vide its judgment dated 10-4-14 the Respondent ought to have pass necessary direction to the Bank to defreeze the account.*
>
> *13 That the action of the Respondents in failing to adjust the amount paid earlier under section 14-B (though wrongly shown in challan as U/S 7-Q) and failing to give the detailed break up of the period of default and the rates at which damages is charged is highly illegal, arbitrary, melafide. The Respondent also most illegally failed to act as per the decision of the Hon'ble Supreme court to allow the petitioner to deposit only 25% of the total damages and extend the same benefit to the petitioner.*
>
> *14 That it is pertinent to mention here that the Respondents had initiated the proceedings under section 7-Q and 14/B for interest and damages for alleged late payment of EPF dues for the period 3/82-Sep 2002 much after lapse of more than 24 Years which is clearly beyond the limitation period.*
>
> *The petitioner is highly prejudiced by such delayed initiation of proceedings by the Respondents as due to long delay, no proper records were available and there has been change of employees etc. most of the beneficiaries have already left the job and not known.*
>
> *It is submitted that it is a settled position of law that if there has been no intention, wilful delay in making payment whether default is found but no apparent "fault" – the quantum of damages should be compensatory rather than penal in nature.*
>
> *15. That it is stated that section 32-B(5) of the EPF Scheme 1952 provides that depending on merit, deduction of damages upto 50% may be allowed. But the Respondent failed to consider the case of the petitioner and extend the benefit of reduction or waiver of damages to the petitioner and/or allow them to pay only 25% of the total damages, in the light of the Hon'ble Apex court's direction*
>
> *16 That the action of the Respondent is highly illegal, arbitrary, melafide and in violation of the Act and settled position of law. The Demand notice dated 22-4-14 & Letter dated 15-6-15 is a non speaking, non- elaborate does not disclose as to how the amount of damages arrived at and calculated deserves to be set aside and quashed.*

That the damages as claimed by the Respondent u/s 14-B for the period 3/82 – 9/2006 is Rs 11,08,930/- and 25% of the same is Rs 2,77,232.5%. After deduction/adjusting the sum of Rs 1,03,6025/- already paid the balance remains Rs 173,630.5/- which the petitioner is required to pay.

In the light of the decision of the Hon'ble Apex Court, the Hon'ble Gauhati High Court of Shillong Bench had also extended the same benefit in other similar cases and directed to pay 25% of the total damages."

In their affidavit-in-opposition, the respondents Nos. 2 & 3, while asserting the correctness of their action, have of course admitted that the petitioner had indeed made payment of Rs. 23,699/- and Rs. 21,211/- on the earlier occasions towards penal damages; and have also admitted that further payments to the tune of Rs.35,143/- and Rs. 25,340/- were inadvertently made by the petitioner under Section 7-Q of the Act. Moreover, the respondents have not specifically controverted the assertion of the petitioner of its right to make payment only to the tune of 25% of the dues; and have rather stated finally that appropriate relief(s) may be granted to the petitioner. The relevant contents of the affidavit-in-opposition of the respondents No. 2 and 3 could be taken note as follows:

"(9) That the contents of Para-8 is not admitted.

That in pursuance of the Judgment and Order dated 10.04.2014, which reads as follows:-

"As such.....the observation that the respondents may calculate the actual amount payable by the petitioner after adjusting the amount already paid by it on account of interest and damages."

That the respondent No. 3 vide letter No. AS/SHG/1260/Recovery/7-Q & 14-B/65(1) dated 22.04.2014 issued fresh notice of demand for an amount of Rs. 10 64 020/- (Rupees Ten Lakhs Sixty Four Thousand Twenty) only after adjusting the amount of Rs. 2 15 244/- (Rupees Two Lakhs Fifteen Thousand Two Hundred Twenty Four) only (Annexure IX of the Writ Petition) already paid by the petitioner school, the details of the recovered amount is as follows:

(A) Rs. 1 70 314.00 (Rupees One lakh seventy thousand three hundred and fourteen only) towards Penal Interest (7-Q)

(B) Rs.23 699.00 (Rupees Twenty three thousand six hundred ninety nine only) towards Penal Damages (14-B)

(C) Rs.21 211.00 (Rupees Twenty one thousand two hundred and eleven only) towards Penal Damages (14-B)

(10) That the contents of Para 9, 10, 13, 15 & 16 are admitted so far as the same is borne out of the records and the rest are denied.

That it is most humbly stated that as per section 8D(1) of the EPF & MP Act 1952, the Recovery Officer has no power to change the assessed dues after the Recovery Certificate has been issued by the Assessing Authority. Further, it is to state that the present Regional Provident Fund Commissioner/Assistant Provident Fund Commissioner are not the Assessing Authorities for this case since it was already assessed by the then Assessing Authority.

That it is most humbly stated that with reference to the payments made by the petitioner inadvertently under section 7-Q of the Act for the period 03/1982 to 09/2002, the following amounts have been adjusted:-

(A) Rs. 35 153.00 (Rupees Thirty five thousand one hundred and fifty three only)

(B) Rs. 25 340.00 (Rupees Twenty five thousand three hundred and forty only)

(11) That the contents of Para- 11 & 12 are admitted so far as the same is borne out of the records and the rest are denied.

That it is most humbly stated that the order of attachment has been sent to the Bank under section 8F(3)(IV) and under Clause (X) of sub section 3 of section 8F of the EPF & MP Act 1952, as stated at para 1 and 2 of page 2 of the notice dated 29/6/2012, the petitioner is not required to be notified.

That it is most humbly stated that the Demand Notice dated 10/10/2007 issued by the then Recovery Officer was quashed, but not the Bank Attachment Order dated 29/6/2012. Further it is most humbly submitted that since the petitioner has not deposit the outstanding Penal Damages even upto 25% of the Assessed Penal Damages.

(12) That the contents of Para – 14 are admitted so far as the same is borne out of the records and the rest are denied.

That it is most humbly submitted that the law of limitation does not apply to cases under section 14-B of the EPF&MP Act 1952 as per the observation given in the Hon'ble Madras High Court in the Shri Padmavathy Cotton Mills, Rajapalayam v/s The Employees Provident Fund Appellate Tribunal, New Delhi and another (WP.No. (MD) No. 89 of 2011 decided on the 14th October 2011). Further it is most humbly stated that it is the statutory duty of the petitioner school to comply with all the provisions of the Act.

(13) With regards to the contents of Para – 17 of the petition your humble respondents have no comments to make being submissions made

by the petitioner to the Honourable court. In view of the above submissions, appropriate relief (s) may be granted to the petitioner."

Learned counsel for the petitioner has argued that in the present case, the Assistant Provident Fund Commissioner failed to spell out the rate of the damages sought to be imposed in his order dated 12.02.2007; and the Department also failed to properly examine the amended Clause 32-A of the Employees' Provident Fund Scheme, 1952. The learned counsel has particularly referred to the decisions of the Hon'ble Supreme Court in *M/S K. Street Lite Electric Corporation* (Supra) and that in *Halwasia Vidya Vihar v. Regional Provident Fund Commission, AIR 2006 SC 1767;* and to the decision of the then Shillong Bench of Gauhati High Court in *WP(C) No. 58 (SH) of 2009 : St. John's School vs. Union of India and Others* to submit that the petitioner cannot be held liable to make payment of any amount beyond 25% of the alleged demand of damages. Per contra, it has been contended on behalf of the contesting respondents that the order dated 12.02.2007 having attained finality, they have not committed any illegality in adopting the recovery proceedings against the petitioner.

It may be usefully noticed that during the course of hearing of this matter, on 17.03.2016 and 22.03.2016, it was offered on behalf of the petitioner that the petitioner would be ready to make payment of 25% of the amount of demand; and after adjusting the amount already paid, would be willing to deposit the remaining payable amount. Without any other comment, this Court observed that the payment offered by the petitioner may be accepted by the respondent No. 2 without prejudice to the rights of either of the parties. Thereafter, it was submitted *ad idem* by the learned counsel for the parties on 29.03.2016 that the petitioner had deposited an amount of Rs. 1,28,720/- through Demand Draft No. 001874 dated

22.03.2016 with respondent No. 2 which, according to the petitioner, ought to be treated as complete payment towards 25% of the demand towards damages, after adjustment of the amount already paid.

Having given thoughtful consideration to the respective stands of the parties, this Court is inclined to accept the submissions made on behalf of the petitioner to the extent that it may be held liable to make payment of 25% of the total amount of damages assessed.

The relevant part of Section 14-B of the Act of 1952, empowering the authorities concerned to recover the damages, reads as under:

> *"**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 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 authorised 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:*
>
> *....."*

The Scheme as referred to in Section 14-B is the Employees' Provident Fund Scheme, 1952 as amended from time to time. Clause 32-A of the Scheme provides for the rate of damages recoverable that was amended in the year 2008. In the case of *St. John's School (Supra),* with reference to the amended Clause 32-A of the Scheme and the aforementioned decisions of the Hon'ble Supreme Court, the then Shillong Bench of Gauhati High Court observed and directed as under:

> *"3. In my judgment and order dated 1-7-2008 passed in connection with **WP(C) No. 58(SH) of 2004** followed by another judgment passed by me on 12-8-2008 in **WP(C) No 160 (SH) of 2005**, in cases somewhat similar to the facts of the instant case, I reduced payment of the damages to the extent of 25%. These orders have not been challenged in an appeal. Needless to say, those judgments were rendered in terms of the decision of the Apex Court in **Halwasia Vidya Vihar v. Regional Provident Fund***

Commission, AIR 2006 SC 1767*, which is binding upon this Court. However, the law on this point has now been changes by amendment of the Employees Provident Fund Scheme, 1952 in 2008, which came into force with effect from 26-9-2008. The amended provision is found at Clause 32-A in the following terms:*

> ***"32-A. 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 (15) of section 17 of the Act or in the payment of any charges payable under any provisions of the Act or the Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such other 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 in the table below:-***
>
> | ***Sl. No.*** | ***Period of default*** | ***Rated of damages (percentage of arrears per annum)*** |
> |---|---|---|
> | ***(1)*** | ***(2)*** | ***(3)*** |
> | ***(a)*** | ***Less that 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."*** |

4. Even a cursory look at the foregoing table will make it plain that for the default of default exceeding six months and above, the damages recoverable is fixed at 25% of the arrears per annum. The amendment is in accordance with the judgment of the Apex Court in ***Halwasia Vidya Vihar case*** *(supra). There can be no two opinions in this behalf. The respondent authorities cannot recover damages exceeding twenty five per centum of the arrears per annum even if the period of default is six month and above. In the view that I have taken, the impugned notice issued by the respondent No. 4 is liable to be interfered.*

5. Resultantly this writ petition is allowed. The impugned notice dated 6-3-2009 is hereby quashed. The respondent authorities are, therefore, directed to allow the petitioner to pay 25% of the total damage for the period between March, 1996 and February, 1999 in accordance with Clause 32-A of the Employees Provident Fund Scheme, 1952. The instalment(s) already paid by the petitioner may be adjusted against the balance payable in terms of this order. No order as to costs."

It may of course, be observed that the rate of damages have been provided in Clause 32-A *ibid.* on the percentage of arrears but on that basis, the Court has allowed the petitioner in *St. John's case* to pay 25% of the total damages assessed. Such a course appears to have been

adopted by the Court in the light of the decisions of the Hon'ble Supreme Court referred to hereinabove. In the case of *M/S K Street Lite (Supra)*, the Supreme Court reduced the amount of damages payable while observing as under:

> *"**4**. The second contention need not be examined in the view we propose to take in the matter. Even if we hold that the Central Government instructions issued under Section 20 of the Act are not binding on the respondent, still in assessing the damages it will be necessary for us to take note of the manner in which the amounts of damages have been levied and appropriately consider as to what would be the correct rate of damages to be imposed under Section 14-B of the Act. The statement of calculation prepared by the respondent regarding delay in payments discloses that the respondent has imposed damages at different rates, for example, for the month of July 1976 the rate of damages is 50% whereas the period of default is over month, while in case of December 1976 the damages imposed upon the appellant are at the rate of 20% though the period of delay is over two months, in the case of delay for April 1988 damages imposed are at the rate of 30% though the period of delay is only one month. In certain cases, even for a delay of below 15 days, like October 1977, damages at the rate of 85% have been imposed, while for another period though the delay is for six months 65% damages have been levied. Therefore, it is not possible to discern the rationale adopted by the respondent in the matter of imposition of penalty. In the circumstances, therefore, it would have been appropriate for us to set aside the order and remit the matter to the respondent, but we do not think that such an exercise is necessary after such a long period. In this case, the amount due towards provident fund has already been deposited and this Court, by order dated December 18, 1998, granted an interim relief to the extent of 75% of the amount of damages sought to be recovered, while out of the disputed amount of damages (that is, Rs. 88,731.25), 25% had already been directed to be deposited. In that view of the matter, we think, it is appropriate to confine the damages leviable in this case on an over all consideration to the extent of 25% of the total damages imposed."*

Coming to the facts of the present case, on a bare look at the aforesaid order dated 12.02.2007, this much is clear that even while proceeding to the assess damages under Section 14-B of the Act of 1952 on different accounts bearing No. 1, 2, 10, 21 and 22, the learned Assistant Provident Fund Commissioner chose not to spell out the quantum and period of arrears as also the corresponding rates on which the damages were sought to be levied. The learned Commissioner also did not record any specific finding if, it had been a matter of intentional default on the part of the petitioner. On the earlier occasion, this Court found the respondents totally unjustified in not even providing for the due credit of

the amount deposited on 02.07.2009 while serving a notice in the year 2010. After this Court directed making of correct calculation, the petitioner made repeated representations seeking reliefs in terms of the aforesaid amended Clause 32- A of the Scheme and the decisions of the Hon'ble Courts. However, the respondent – Regional Provident Fund Commissioner, in his letter dated 15.06.2015, even while referring to certain deposits and reiterating his demand to the tune of Rs. 10,64,020/-, did not even advert to the submissions of the petitioner regarding the relief in terms of the aforementioned decisions of the Courts. Interestingly, such an aspect has not been traversed specifically in this writ petition either. As noticed in the above-quoted passages in the affidavit-in-opposition, the core submission of the petitioner, for reduction of its liability to the tune of 25% of assessed damages, has not been controverted by the respondents while stating, of course, that the petitioner has not deposited even 25% of the assessed damages. However, in all fairness, the respondents have stated in the last that the petitioner may be granted appropriate relief(s).

Thus, the position remains that in the initial order dated 12.02.2007, the learned Assistant Provident Fund Commissioner did not even state the rate/rates on which the damages were sought to be levied for a long period of March, 1982 to September, 2002; and earlier, the respondents failed to account for and adjust the payment made by the petitioner; and the petitioner has indeed made another substantial payment during the course of hearing of this writ petition.

Looking to the shortcomings in the order dated 12.02.2007, and in the overall circumstances of the case, while following the course adopted by the Shillong Bench of Gauhati High Court in the case of *St. Jon's School (Supra),* it appears just and proper to hold that the petitioner would

be liable to make payment towards damages maximum to the extent of 25% of the damages assessed.

So far the amount payable by the petitioner towards such component of 25% of damages is concerned, this Court is still unable to conclude on the matter because of several errors, inconsistencies and incongruities left open by both the parties. Indisputably, the petitioner, while making payment by way of challans dated 02.07.2009 mentioned as if they were of payment towards the dues of interest under Section 7-Q of the Act. Such payments are now said to be relating to the amount of damages under Section 14-B of the Act. It is, however, not disputed that the interest payable under Section 7-Q of the Act had already been paid off. It is, therefore, required of the parties that the accounts be corrected and reconciled and thereafter, the respondents may call upon the petitioner to make payment of other amount, if found due towards the component of 25% of the damages assessed.

For what has been discussed hereinabove, this writ petition is allowed to the extent and in the manner that the petitioner is held liable to make payment only to the extent of 25% of the total damages assessed under the order dated 12.02.2007. The demand notice dated 22.04.2014 is quashed; and the respondents are directed to reconcile the account with proper adjustment of the amount already paid by the petitioner. For the purpose, within four weeks from today, the petitioner may make specific and clear representation to the Regional Provident Fund Commissioner, who shall then work out reconciliation of the account with adjustment of the amount already paid and then, may seek recovery of the balance of the amount, if at all found due towards 25% of the total damages assessed.

Further, looking to the relief granted and the payment already made by the petitioner, this Court finds no reason to continue with the freezing of the bank account of the petitioner. Therefore, the order of the respondents freezing the bank account of the petitioner shall be treated as annulled.

In the interest of justice, it is made clear that this order pertains only to the demand arising from the order dated 12.02.2007; and in case of the petitioner being in arrears in relation to any other amount, the respondents shall be free to take recourse to appropriate proceedings in accordance with law.

No costs.

CHIEF JUSTICE

Sylvana
Item No. 13