

**(2016) 10 KAR CK 0007**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 38170 of 2014 and W.P. Nos. 38910-38926 of 2014  
(L-PF)

M/s. Fenwick and Ravi, Bangalore

APPELLANT

Vs

Employees Provident Fund Organisation, Regional Office,  
Bangalore

RESPONDENT

**Date of Decision :** 06-10-2016

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,  
Section 7Q

**Citation :** (2016) 4 AirKarR 743 : (2017) 2 CLR 112 : (2017) 152 FLR 777 :  
(2017) LabLR 72 : (2017) LIC 225

**Hon'ble Judges :** A. N. Venugopala Gowda, J.

**Bench :** Single Bench

**Advocate :** Sri V. Narasimha Holla, Advocate, for the Petitioner; Sri B. Pramod,  
Advocate, for the Respondents

**Final Decision :** Dismissed

## Judgement

A.N. Venugopala Gowda, J. - These writ petitions are directed against a notice issued vide Annexun - C, pursuant to an order passed by respondent No.1 under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the Act"), demanding payment of interest amount of Rs. 5,58,561/- on the provident fund dues for the period from Apr 1996 to November, 2013 and for issue of direction to the respondents to refund Rs. 2,00,000 -remitted by the petitioner on 28.03.2014, vide the challan as at Annexure-E.

2. Brief facts of the case are that the petitioner, an establishment covered under the Act. was required to remit provident fund contributions under Section 6 of the Act read with para graph 29 of the Employees' Provident Funds Scheme, 1952. Alleging that the petitioner failed to pay the contributions within the stipulated period i.e., for the period from April, 1996 to November, 2013, a show-cause notice dated 24.12.2013 vide Annexure - A was issued. In response to the

said notice, a representative of the petitioner having appeared on 21.02.2014 before respondent No.1 and admitted the delay in remittance of the provident fund contributions and requested instalment facility to clear the dues by stating that the establishment was facing financial difficulties, the 1st respondent by an order dated 28.02.2014 vide Annexure - B held that the petitioner is liable for payment of damages from April, 1996 to November, 2013, totalling to Rs. 12,42,115/-. The amount having not been remitted, a demand letter vide Annexure - C, under Section 7Q of the Act and the schemes framed thereunder was served on the petitioner to remit the interest. The 2nd respondent having served the notice of demand vide Annexure - D, Rs. 2,00,000/- was remitted by the petitioner on 28.03.2014 vide Annexure - E.

3. Sri. V. Narasimha Holla, learned advocate, firstly contended that Annexure - C is irrational. Secondly, there being delay of about 16 years commencing from April 1996, the 1st respondent could not have levied the interest on account of the delay in remitting of the contributions. He submitted that the petitioner had no intention of avoiding remittance of the contributions and that the delay occurred on account of the financial constraints faced due to 11 on payment/delayed payment of the money for the products supplied to the Government and other public sector undertakings. Lastly, that Rs. 2,00,000/- was remitted on 28.03.2014 on account of the persistent threats and hence, the respondents be directed to refund the amount and absolve the petitioner of the liability to pay interest amount demanded vide Annexure - C.

4. Sri. B. Pramod, learned advocate on the other hand submitted that the delay in remittance of contributions being not in dispute, the action of the respondent No.1 in the matter of levy of interest is justified. Learned counsel submitted that the petitioner having remitted Rs. 2,00,000/- and also the further sum pursuant to the order dated 28.10.2014 passed in this petition, no case exists for consideration. He submitted that Section 14B of the Act invests the power in respondent No. 1 to impose damages by way of penalty and paragraph 32A of the Employees' Provident Funds Scheme, 1952 prescribes the mode of calculation of damages and respondent No. 1 having such jurisdiction, after service of show-cause notice and providing an opportunity of hearing to the petitioner and there being no dispute with regard to the default has issued the demand notice vide Annexure - C and hence, no interference in the matter is called for. Learned counsel further submitted that the Act being a beneficial welfare legislation to ensure health and other benefits to the employees and that there being no discretion left for the 1st respondent, the demand made vide Annexure - C being lawful and not in contravention of Section 7Q, the writ petition is liable to be dismissed with costs.

5. Considered the rival contentions and perused the record. Point for consideration is, whether any interference with Annexure-C is called for?

6. Section 7A(1) of the Act provides for determination of moneys due from employers. Section 7B is with regard to review of orders passed under Section

7A. Section 7C is with regard to determination of escaped amount. Section 8 contains the mode of recovery of money due from the employers. The arrears can be recovered by the Recovery Officer in the manner specified in Section 8B to 8G of the Act.

7. Learned advocate for the petitioner did not dispute the fact that there was delay in remittance of provident fund contributions and the petitioner's representative having sought instalment facility to clear the dues. It is on account of the long delay in remittance of the provident fund contributions the order as at Annexure-B was passed. Thereafter, in terms of Section 7Q of the Act the notice as at Annexure-C demanding payment of interest amounting to Rs. 5,58,561/- was served on the petitioner. The said amount having not been deposited the respondent No.2 served the notice vide Annexure-D. Towards part compliance of the demand made vide Annexures - C and D, Rs. 2,00,000/- was remitted vide Annexure - E, without any whisper by the petitioner.

8. The Act does not contain any provision prescribing the period of limitation for assessment or recovery of damages or interest. The contributions are required to be remitted by the employer for the benefit of the employees. The Commissioner under the Act, by virtue of Section 14B and Section 7Q has been vested with the power of computation of recovery of the damages and the interest respectively. As the amount due was not deposited by the petitioner within the time allowed and there being no provision stipulating any period of limitation for recovering arrears, the provisions of the Limitation Act, 1963 has no application. Hence, the contention that on account of the inordinate delay of 16 years in the matter of levy of interest, the impugned action is liable to be annulled has no merit. The petitioner having not remitted the contributions within time, cannot contend that the 1st respondent is not justified in levying the interest.

9. The delay in remittance of the contributions being undisputed, the action of the 1st respondent directing the petitioner to pay the interest amount of Rs. 5,58,561/- as per Annexure-C is justified. In view of the order as at Annexure-B, the demand letter issued under Section 7Q of the Act vide Annexure-C is neither arbitrary nor irrational. It is not the case of the petitioner that the interest levied vide Annexure-C is higher than the Bank rate of interest and/or that there is any contravention of Section 7Q of the Act. Hence, it cannot be contended that Annexure-C was issued mechanically or that the decision is irrational. Hence, no exception can be taken for levy of interest vide Annexure-C.

10. None of the grounds urged by Sri. V. Narasimha Holla have any merit and hence, the petitioner is not entitled to any relief.

In the result, writ petitions are dismissed. However, the petitioner is granted two months' time to remit the balance interest amount.