

(2009) 05 MAD CK 0004
In the Madras High Court
Case No : Writ Petition No. 145 of 2005

India Cements Limited

APPELLANT

Vs

The Regional Provident Fund Commissioner - II, Employees'
Provident Fund Organisation and The Assistant Provident
Fund Commissioner Employees' Provident Fund Organisation

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14B, 14B, 15(2), 17
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (2010) 2 LLJ 517 : (2009) 8 MLJ 1536

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : S. Silambanan, for Silambanan Associates, for the Appellant; V.J. Latha, for the Respondent

Judgement

V. Dhanapalan, J.—Challenging the order of the 1st respondent dated 01.12.2004, levying damages and interest, the petitioner has filed the present writ petition.

2. The petitioner, India Cements Limited, a company registered under the Indian Companies Act, 1913 is one of the leading manufacturers of

cement in the country for several decades and is inter alia engaged in the manufacture and sale of cement. It has got various factories in the state of

Tamil Nadu as well as in the state of Andhra Pradesh. One of its factories is located in Sankari West, Salem District. The petitioner has several

employees on its role and also engage contract workers, who are permitted for incidental jobs of temporary nature and strictly enforce compliance

of all the statutory requirements under various legislations.

2a. The petitioner industry has been allotted a Permanent Code Number and it contributes a huge amount of money by way of Employees

Provident Fund and is prompt in payment of its contribution to the organisation. The petitioner factory is situated at Sankari, Salem District. The

petitioner is covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, hereinafter referred to as EPF Act

and it has been complying with the EPF contributions in time and without any default. The EPF Code Number allotted to the petitioner is Code

No. TN/4648.

2b. According to the petitioner, they have been engaging contractors, who were allotted Sub-Code Numbers besides the main code number

TN/4648 allotted to them, for loading of cement bags and other incidental jobs of temporary nature. It is their case that on 26.03.1999, they had

sent a letter to the Assistant Provident Fund Commissioner pointing out that they had closed and cancelled the contract given to the contractors

referred in the letter, with effect from 04.11.1998 and the contractors were not given any work from 23.09.1998 and they have not earned any

wages from the said date. The petitioner stated that the minimum administrative charges had been paid to the contractors, who were allotted sub

code numbers and in view of the same, there would be no remittances/returns in respect of Sub-Code Numbers from 01.12.1998 onwards. It is

seen that the petitioner had also requested the authority concerned to cancel the Sub-Code Numbers allotted to the contractors.

2c. The petitioner, on facing administrative inconvenience regarding payment of EPF contributions in relation to engaging contractors, met the

Assistant Provident Fund Commissioner on 15.03.2000 and explained the Management's difficulties and requested that the contractors may be

given a separate code number. This, was however not feasible from the side of the Department and the Assistant Provident Fund Commissioner

agreed to give a Sub-Code Number under the Main Code Number of the petitioner. Thereafter, the petitioner, vide letter dated 18.04.2000

reiterated the above and requested the Assistant Provident Fund Commissioner to allot a Sub-Code Number for the contractors under its main

code, so that they will be in a position to remit the contribution through challan under new Sub-Code Number and send necessary returns for the

contractors engaged.

2d. On 22.04.2000, the petitioner wrote to the EPF Department once again requesting the Department to allot a Sub-Code Number under the

Main Code Number of the petitioner with effect from 15.12.1998. Again, on 26/30.05.2000, the petitioner addressed a letter to the Provident

Fund Inspector giving the list of contractors with the date of commencement of work and requested for allotment of Sub-Code Number for its

contractors under the Main Code No. TN/4648. On 08.11.2001, the petitioner made a similar request for separate Sub Code Numbers under its

Main Code Number. On 21.12.2001, the petitioner received a letter from the Assistant Provident Fund Commissioner stating that the request of

the petitioner for allotment of Sub-Code Numbers for implementation of the EPF scheme in respect of contract employees has been acceded by

their office and the Department has allotted 3 Sub-Code Numbers to the petitioner with effect from the date mentioned against each of them, as

follows:

(i) India Cements Ltd. (Packing Division) No. TN/4648-R, dated 15.12.1998

(ii) India Cements Ltd. (Civil Works) No. TN/4648-S, dated 01.09.1999

(iii) India Cements Ltd. (Engineering Works) No. TN/4648-T, dated 01.10.1999

2e. The Assistant Provident Fund Commissioner advised the petitioner to submit the statutory returns in respect of the above said code numbers

and accordingly, the petitioner immediately remitted the contribution of the contractors as required under the EPF Act. The petitioner vide its letter

dated 01.03.2002 remitted a sum of Rs. 9,59,505.10 towards PF contribution recovered from 01.09.1999 to 31.12.2001 in respect of labourers.

The Regional Provident Fund Commissioner vide his letter No. TN/SLM/Circle:O/Damages/TN/4648S/CA informed the petitioner that certain

payments of PF dues made by the petitioner were after the respective dates which attracted simple interest u/s 7Q and damages u/s 14B of EPF &

MP Act, 1952. The 1st respondent demanded a total amount of interest and damages at Rs. 5,84,095/- (Rs. 1,44,405/- towards interest and Rs.

4,39,690/- towards damages) and stated that the non-compliance would attract action under Sections 8B and 14 of the EPF Act.

2f. It is the further case of the petitioner that the 1st respondent by its show cause notice cum levy order dated 15.10.2004 stated that the belated

remittances have attracted penal damage and interest under Sections 14B and 7Q of the EPF Act and the petitioner was called upon to remit the

damages and simple interest, failing which the due shall be recovered as envisaged under Sections 8B to 8G of the EPF Act along with interest at

12% per annum. The petitioner vide its letter dated 27.11.2004 explained clearly the sequence of events and facts and stated that there was no

delay on the part of the Management in remitting the contribution amount as advised by the PF Department on allotment of sub code numbers and

the contribution was paid on 26.02.2002 and the delay can be attributed if at all only from 22.12.2001 to 26.02.2002.

2g. According to the petitioner, there was no delay on their part in remitting the contribution which was done as soon as the Code Number

TN/4648/S was allotted in respect of the contract workers and provisions of Section 14B cannot be attracted in such circumstances since the

petitioner was never advised or intimated by the Department to remit the contribution amount in the main code number nor any separate or sub-

code number was allotted. In spite of the petitioner's request that the demand may be withdrawn, the 1st respondent passed the impugned order

dated 01.12.2004 ordering payment of penal damages of Rs. 4,39,600/- u/s 14B of the Act and the interest of Rs. 1,44,405/- u/s 7Q of the Act

for a period from September 1999 to August 2002. In the order, it was also stated that if the amounts are not paid, the same will be recovered

under Sections 8B to 8G of the EPF Act.

3. The respondents have filed counter affidavit in the Vacate Stay Petition and have stated that the main unit of the petitioner Establishment, which

has been covered under the Provident Fund Code Number TN/4648 had requested to allot a separate Code Number for all the Contractors

working for their Unit. However, their request was not considered and finally, after explaining the Provisions of the Act, the establishment was

allotted separate Code Numbers under the main Code Number for all their Contractors. The said allotment intimation was given to them and the

date of coverage for the petitioner establishment was made from 01.09.1999.

3a. The respondents have further stated that the petitioner Establishment had remitted the Provident Fund dues from 01.09.1999 to 31.12.2001 in

March 2002 only. As there was belated remittance, penal damages u/s 14B and

interest u/s 7Q for the period from September 1999 to August

2002 to the tune of Rs. 5,84,095/- (Rs. 4,39,690/- as penal damages and Rs. 1,44,405/- as interest) were levied.

3b. With regard to the contention of the petitioner that they are not habitual defaulters and the remittances were made belatedly since the coverage

intimation was issued in November 2001, the respondents have stated that while issuing the coverage intimation, bringing the establishment within

the ambit of the provisions of the Employees' Provident Fund Act with effect from 01.09.1999, the employer was directed to remit the Provident

Fund dues from 01.09.1999 immediately. However, the employer had remitted the dues in March 2002 only, after a lapse of about 5 months,

which according to the respondents, clearly prove the intention of the petitioner Establishment of not to comply with the provisions of the

Employees' Provident Fund Act. Moreover, the employer had deducted the Provident Fund contributions from the wages of the employees, but

did not remit the same in their Provident Fund account. According to the respondents, they should have remitted the amount in the main Code

Number and after allotment of separate Sub-Code numbers, the same could have been transferred to the concerned Code Number. Instead, the

employer had opted to keep the money with himself and hence, he is liable for penal damages and interest.

3c. It is the further case of the respondents that having accepted the date of coverage as 01.09.1999, the petitioner Establishment is liable for penal

damages and interest under Sections 14B and 7Q of the Employees' Provident Fund Act. Once an establishment is covered under the provisions

of the Employees' Provident Fund Act, there is no discrimination in the application of the Act to different kinds of establishments and it would

apply in uniformity to all the establishments. The respondents have further stated that the contention of the Authority is not to penalise the employer

unnecessarily. It is statutory provision in the Act to levy penal damages and interest for the period of delay in remittances of dues irrespective of

whether the establishment is covered statutorily or voluntarily. Moreover, the date of coverage has not been disputed by the employer.

3d. The respondents would also state that as there is delay in remitting the Provident Fund dues, the employer is liable for damages and interest.

Therefore, the quantum of penal damages and interest were levied vide proceedings dated 01.12.2004 to the tune of Rs. 5,84,095/- (Rs.

4,39,690/- as penal damages and Rs. 1,44,405/- as interest). It was further informed that in case of failure to remit the amount, recovery actions

under Sections 8B to 8G of the Employees' Provident Fund Act would be taken to recover the same.

3e. As there was belated remittance of Provident Fund dues, a notice dated 15.10.2004 along with a show cause notice-cum-levy order dated

15.10.2004 informing the liability of penal damages and interest was issued to the petitioner Establishment. Subsequently, after affording an

opportunity of hearing and after hearing the representative of the petitioner's Establishment in person, a speaking order dated 01.12.2004 was

served on the petitioner Establishment. According to the respondents, the said order is a Speaking Order and is maintainable under law. It is also

the case of the respondents that the damages and interest are punitive and deterrent in nature and are levied to make good the loss suffered by the

Fund of the Organisation due to belated remittances made by the petitioner and interest being paid to the member. Moreover, the respondents

have followed all the procedures before levying the damages and interest. The respondents even though have quasi-judicial powers to levy

damages, are not the Authority and have no power to reduce the quantum of damages or waive the same. As such, the proceedings is very much

in accordance with the procedures in vogue and maintainable under law.

3f. The respondents have further submitted that the Provident Fund and other dues payable under the Employees' Provident Fund and

Miscellaneous Provisions Act, 1952 are part of the legitimate statutory entitlement of the workers. According to the respondents, the Employees'

Provident Fund Act comes into force in its own vigour and the petitioner Establishment is liable to remit the damages and interest.

4. Heard Mr. S.Silambanan, learned Senior Counsel appearing for the petitioner and Mrs.V.J.Latha, learned Counsel appearing for the respondents.

5. Learned Counsel for the petitioner would contend that the respondents ought to have passed the impugned order after due consideration of the

explanation submitted by the petitioner on 27.12.2004 and the order should

have been a speaking order, since, such an order amounts to punishment. He further contended that the respondents ought to have given satisfactory and proper reasons for levying damages and interest and that the damages cannot be levied for any delay for the mere reason that there was a delay. According to the petitioner, the respondents have failed to appreciate the provisions of the EPF Act and the Rules made thereunder and contended that the respondents ought to have levied nil damages.

6. Per contra, learned Counsel appearing for the respondents would submit that as there is delay in remitting the Provident Fund dues, the employer is liable for damages and interest and therefore, the quantum of penal damages and interest were levied. It is also the contention of the learned Counsel that the damages and interest are punitive and deterrent in nature and are levied to make good the loss suffered by the Fund of the Organisation due to belated remittances made by the petitioner and interest being paid to the member. According to the learned Counsel, the respondents have followed all the procedures before levying the damages and interest.

7. I have carefully considered the submissions made by the learned Counsel on either side, analysed the relevant provisions and perused the material documents.

8. An analysis of the facts would reveal that the petitioner, a Company engaged in the manufacture and sale of cement in the country for several decades, who has got several employees on its role has also been engaging contract workers to carry on incidental jobs of temporary nature. The petitioner has been allotted a Permanent Account Number and is covered under the provisions of the EPF Act. The EPF Code Number allotted to the petitioner is No. TN/4648. According to the petitioner, they had sent a letter to the Assistant Provident Fund Commissioner on 26.03.1999, that they had closed and cancelled the contract given to the contractors referred in the letter, with effect from 04.11.1998 and that the contractors were not given any work from 23.09.1998 and they have not earned any wages from the said date. It is also the submission of the petitioner that minimum administrative charges had been paid to the contractors, who were allotted Sub-Code Numbers and in view of the same, there would be

no remittances/returns in respect of the Sub-Code Numbers from 01.12.1998 onwards. Subsequently, the petitioner had also requested the

authority concerned to cancel the Sub-Code Numbers allotted to the contractors.

9. Thereafter, on facing administrative inconvenience regarding payment of EPF contributions in relation to engaging contractors, the petitioner met

the Assistant Provident Fund Commissioner on 15.03.2000 and explained the Management's difficulties and requested that the contractors may

be given a separate Code Number. Since such request was not feasible from the side of the Department, the Assistant Provident Fund

Commissioner agreed to give a Sub-Code Number under the Main Code Number of the petitioner. After repeated requests made by the

petitioner on the same issue, the Assistant Provident Fund Commissioner allotted three Sub-Code Numbers to their Company, viz., (i) India

Cements Ltd. (Packing Division) No. TN/4648-R, dated 15.12.1998 (ii) India Cements Ltd. (Civil Works) No. TN/4648-S, dated 01.09.1999

and (iii) India Cements Ltd. (Engineering Works) No. TN/4648-T, dated 01.10.1999 with an advise to submit the statutory returns in respect of

the above said code numbers and accordingly, the petitioner remitted the contributions of the contractors as required under the EPF Act.

10. In the show cause notice dated 15.10.2004 issued to the petitioner, the 1st respondent has stated that the belated remittances have attracted

penal damage and interest under Sections 14B and 7Q of the EPF Act and the petitioner was called upon to remit the damages and simple

interest, failing which the due shall be recovered as envisaged under Sections 8B to 8G of the EPF Act along with interest at 12% per annum.

According to the petitioner, there was no delay on their part in remitting the contribution amount as advised by the PF Department on allotment of

Sub-Code Numbers and the contribution was paid on 26.02.2002 and the delay if any, can be attributed only from 22.12.2001 to 26.02.2002.

11. It is the case of the respondents that while issuing coverage intimation, bringing the establishment within the ambit of the provisions of the EPF

Act with effect from 01.09.1999, the employer was directed to remit the Provident Fund dues from 01.09.1999 immediately. However, the

employer/petitioner had remitted the dues only in March 2002, after a lapse of five months. It is the contention of the respondents that the

petitioner had deducted the Provident Fund contributions from the wages of the employees, but did not remit the same in their Provident Fund

Account; instead they have kept the money with them for which they are liable for penal damages and interest under Sections 14B and 7Q of the EPF Act.

12. The respondents would further state that the contention of the Authority is not to penalise the employer unnecessarily. It is statutory provision in

the Act to levy penal damages and interest for the period of delay in remittances of due irrespective of whether the establishment is covered

statutorily or voluntarily. It is pertinent to note here that the date of coverage has not been disputed by the employer/petitioner. It is also the case of

the respondents that even though they have quasi-judicial powers to levy damages, they have no power to reduce the quantum of damages or

waive the same and as such, the proceedings dated 01.12.2004 is a speaking order and is maintainable under law.

13. As per Section 7Q of the EPF Act, 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 the 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. With regard to recovery of damages, Section 14B of the EPF Act provides that where an employer makes default in the payment

of any contribution to the Fund (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 the Act or

of any scheme or Insurance scheme or under any of the conditions specified u/s 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 u/s 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].

14. In the instant case, the coverage intimation was issued in November 2001 and the petitioner was directed to remit the Provident Fund dues

from 01.09.1999, but the petitioner had remitted the dues in March 2002 only, after a lapse of 5 months. Therefore, as per the provisions of the

Employees' Provident Fund Act, the petitioner is liable to pay simple interest at the rate of 12% per annum or at such higher rates as may be

specified in the Scheme on any amount due from him under the Act from the date on which the amount has become so due till the date of its actual

payment. Accordingly, the respondents have exercised their powers and levied the amount of interest for the period and therefore the petitioner is

liable to pay such dues. However, the only grievance of the petitioner appears to be that if at all there is any delay, it is only from 22.12.2001 to

26.02.2002, for which this Court cannot go into the calculation of the period of delay and it has to be represented before the respondents.

15. For the foregoing reasons, I find no infirmity in the order dated 01.12.2004 passed by the 1st respondent. This writ petition deserves no merit

and the same stands rejected. However, the petitioner is at liberty to make a representation to the respondents with respect to the period of delay,

i.e. from 22.12.2001 to 26.02.2002 and the same shall be considered by the respondents and appropriate orders shall be passed in accordance

with law and on merits.

In fine, the Writ Petition is disposed of on the above terms. No costs. Consequently, connected W.P.M.P. No. 179 of 2005 and W.V.M.P. No.

156 of 2006 are closed.