**(2014) 01 MP CK 0006**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 4423/2012

Ramakrishna Vidhya Mandir APPELLANT

Vs

E.P.F. Appellate Tribunal and Another RESPONDENT

**Date of Decision :** 06-01-2014

**Acts Referred:**

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

**Citation :** (2014) 142 FLR 192 : (2014) 3 LLJ 521 : (2014) LLR 762 : (2014) 2 MPHT 192 : (2014) 2 MPLJ 351

**Hon'ble Judges :** S.K. Gangele, J;D.K. Paliwal, J

**Bench :** Division Bench

**Advocate :** D.K. Agrawal, Advocate for the Appellant; R.K. Goyal, Advocate for the Respondent Nos. 2 to 4, Advocate for the Respondent

**Final Decision :** Partly Allowed

## Judgement

1. Heard. This petition has been filed by the petitioner against the orders dated 9-5-2011 (Annexure P-1) and dated 19-4-2005 (Annexure P-2).

2. The petitioner-Society is registered under the provisions of M.P. Societies Registrikaran Adhiniyam, 1973. It has been managing school. An enquiry was initiated against the petitioner to the effect that whether the petitioner was covered under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to "the Act of 1952") for the purpose of payment of Provident Fund to its employees. A notice was issued on 3-4-1995. The petitioner submitted its reply. Thereafter, the petitioner-Institution deposited entire dues of Rs. 1,16,931/- on 24-8-1996. Thereafter, a notice was issued to the petitioner to the effect that why damages and interest be not ordered. The authority, vide order dated 19-4-2005 directed the petitioner-Institution to deposit an amount of Rs. 4,27,311/- for the damages and interest. Against the aforesaid order, the petitioner filed an appeal. The Appellate Authority modified the amount up to 75%. Against the aforesaid order, the Provident Fund Commissioner and the petitioner-Society filed petitions. This

Court, vide common order dated 28-7-2010 passed in W.P. No. 4201/2008 and W.P. No. 1537/2009 quashed the order of the Appellate Authority on the ground that the Appellate Authority passed the order in the absence of the petitioner and there were sufficient reasons for non-appearance on behalf of the petitioner and remanded the matter back. Thereafter, vide impugned order, the Tribunal has ordered that the liability of the petitioner shall be assessed at the rate of 37% inclusive of interest annually.

3. The main grievance of the petitioner in this petition is that the direction of the authority to assess the liability @ 37% inclusive of interest annually is contrary to law, because the liability in regard to the petitioner is up to 1996 and at that time, the interest part was not liable to be paid by the management. In support of his contention, learned Counsel relied on the following judgments:--

(i) Regional Provident Fund Commissioner Vs. Harrisons Malayalam Ltd., .

(ii) Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, E.P.F. Organization, 2013 LLR 222 (Short Note).

(iii) Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another, .

(iv) Bhartiyam Vidya Niketan and another Vs. Union of India and others, W.P. No. 1446/2005.

4. Section 14-B of the Act of 1952 was amended and the amendment came w.e.f. 1-9-1991 and the following amendment came into force w.e.f. 1-9-1991:--

14-B. 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 subsection (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 u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by Notification in the Official Gazette, in this behalf, may recover from the employer such damages, not exceedings the amount of arrears, as it may thinks fit to impose:

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.

5. The legislature also brought Section 7-Q, which provides imposition of interest for delay in payment of amount. The relevant provision is as under:--

7-Q. Interest payable by the employer.--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.

6. It is clear from the aforesaid facts that the amendment in Section 14-B of the Act of 1952 was made effective w.e.f. 1-9-1991. Earlier to this amendment, the Section 14-B was that any officer authorized by the Central Government may recover from the employer such damages, not exceeding the amount of arrear. At that time, there was no provision for interest. The provision of interest also came into force by introduction of Section 7-Q, which came into existence w.e.f. 1-7-1997.

7. In the present case, the liability of the petitioner in regard to payment of amount of arrears to the employees was for a period w.e.f. 1982 to January, 1995. The petitioner deposited said amount of Rs. 1,16,931/- on 24-8-1996. In such circumstances, the Appellate Authority has wrongly imposed damages and interest on the basis of amended provisions of Section 14-B and Section 7-Q of the Act of 1952.

8. Learned Counsel for the petitioner has submitted that the petitioner has no objection to deposit 37% of the total amount as damages and arrears of interest. In our opinion, looking to the facts of the case, it would be just and proper that if the petitioner be directed to deposit 50% of the amount of Rs. 1,16,931/- as damages and interest. Hence, this petition is partly allowed. The impugned order dated 9-5-2011 (Annexure P-1) is hereby quashed. It is ordered that the petitioner shall be liable to pay 50% damages and interest of the total amount, which was due against the petitioner, i.e., Rs. 1,16,931/-. Rest of the amount, which was deposited by the petitioner be returned back to him.

No order as to costs.

 