

**(2011) 06 MAD CK 0330**

**In the Madras High Court**

**Case No :** Writ Petition No. 29470 of 2010 and M.P. No. 1 of 2010

The Management of W.S. Industries (India) Ltd.

APPELLANT

Vs

The Assistant Provident Fund Commissioner (PDC),  
Employees Provident Fund Organisation

RESPONDENT

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**Date of Decision :** 07-06-2011

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,  
18(1), 7I, 7Q  
Industrial Disputes Act, 1947 — Section 33C(2)

**Citation :** (2011) 06 MAD CK 0330

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** N. Manoharan, for the Appellant; J. Sathyanarayana Prasad, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—The Petitioner has filed the present writ petition seeking to challenge an order dated 09.12.2010 on the file of the Respondent Assistant Provident Fund Commissioner, Tambaram. By the aforesaid order, a penalty u/s 14B of the EPF Act was levied against the Petitioner. The Petitioner management was informed that for the delayed payment of dues to the department, penal damages are entitled to be levied. The stand of the management that there was settlement u/s 18(1) can have no bearing on the management. Therefore, they were informed that in terms of Section 14B read with Section 7-Q, they are bound to pay a sum of Rs. 31530/- and also Rs. 31,440/- respectively. If the Petitioner do not pay the amount, they were also informed that coercive steps will be taken for recovery of the amount.

2. It is seen from the records that the workmen engaged by them moved the Labour Court u/s 33C(2) of the Industrial Disputes Act, claiming certain additional amounts towards wages. The matter was taken before the Lok Adalat.

On the suggestion made by the Lok Adalat, the Petitioner had entered into a settlement u/s 18(1). The Petitioner management had agreed to pay certain amounts towards the claim for additional wages. But, in that agreement, it was stated that they will deduct PF out of the amount payable to the workmen and it will be paid to the department. But no additional liability shall be made on the management on any account. Notwithstanding the same, the department had issued notice claiming damages and penal interest on the delayed payment.

3. When notice was issued on 18.6.2010, the Petitioner management informed that the issue is covered by Section 18(1) settlement followed by the Lok Adalat proceedings. Therefore, they are not bound to pay any damages. Notwithstanding the same, the impugned order came to be passed. It is challenging the same, the writ petition came to be filed. The same was admitted on 23.12.2010. Pending the writ petition, the interim injunction was granted.

4. On notice from this Court, the Respondent has filed a counter affidavit, dated 7.4.2011. In the counter affidavit, it was stated that the contribution claimed was in respect of the additional wages and when they were not paid to the workmen, the workmen had moved the labour court. It does not mean that the contribution shall start after determination by the labour court on the said issue. Even without determination by the Labour Court, the matter was settled through aegis of Lok Adalat. A mere entering into settlement will not take away the jurisdiction of the department from levying damages and penal interest.

5. However, Mr. N. Manoharan, learned Counsel for the Petitioner placed reliance upon a division bench judgment of the Kerala High Court in *The Regional Director, E.S.I. Corporation, Trichur Vs. T.K. Bhaskaran* reported in 1997 Lab.I.C. 1115. He referred to paragraph 5 of the said judgment which is as follows:

5. Further question to be considered is whether the Respondent is liable to pay damages in the facts and circumstances of this case even if there was a delay in making the payment of the contribution. This aspect has to be considered in the light of the principle laid down by this Court in *The Regional Director, E.S.I. Corporation v. Sakhti Tiles* (1988) 2 Ker LJ 280. This Court has held that the Corporation will not be justified in levying the damages in cases where the employer, or the person, who is bound to pay the amount in respect of the contribution payable in this regard, is able to offer sufficient or cogent explanation for non-remittance, or in cases where there is only a technical or venial breach of the provision of the Act, or there exists bona fide circumstances, which will point out that there was no deliberate omission on the part of the employer. Since the failure to carry out the statutory obligation should be adjudicated by a quasi judicial enquiry and the levy of damages is quasi penal in character, such damages will not ordinarily be imposed unless the party obliged to pay the amount due, acted either deliberately or in defiance of law, or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation....

6. It must be noted that the settlement reached between the parties cannot take away the jurisdiction of the authorities in determining the amount due and payable.

7. In this context, the Supreme Court in Union of India (UOI) and Another Vs. Ogale Glass Works, has held in paragraph 47 as follows:

47. Admittedly the Appellants were not parties to the award. No doubt under the Industrial Disputes Act the award will be binding, as against the Respondent and its workmen. But the Appellants are seeking in these proceedings to enforce the statutory duty cast upon them to collect the contributions due from the Respondent which again is a statutory liability under the Act and the Scheme. The object of the Appellants in enforcing the Act is only to discharge the statutory duty enjoined on them for the benefit of the employees concerned. In view of the decision of this Court, it is clear that the Act and the Scheme apply to all the sections of the Respondent, and if so it follows that the Respondent is liable to make contributions and that at the rate specified in the Act.

8. The said judgment of the Supreme Court was quoted and followed by the Bombay High Court in Gosalia Shipping Pvt. Ltd., Goa and Another Vs. Regional Provident Fund Commissioner, Goa and Anr, . In paragraph 11, the Bombay High Court had observed as follows:

11... This judgment of the Apex Court should conclude the matter. Therefore any settlement and the Award between the parties cannot be binding on an Authority under the Act who can arrive at a conclusion based on all materials available including settlements if any produced before him.

9. Further, the management never challenged the said order by way of any appeal u/s 7-I. Therefore, it is not a fit case where this Court can grant any relief to the Petitioner. Hence the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.