



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 4TH DAY OF JANUARY 2024 / 14TH Pousha, 1945

WP(C) NO. 35163 OF 2019

PETITIONER:

CENTRAL BOARD OF TRUSTEES,
EMPLOYEES PROVIDENT FUND,
THROUGH REGIONAL PROVIDENT FUND COMMISSIONER,
REGIONAL OFFICE, V.K.COMPLEX, FORT ROAD, KANNUR.
BY ADV K.C.SANTHOSHKUMAR

RESPONDENTS:

- 1 BAKE 'N' JOY HOT BAKERY,
 RAILWAY STATION ROAD, KANNUR-670 001.

- 2 CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
 CUM LABOUR COURT, KARITHALA - KARSHAKA ROAD,
 ERNAKULAM - 682 011.
 BY ADVS.

ATHUL BABU
PRANOY K.KOTTARAM
SIVARAMAN P.L

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C.R.

JUDGMENT

The Central Board of Trustees of the Employees Provident Fund has filed this writ petition through the Regional Provident Fund Commissioner, Regional Office, V.K.Complex, Fort Road, Kannur, challenging Ext.P3 order of the Central Government Industrial Tribunal-Cum-Labour Court (in short 'the Tribunal'), Ernakulam in Appeal No.117 of 2019, which was an appeal filed by the 1st respondent challenging levy of damages under Section 14 (B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the EPF Act'). Through Ext.P3 order, the Tribunal has reduced the amount of damages to 50% of the amount levied for reasons stated in the order.

2. The learned counsel appearing for the petitioner would submit that the levy of damages under Section 14 (B) of the EPF Act is statutory. It is submitted that this is a case where there was a clear disregard to the obligation under law to pay the contributions in respect of the employees in question. It is submitted that the contributions had been collected from the employees and had to be remitted to the Department together with the employer's



contribution. It is submitted that after collecting/deducting the employee part of the contribution, the 1st respondent had failed to remit the amount to the Department and therefore, the levy of damages was perfectly justified and in tune with the statutory provisions. It is submitted that the Tribunal had without just cause interfered with the order levying damages and had reduced the damages to 50% of the amount levied.

3. The learned counsel appearing for the 1st respondent would submit that there is no illegality in Ext.P3 order of the Tribunal. It is submitted that the reasons which made with the Tribunal in granting relief to the 1st respondent is evident from the order itself. It is submitted that the Tribunal had clearly found that this was a case where the coverage and liability under the EPF Act had been disputed by the organization. It is submitted that it was also found that the business was being run by the husband of the present proprietor, who had passed away in 2004 after suffering from a certain illness, for which he had to take treatment in Bombay. It is submitted that the Tribunal has found that the proceedings in which the coverage of the establishment was determined were not properly prosecuted by the late husband of the petitioner on account of his illness and that an appeal filed against those proceedings was



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also dismissed for non-prosecution. It is submitted that it is clear from the judgment of the Supreme Court in *Employees' State Insurance Corporation v. HMT Ltd and Another*; (2008)3 SCC 35 as also from the judgment of the Supreme Court in *Mcleod Russel India Limited v. Regional Provident Fund Commissioner, Jalpaiguri and Others*; (2014)15 SCC 263 that unless there is *mens rea* or *actus reus* and a conscious and willful disregard of obligations under the EPF Act, there could not be an automatic imposition of damages at 100%. It is submitted that in the facts and circumstances of the case, the order of the Tribunal in Appeal No.117 of 2019 reducing the damage to 50% cannot be said to be unreasonable warranting the interference at the hands of this Court in the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution of India.

4. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent, I am of the view that there is considerable merit in the contention taken by the learned counsel appearing for the 1st respondent. The facts which compelled the Tribunal to take a view that this was not a case where the damages had to be levied at 100% is spelt out in the order itself. These reasons have already been noticed by this Court



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while considering the submissions of the learned counsel appearing for the 1st respondent. Indeed, the requirement of *mens rea* and/or *actus reus* is no longer a necessary ingredient to be proved to impose damages. In ***Horticulture Experiment Station v. Provident Fund Organization***, (2022) 4 SCC 516 after referring to HMT (*supra*), ***McLeod Russel (India) Ltd. (supra)***, ***Provident Fund Commr. v. RSL Textiles (India) (P) Ltd.*** (2017) 3 SCC 110, ***SEBI v. Shriram Mutual Fund***, (2006) 5 SCC 361 & ***Union of India v. Dharamendra Textile Processors***, (2008) 13 SCC 369 it was held:-

“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.”

It is no doubt true that in ***Horticulture Experiment Station (supra)***, while dealing with the question of damages under the EPF Act, the Supreme Court followed the view in ***SEBI v. Shriram Mutual Fund*** (which was decided in the background of penalty provisions in the *SEBI Act*) that “a breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that



unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not.” The above view in respect of penalty provisions in the SEBI Act, in ***Shriram Mutual Fund (supra)*** was followed by a three-judge bench of the Supreme Court in ***Union of India v. Dharamendra Textile Processors (supra)*** (which was decided in the background of penalty provisions in the Income Tax Act). However, the said decision of the Supreme Court does not hold that 100% damages must be invariably imposed. The decision is also not authority for the proposition that the circumstances that led to the default cannot be considered while deciding the quantum of damages to be imposed. In the facts of the present case, the Tribunal has not set aside the damages under Section 14-B of the EPF Act. It has only reduced the quantum of penalty to 50%. This, in my view is permissible even when the requirement of *mens rea* and/or *actus reus* is no longer a necessary ingredient for levy of damages under Section 14-B of the EPF Act. It is to be noted that the provisions of Section 14-B of the EPF Act do not prescribe that a penalty at 100% is to be mandatorily imposed.

5. In the light of the above, I am of the view that the Tribunal has committed no illegality in reducing the damages from



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100% to 50%. I see no ground made out for interference with Ext.P3 order in the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution of India.

The writ petition fails and it is accordingly dismissed.

Sd/-
GOPINATH P.
JUDGE

DK



APPENDIX OF WP(C) 35163/2019

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE APPEAL MEMORANDUM BEARING APPEAL NO.117/2019 FILED BEFORE THE 2ND RESPONDENT BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN BEFORE THE 2ND RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE ORDER DATED 02.9.2019 IN APPEAL NO.117/2019 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT EXHIBITS

EXHIBIT R1(A) TRUE COPY OF THE DEATH CERTIFICATE DATED 9.12.2004