

(2015) 05 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (C) 2022 of 2011

Apex Security and Detective Force Pvt. Ltd.

APPELLANT

Vs

Central Board of Trustees, EPF Organisation

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 14-B, 15, 17, 6

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (2015) LLR 900

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : S.P. Arora, for the Appellant; Keshav Mohan and Amrita Narayan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—By the present petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the order dated 02.02.2011 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal (hereinafter referred to as "the EPFAT"), New Delhi in Appeal No. 650(4) 2004 whereby the appeal of the petitioner under Section 7-D read with Section 7-I of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) was dismissed by the EPAT. The petitioner also impugns the order dated 30.04.2004 passed by the respondent whereby damages to the tune of Rs. 21,01,669/- (Rs. Twenty one lacs one thousand six hundred and sixty nine) under Sections 14B and 7Q of the EPF Act was cumulatively levied on the petitioner.

2. Brief facts as emerging from the petition are that the petitioner establishment was served with a letter No.DL/CPM/Circle:30/Damages/DL/12870/CA dated 15.01.2004 by the office of the respondent requiring the petitioner to make payment of interest and damages for the belated remittance under Section 7Q

and 14B of the EPF Act for the period March 1997 to February 2002. The total amount due and payable was shown as Rs. 6,87,065/- (Rs. Six lacs eighty seven thousand and sixty five) as interest under Section 7Q and Rs. 16,80,570/- (Rs. Sixteen lacs eighty thousand five hundred and seventy) under Section 14B of the EPF Act. The action for levy of damages under Section 14B of the EPF Act was initiated on 03.02.2004 and the inquiry was fixed for 19.02.2004. The petitioner was forced to pay an amount of Rs. 2 lacs (Rs. Two lacs) on 08.03.2004 as payment towards proposed action for levy of damages and another Rs. 50,000/- (Rs. Fifty thousand) on 15.04.2004. The case was thereafter adjourned to 30.04.2004

3. Thereafter, the petitioner received order dated 30.04.2004 with the forwarding letter dated 14.05.2004 whereby the respondent levied the damages and interest cumulatively as Rs. 21,01,669/- (Rs. Twenty one lacs one thousand six hundred and sixty nine). A review petition dated 26.05.2004 was filed by the petitioner before the respondent. However, the same was dismissed by the respondent and the same was informed to the petitioner vide letter dated 30.07.2004.

4. Against the order of levy of damages and interest, the petitioner preferred a statutory appeal ATA No. 650(04) 2004. The petitioner was heard on the said appeal. However, the same was dismissed vide impugned order dated 02.02.2011.

5. Learned counsel for the petitioner contended that the impugned order was passed in a highly laconic manner without any application of mind. The impugned order dated 30.04.2004 is a non-speaking order and non-elaborate as it does not disclose as to how the amount of damages as well as interest was arrived at and calculated. The damages under Section 14B of the EPF Act, inherently contains the amount of loss of interest to the department as well. Charging of interest in addition to damages for the same period is against the Constitutional provisions. Reliance in this regard is placed on *Systems and Stamping and Another Vs. Employees' Provident Fund Appellate Tribunal and Others*, (2008) 2 LLJ 939 . and *Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, E.P.F. Organization*, (2012) 10 AD 1 : (2012) 193 DLT 486 : (2012) 132 DRJ 753 : (2012) 135 FLR 799 : (2013) 1 ILR Delhi 190 : (2013) 1 LLJ 29 : (2013) 2 SCT 199 . in support of this contention.

6. It was further contended by learned counsel for the petitioner that the petitioner is not liable to pay interest charged under Section 7Q of the EPF Act as no amount of damages was due from the petitioner. Otherwise also, the respondent does not have power to charge interest under the said section. Provisions of Section 7Q are prescribing in nature and not charging. There are no provisions for recovery of the amount of interest if levied or charged under this Section.

7. It was also contended on behalf of the petitioner that the EPFAT failed to appreciate that the proceedings against the petitioner establishment were

initiated after a lapse of three years which is clearly beyond the limitation period and is barred by departmental circular dated 28.11.1990. As per the said circular, Regional Provident Fund Commissioners were directed to ensure that all pending cases were disposed off within a period of three years from the date of the said circular. In cases of fresh defaults, damages were directed to be levied within a period of the subsequent three financial years.

8. Learned counsel for the petitioner lastly contended that the language of Section 14B of the EPF Act read with para 32 of the Employees provident Fund Scheme, 1952 (hereinafter referred to as the Scheme) reveals that the levy of damages on the EPF contributions will not be legal if there remains no default or arrears on the date when the damages are levied. In the present case, there has been no delay in the deposit of the Provident Fund dues and no amount of Provident Fund dues were payable on the day of show cause notice.

9. Per contra learned counsel for the respondent contended that the EPF Act is meant to provide social and financial security to the downtrodden section of the society at the time of their retirement, death during service, medical treatment, etc. The EPF Act is a social welfare legislation which cannot be done away with and strict adherence to its provisions is mandatory. Under this Act, the employer is duty bound to make the Provident Fund contributions on time and in case of any default, the employer is liable to pay damages. Any delay in payment of the amount under Section 6 of the EPF Act causes a loss to the beneficiary of the scheme. Thus the damage that is sought to be recovered from the employer is for the purpose of indemnifying the beneficiaries for the loss that they have suffered. Reliance is placed on *Bharat Plywood and Timber Products (P) Ltd. Vs. Employees' Provident Fund Commissioner and Others*, (1977) 1 LLJ 379 . in support of this contention.

10. It was further contended on behalf of the respondent that Section 7Q and 14B of the EPF Act have separate and distinct identity and that the interest element is not ingrained under the damages levied under Section 14B of the EPF Act. While the purpose of Section 7Q of the EPF Act is to recoup the loss of interest sustained by the subscriber on account of the belated remittance to the fund, damages under Section 14B of the EPF Act are purely punitive in nature and meant to act as deterrent to the defaulter from making further defaults. None of these sections are restrictive on the operation of the other and can operate simultaneously.

11. Learned counsel for the respondent lastly contended that Section 14B of the EPF Act does not prescribe any time limit for the service of a notice and commencement of proceedings there-under. Delay in issuance of notice under the said section is no ground for claiming immunity from liability of damages. The circular dated 28.11.1990 is only a guideline issued to the officers to perform their functions in an expedient manner. Such guidelines are merely suggestive in nature and cannot take place of a statutory law.

12. I have given my thoughtful consideration to the submissions made by learned counsels for the parties. I have also perused the material on record.

13. The EPF Act is a beneficial piece of legislation. It was passed with an object of making some provisions for the future of the industrial worker after his retirement or for his dependents in the case of his early death. The Parliamentarian, after considering various financial and administrative difficulties in old and survival pension"s schemes and gratuity schemes, agreed to introduce the institution of contributory provident fund schemes in which, both the worker and the employer would contribute. Provident fund scheme was considered as a means to encourage the stabilization of a steady labour force in industrial centre. The Parliamentarians were well aware of the fact that with industrial growth, although, the big employers had introduced the scheme of provident fund for the welfare of their workers, but all these schemes until then were private and voluntary and the workers of the small employers remain deprived of the benefits which were provided by big employers. Thus, with an object to provide for compulsory establishment of provident fund by every employer in the industrial concerns for the betterment of his employee, the EPF Act was enacted.

14. The EPF Act, under its various sections, encompasses the provisions for establishment of Employees" Provident Fund Schemes, contribution and matters which may be provided for in scheme, determination of money due from the employer, deposit of amount due, mode of penalties, recovery, etc. Here, it would be relevant to reproduce Section 14-B of the EPF Act which is material to the case before this court. Section 14-B of the EPF Act provides for the power of the competent authority provided there under to recover damages for delayed Provident Fund deposits. Section 14-B of the EPF Act 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:

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 (1 of

1986), subject to such terms and conditions as may be specified in the Scheme."

15. The primary contention on behalf of the petitioner is that competent authority under Section 14B of the EPF Act is not empowered to raise demands under the said provisions beyond a limitation period of three years as provided in by the circular dated 28.11.1990. Reliance is placed especially on paragraph 2 thereof which reads as:-

"2. After considering the issues the C.B.T. has decided that all cases under Section 14B are to be finalized within a period of 3 years. Accordingly, it is stated that the cases in which damages are yet to be levied as on 30th June, 1990 the R.P.F. Cs should ensure that all such cases are disposed of within a period of 3 years from now and in case of fresh defaulted damages shall be levied within the close of the subsequent three financial years."

16. This contention does not find favour with this court. Section 14-B of the EPF Act was inserted with an object to act as a deterrent measure on the employer to prevent them from not carrying out their statutory obligations to make payments to the provident fund. The damages under Section 14-B EPF Act are penal in nature. This section authorizes the Central Provident Fund Commissioner or such other officer as may be authorised to impose exemplary or punitive damages and thereby prevent the employer from making defaults. In the absence of such a provision, the employer could deliberately default in the payment of their provident fund contributions and in the meanwhile utilize both their contributions as well as that of employees" in their business. In such a case, an employer could delay the payment of provident fund dues without any genuine reasons on his part for doing so and may escape from his liability to make payment without undergoing any additional financial liabilities. To prevent this, the said section was made a part of the EPF Act and also by the Act 40 of 1973 the words "damages not exceeding 25% of amount of arrears" were later on amended to "not exceeding the amount of arrears" in the said section.

17. The Hon"ble Supreme Court in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, AIR 1979 SC 1803(1) : (1979) 39 FLR 309 : (1979) LabIC 1261 : (1979) 2 LLJ 416 : (1979) 4 SCC 573 : (1980) 1 SCR 61 , referred to the reasons which made the Parliamentarian to insert Section 14-B on the statute book and observed:-

"10. In its working, the authorities were faced with certain administrative difficulties. An employer could delay payment of Provident Fund dues without any additional financial liability. Parliament, accordingly, inserted Section 14-B for recovery of damages on the amount of arrears. The reason for enacting Section 14-B is that employers may be deterred and thwarted from making defaults in carrying out statutory obligations to make payments to the Provident Fund. The object and purpose of the section is to authorise the Regional Provident Fund Commissioner to impose exemplary or punitive damages and thereby to prevent employers from making defaults. Section 14-B, as originally enacted, provided

for imposition of such damages, not exceeding 25% of the amount of arrears. This, however, did not prove to be sufficiently deterrent. The employers were still making defaults in making contributions to the Provident Fund, and in the meanwhile utilising both their own contribution as well as the employees' contribution, in their business. The provision contained in Section 14-B for recovery of damages, therefore, proved to be illusory. Accordingly, by Act 40 of 1973, the words "twenty-five per cent of" were omitted from Section 14-B and the words "not exceeding the amount of arrear" were substituted. The intention is to invest the Regional Provident Fund Commissioner with power to impose such damages that the employer would not find it profitable to make defaults in making payments."

18. If the defaulter is permitted to escape his liability on the ground that the demand under Section 14B of the EPF Act was raised belatedly it would amount to allowing a defaulter to take benefit of his own wrong which no court of law can permit. Computation and levy of damages under Section 14B of the EPF Act is to be distinguished from the cases where the exercise of powers by the authority at a very belated stage is likely to result in the deprivation of property which rightly and lawfully belonged to the person concerned. However, the position under the said Section is totally different. Under Section 14B of the EPF Act the liability of the defaulter arises because of his delay in not depositing the Provident Fund contributions of his employees on time and in the meanwhile utilizing the same for his own gains. The damages claimed under Section 14-B of the EPF Act thus are in a nature of a penalty and in no case can be taken similar to a case of deprivation of property rightfully and lawfully in possession of a person.

19. In this context, the Hon"ble Supreme Court in M/s. Hindustan Times Limited Vs. Union of India and Others, (1998) 1 JT 18(1) : (1998) 1 SCALE 34 : (1998) 2 SCC 242 : (1998) 1 SCR 4 : (1998) 1 UJ 368 : (1998) AIRSCW 352 : (1998) 1 Supreme 174 observed:-

"29. The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show- cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power-cut, financial problems relating to other indebtedness or the delay in realisation of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14-B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under section 14-B would be taken; mere delay in initiating action under section 14-B cannot amount to prejudice inasmuch as the delay on the part of the

department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under section 14-B, he has changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature; he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

20. Similar view was taken by the Hon"ble Supreme Court in M/s. K. Streetlite Electric Corporation Vs. Regional Provident Fund Commissioner, Haryana, AIR 2001 SC 1818 : (2001) 89 FLR 743 : (2001) 4 JT 542 : (2001) LabIC 1423 : (2001) 1 LLJ 1703 : (2001) 3 SCALE 220 : (2001) 4 SCC 449 : (2001) SCC(L&S) 732 : (2001) 2 SCR 1025 : (2001) 2 SCT 734 : (2001) 3 SLJ 128 : (2001) AIRSCW 1482 : (2001) 3 Supreme 198 . In the said case, Regional Provident Fund Commissioner, Haryana had imposed damages to the tune of almost Rs 90 lakhs on account of belated deposit of the amount towards the provident fund of the Company. However, the Regional Provident Fund Commissioner initiated the proceedings about 10 years after the default was stated to have been committed. The Company raised the defence that since the proceedings were initiated by the Commissioner after a considerable delay they were waived from the responsibility of paying the contributions. The Hon"ble Supreme Court, reiterated the law laid down in "M/s. Hindustan Times Limited vs. Union of India and Others", (supra) and opined that, the mere fact that the proceedings were initiated or demand for damages was made after several years cannot, by itself, be a ground for drawing an inference of waiver of the employer's responsibilities.

21. So far as the circular dated 28.11.1990 is concerned, it is observed that the said circular is in a nature of an administrative direction and has still not taken form of a statute. There has still not been any amendment in Section 14B of the EPF Act prescribing the period of limitation in which the proceedings under the said Section are to be initiated by the authority concerned. Hence, the law in this context is still governed by the judgment of the Hon"ble Supreme Court in "M/s. Hindustan Times Limited vs. Union of India and Others", (supra) and "M/s. K. Streetlite Electric Corporation V/s Regional Provident Fund Commissioner, Haryana", (supra). It is a settled law that any administrative direction, order, circular, etc. can act as only an aid to the provisions of a statute and cannot override it. As already observed that the Apex Court has settled the law in the

aforementioned two judgments that no limitations cannot be prescribed under Section 14B of the EPF Act, in such a case, this court fails to see how such a time limit can be read into the provisions of the said section that too by a circular that is purely in a nature of an administrative direction.

22. This brings me to the next contention of the learned counsel for the petitioner that the liability of the defaulter to pay interest under Section 7Q of the EPF Act is already covered in the computation made under Section 14B of the said Act, hence the petitioner is not liable to pay on two different accounts independently, one under Section 7Q of the EPF Act and other under Section 14B thereof. This contention too does not find favour with this court.

23. At this juncture it would be pertinent to reproduce Section 7Q of the EPF Act which provides for the liability of the management to pay interest in case of default in the payment of the Provident Fund dues. Section 7Q of the EPF Act reads as under:-

"7Q. 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."

24. Undoubtedly, Section 14B of the EPF Act is a penal provision whereas Section 7Q of the EPF Act provides for the levy of interest on the defaulter till the amount in question is deposited. Prior to the amendment of Section 14B of the EPF Act in the year 1988 the maximum rate at which the damage could have been levied was upto 25%. Para 32A of the Scheme was relevant before the amendment because therein table has been given, providing for how damages are to be calculated to the extent of 25% whereas now (post amendment in the said Section) the damages that can be levied under Section 14B of the EPF Act are up to 100%. Prior to the year 1988, the damages were to be governed by the Scheme but by virtue of the amendment in the year 1988, said provision has also been substituted giving full liberty to the authority concerned to impose damages not more than the amount of arrears. In the aforesaid back ground, if Para 32A of the Scheme is applied, then damages cannot be imposed beyond 25% whereas, as per the amended provisions, the penalty can be up to the equivalent amount of arrears, say 100%. As already observed no scheme, rule or regulation can nullify the provisions of Act. Therefore, in my opinion, the reliance of the learned counsel of the petitioner on the notification dated 29.03.1990 is misconceived. It seems that scheme was framed taking note of maximum limit of damages being 25% so also the said notification was issued including the rate of interest as payable under Section 7Q of the EPF Act without considering the fact that by the amendment of 1988 the maximum cap of damages under Section 14B of the EPF Act was increased from 25% to 100%. The amendments as

discussed aforesaid, was not brought to the notice of this Court as would be clear from perusal of the judgments of "System and Stamping and Anr. vs. Employees Provident Fund Appellate Tribunal and Ors.", (supra) and "Roma Henny Security Services Pvt. Ltd. vs. Central Board of Trustees, E.P.F. Organization Through Assistant P.F. Commissioner, Delhi (North) ", (supra). Hence in such a situation it would not be proper to limit the applicability of Section 7Q of the EPF Act to cases where it has been levied alongwith the damages under Section 14B of the said Act and to state therein that the interest as provided under Section 7Q of the EPF Act is ingrained under the order for damages as computed under Section 14B of the said Act. Clearly, no fetters can be placed on the power of the competent authority to pass an independent order for levy of damages under Section 7Q of the EPF Act. Section 7Q of the EPF Act stands on its own independent footing making a defaulter/employer, "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".

25. Section 7Q of the EPF Act is also not merely a prescribing provision as has been contended on behalf of the petitioner. Absence of an expressed provision of appeal against Section 7Q of the EPF Act is not sufficient enough to make its provisions nugatory. It is well settled law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. A right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. Clearly an appeal against an order passed under Section 7Q of the EPF Act would not lie under Section 7-I of the said Act. However, the Hon"ble Supreme Court in *Arcot Textile Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others*, AIR 2014 SC 295 : (2014) 140 FLR 233 : (2013) 14 JT 285 : (2014) LabIC 189 : (2013) 4 LLJ 550 : (2013) 5 LLN 35 : (2014) LLR 89 : (2013) 13 SCALE 277 : (2014) 1 SCT 335 has held that when a composite order is passed under Section 7A and 7Q of the EPF Act, it can be challenged under Section 7-I of the said Act. However, when an independent order under Section 7Q of the EPF Act is passed, the Apex Court opined that the affected person should have a right to file an objection if he intends to do. It was observed by the Hon"ble Supreme court as under:-

"27. Presently we shall address to the nature of the lis that can arise under this provision. There cannot be any dispute that the Act in question is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under statutory obligation to make the deposit that is due from him. In the event of default committed by the employer Section 14-B

steps in and calls upon the employer to pay the damages. (See: Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur and others[12]). Section 7Q which provides for interest for belated payment is basically a compensation for payment of interest to the affected employees. This provision has been made to secure just and humane conditions of work as has been opined in Regional Provident Fund Commissioner v. Hooghly Mills Company Limited and others[13]. The language employed in Section 7Q provides for levy of interest on delayed payment and the rates have been stipulated. When a composite order is passed or order imposing interest becomes a part of the order or levy in any of the provisions of the Act the authority grants a reasonable opportunity of hearing to the employer/affected party.

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28. The learned counsel for the respondent would contend that the natural justice has been impliedly excluded and for the said purpose she would emphasise upon the scheme and the purpose of the Act. There is no cavil for the fact that it is social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty. It is contended that it is luminous that the legislature always intended that when hearing takes place for determination of the money due, the component of interest would be computed and in that backdrop the affected person will have opportunity of hearing. But in reality when an independent order is passed under Section 7Q which can also be done as has been done in the present case the affected person, we are inclined to think, should have the right to file an objection if he intends to do. We are disposed to think so, when a demand of this nature is made, it cannot be said that no prejudice is caused.

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34. Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the Competent Authority."

26. This court is also not in agreement with the contention that in the absence of arrears of provident fund contributions on the date of issue of notice, no damage could have been levied on the petitioner under Section 14B of the EPF Act. The said contention is not in conformity with the correct legal position. Damages U/s

14-B of the Act are leviable not only for arrears but also for belated payments. As per the said Section, the employer is duty bound to make the provident fund contribution on time and in the default of it, the provisions of said Section are attracted. It is thus not mandatory on the date of computation of damages under Section 14B of the EPF Act that the provident fund dues must still be in "arrears". The expression used under section 14B of the EPF Act is, "When an employer makes default in the payment of any contribution to the Fund" and the requirement of arrears on the date of computation is not provided under the said section. In such a case, the court cannot include something which is not provided by law. Otherwise also, if the contention of the petitioner is permitted then in all cases the defaulter would make provident fund contributions after a delay and would claim that since on the day of notice under Section 14B of the EPF Act no arrears were pending hence, he is not liable to damages. This would clearly have an effect of making the provisions of this section nugatory which cannot be permitted.

27. Finally it is also worth mentioning here that while deciding the appeal on 02.02.2011, the respondent had duly considered the reasons of the petitioner leading to the said default and observed as under:-

"6. The applicability of the Act to the appellant establishment and the delay in payment of EPF dues has not been questioned. The notice issued by the EPF Authority shows the details of default committed by the appellant in payment of EPF dues. It is asserted that the delay was caused due to delay in receiving amounts from the Government Agencies. The delay in collecting funds from the government on the part of the appellant and the same is not a justifiable ground for delay in depositing the contribution."

28. The opinion as reflected in the said order is in consonance with the judgment of the Hon"ble Supreme Court in "M/s. Hindustan Times Limited vs. Union of India and Others", (supra) and hence on this ground too no fault can be imputed in the impugned order of learned EPFAT, New Delhi.

29. In the light of the above discussion the petition deserves to be dismissed and the same is hereby dismissed.

30. The trial court record be sent back forthwith.

C.M. Appl. No.4295/2011

The application is dismissed as infructuous.