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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2905 OF 2016

Central Board of Trustees, EPF
A body of corporate having perpetual
succession and common seal, having
office at Bhavisyanidhi Bhavan,
14, Bhikaji Cama Place, New Delhi 110 066
The Asstt. Provident Fund Commissioner,
(Legal), Employees' Provident Fund
Organization, Sub-Regional Office,
Tower-6, 5th Floor, Vashi Railway Station
Complex, Vashi, Navi Mumbai 400 073 ... **Petitioner**

Vs.

National Organic Chemical Industries Ltd.,
Mafatlal House, H.T. Parekh Marg,
Backbay Reclamation, Churchgate,
Mumbai – 400 020 ... **Respondent**

WITH
WRIT PETITION NO.11859 OF 2017

The Asstt. Provident Fund Commissioner,
Sub-Regional Office, Tower-6, 5th Floor
Vashi Railway Station Complex, Vashi,
Navi Mumbai 400 073 ... **Petitioner**

Vs.

National Organic Chemical Industries Ltd.,
Mafatlal House, H.T. Parekh Marg,
Backbay Reclamation, Churchgate,
Mumbai – 400 020 ... **Respondent**

Mr. Sandeep Mishra with Ms. Madhura Muley for the petitioner.

Mr. Lancy D'Souza with Mr. Rahul Sanghavi i/by M/s. Sanjay Udeshi & Co., for the respondent in WP/2905/2016.

Mr. Anand Pai with Mr. Rahul Sanghavi i/by M/s. Sanjay Udeshi & Co., for the respondent in WP/11859/2017.

Mr. H.D. Mulla, AGP for State in WP/2905/2016.

Ms. Mamta Shrivastava, AGP for State in WP/11859/2017.

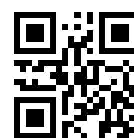
CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: FEBRUARY 27, 2026.**
PRONOUNCED ON	**: MARCH 6, 2026**

JUDGMENT:

1. Since the questions of law and fact arising in all these writ petitions are common, the same are being disposed of by this common judgment.

2. By the present writ petitions filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 23 January 2014 passed by the Presiding Officer, Provident Fund Appellate Tribunal, New Delhi, in ATA Nos. 672(09) and 673(09) of 2007.

3. The facts giving rise to the present writ petitions, stated briefly, are as follows. The respondent is an establishment covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and was allotted Code No.



MH/9437. The respondent failed and neglected to deposit provident fund contributions, Family Pension Fund contributions, administrative charges, and deposit linked insurance contributions as required under the Act and the Employees' Pension Scheme, 1995, for the period from March 2002 to September 2004. The said contributions were eventually deposited on or about 10 November 2004.

4. The petitioner issued a show cause notice dated 19 April 2006 calling upon the respondent to explain why damages under Section 14B of the Act and interest under Section 7Q of the Act should not be recovered. The respondent submitted its reply. The explanation furnished for delayed remittance of contributions was not accepted by the competent authority. Consequently, by order dated 25 July 2007, the authority levied damages under Section 14B read with Paragraph 32 of the Scheme and interest under Section 7Q of the Act.

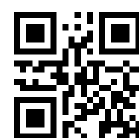
5. Under Section 7Q of the Act, payment of interest is mandatory. Paragraph 60 of the Scheme obligates the Commissioner to credit interest to the account of each member at such rate as may be determined by the Central Government in consultation with the Central Board of Trustees. The petitioner contends that an order passed under Section 7Q is not appealable under Section 7-I of the Act.

6. The respondent challenged the order dated 25 July 2007 before the Appellate Tribunal by filing Appeal No. 672(9) of 2007. By interim order dated 26 February 2010, the Tribunal directed the

respondent to deposit 25% of the assessed amount with the Commissioner. The respondent complied with the said direction and deposited the amount.

7. The Tribunal proceeded to hear the appeal in the absence of the respondent and, by order dated 21 February 2011, dismissed the appeal. The said order was challenged before this Court in Writ Petition No. 4519 of 2011. By order dated 10 August 2011, this Court quashed and set aside the order dated 21 February 2011 and remanded the matter to the Appellate Authority for fresh consideration on merits after granting an opportunity of hearing to both sides. Pursuant to the remand, the petitioner filed its reply before the Appellate Tribunal. The Tribunal, by order dated 23 January 2014, allowed the respondent's appeal on the ground that the authority had not applied the law in its proper perspective and that no inquiry or finding had been recorded to establish that the respondent had willfully and deliberately withheld the contributions. The Tribunal further observed that the beneficiaries were not identifiable. Aggrieved thereby, the petitioner has filed the present writ petitions.

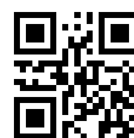
8. Mr. Mishra, learned counsel appearing for the petitioner, submits that there is no finding recorded by the Inquiry Officer establishing any willful default on the part of the appellant in remitting provident fund dues within the prescribed time. It is contended that the Tribunal failed to properly appreciate the law laid down by the Supreme Court in *Organo Chemical Industries and Another v. Union of India* (1979) 4 SCC 573, wherein, particularly in paragraph 22, it was held that the expression



"default" under Section 14B denotes failure in performance or failure to act. According to him, the requirement of willful default is not an essential ingredient for invoking Section 14B. He further submits that the said principle has been reiterated by the Supreme Court in *Hindustan Times Ltd. v. Union of India,* (1998) 2 SCC 242.

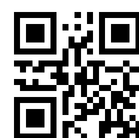
9. Learned counsel further submits that the finding recorded by the Tribunal in paragraph 8 of the impugned order, namely that damages ought not to be levied in the absence of mens rea on the part of the appellant, has materially influenced the relief granted to the respondent. According to him, such a proposition in relation to imposition of penalty under civil law is contrary to the law laid down by the Supreme Court in the case of SEBI and subsequently affirmed in *Union of India v. Dharamendra Textile Processors,* 2008 (13) SCC 369.

10. It is further submitted that the Tribunal erred in holding that the beneficiaries were not identified. Learned counsel contends that beneficiaries are necessarily identified for the purposes of provident fund and pension contributions, as the company had deposited contributions along with requisite statutory returns containing particulars and names of each employee. It is therefore urged that the finding regarding non-identification of beneficiaries is factually and legally unsustainable. According to him, in proceedings under Section 14B, identification of beneficiaries is not a relevant consideration, except to the extent required for deposit of contributions.



11. Learned counsel also submits that although the Tribunal relied upon the judgment of the Supreme Court in *HMT Ltd. v. Union of India,* (2008) 3 SCC 35, the said decision stands impliedly overruled in view of the subsequent judgment in Dharamendra Textile Processors, and therefore the reliance placed by the Tribunal is misplaced. It is further submitted that even in HMT Ltd., the matter was remanded by the Supreme Court to the High Court for fresh consideration.

12. Per contra, Mr. D'Souza and Mr. Pai, learned counsel appearing for the respondent, submit that it is undisputed that the respondent establishment had been closed down pursuant to an order passed by the Commissioner of Labour with effect from 20 March 2003. The said closure order was challenged before the Industrial Tribunal, which set aside the order, and thereafter, in Writ Petition No. 5046 of 2004 filed before this Court, the dispute came to be resolved in terms of a Tripartite Memorandum of Understanding and Settlement dated 11 September 2004. It is submitted that disputes regarding payment of wages remained pending before various judicial forums until such settlement was arrived at, and consequently the liability of the appellant was neither ascertained nor crystallized during that period. According to the respondent, entitlement of employees to wages arose only upon the said settlement. It is further contended that there was a specific direction issued by this Court for payment of wages, which was duly complied with by the appellant, and therefore it cannot be said that wages were intentionally withheld. During the pendency of litigation following closure of the division, workmen

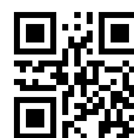


were not entitled to wages and, consequently, no provident fund contributions were payable either by the employer or by the employees.

13. Learned counsel for the respondent submits that a perusal of the impugned order demonstrates that the authority conducting the inquiry under Section 14B failed to apply the correct legal principles. It is urged that no inquiry was conducted and no finding of fact was recorded to establish that the appellant had willfully and deliberately withheld provident fund contributions. In the absence of such findings, the delay in remittance cannot be treated as deliberate.

14. It is further submitted that the impugned order reflects non-application of law in its proper perspective, as no finding exists to show deliberate or willful withholding of provident fund contributions. According to the respondent, in the absence of identifiable beneficiaries claiming the provident fund dues deposited by the establishment, damages levied would not enure to the benefit of any beneficiary, and therefore levy of damages is unwarranted. It is also contended that since the appellant is not a willful defaulter, damages cannot be imposed in view of the decision in HMT Ltd. On these grounds, the Tribunal set aside the impugned order and allowed the appeal.

15. Learned counsel for the respondent further submits that during the period commencing from the setting aside of the closure order until the settlement, no wages were payable to the employees. Inviting attention to Section 2(b) of the Employees'



Provident Funds Act, it is contended that liability to pay basic wages arises only when an employee is on duty. Since the employees were not on duty during the relevant period, basic wages were not payable and they were required to be treated as being on leave. Reliance is also placed on Clause 29 of the Employees' Provident Fund Scheme, 1952, to contend that liability to pay contributions arises only when wages are payable. It is further submitted that the amount paid under the settlement was in the nature of compensation and not wages.

16. Relying upon the judgment in *Organo Chemicals Industries Ltd.*, learned counsel submits that while determining damages under Section 14B, the authority is required to consider relevant factors such as the number of defaults, the period of delay, subsequent compliance, and the quantum involved. It is contended that unless such factors are duly considered, an order imposing damages cannot be sustained. According to the respondent, the order passed by the petitioner suffers from non-consideration of these material factors.

Reasons and analysis

17. The facts placed by the respondent need very careful examination. This is not a case of delay without background. Here, first there was a closure. Then that closure was challenged. After that, there was litigation before different forums. Finally, the matter ended in a settlement.

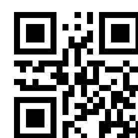
18. When a factory is closed and later the closure is set aside, many questions arise. Were the workers working during that time.

Were they entitled to wages. Was the employer under a clear duty to pay wages month by month. If wages themselves were under dispute and the matter was pending before a Court or Tribunal, then the liability to pay provident fund contributions may also remain uncertain for that period.

19. If there is a real and genuine dispute about whether wages are payable, the employer may say that contribution cannot be calculated until wages are decided. This type of dispute, if it is bona fide and not created as an excuse, becomes a relevant factor. The authority under Section 14B cannot ignore this background. It must see whether the dispute was genuine and whether the employer acted honestly during that period.

20. Section 2(b) defines basic wages. It connects wages with duty or leave with wages. It may require determination first. Therefore, in such a case, the authority must clearly decide from which date wages became legally payable and from which date contribution became due.

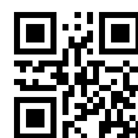
21. Now coming to the question of mens rea. The Tribunal held that since there was no finding of willful and deliberate withholding, damages could not be imposed. In other words, the Tribunal treated absence of bad intention as enough to cancel damages. The Act does not say that Section 14B requires proof of bad intention in every case. The word used in the section is “default”, not “willful default”. However, that does not mean intention is totally irrelevant. If there is delay, default is made out in principle. But while deciding whether to impose damages and



how much, the authority must look at conduct. Was he deliberately avoiding payment. Or was he facing genuine legal uncertainty. These matters are important when fixing damages. So intention is not a legal requirement, but conduct is a relevant circumstance.

22. On the question of identification of beneficiaries, the Tribunal held that beneficiaries were not identified. But the record shows that statutory returns were filed and names of employees were given. Once returns are filed and deposits are made with employee details, beneficiaries are normally identifiable. The law does not say that identification of beneficiaries is a condition before Section 14B can be applied. The purpose of damages is to ensure timely compliance and protect the Fund. Therefore, the reasoning that damages cannot be levied because beneficiaries are not identified is not legally correct. At the same time, in a particular case, if there is some practical difficulty in crediting amounts to beneficiaries, that may be considered while exercising discretion. But it cannot be treated as a complete bar to levy damages.

23. Next is the question of inquiry. The record shows that the order under Section 14B does not discuss in detail the effect of closure, the pending litigation, or the settlement. The order does not clearly explain why the delay is treated as blameworthy despite these facts. The Act requires not only hearing, but also reasoning. The employer must be given an opportunity to explain. But the authority must also show in its order that it has considered that explanation properly. A fair inquiry means more than issuing notice and passing an order. The authority must analyse the facts.

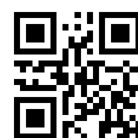


It must state reasons. It must show why it accepts or rejects the employer's explanation.

24. Before imposing damages under Section 14B, certain factors must be kept in mind. These include the number of times default occurred. The total period of delay. The reasons for delay. Whether the employer acted in good faith. Whether contributions were ultimately deposited and how quickly. Whether beneficiaries can be clearly identified. The financial position of the establishment, especially if it is sick or under rehabilitation. These are guiding factors.

25. When we read the judgments together, the position becomes clear. *Organo* explains what default means. *HMT* and later cases held that mitigating circumstances are important. Recent judgments hold that civil penalties do not always need mens rea. But they also hold that discretion must be used properly. So the combined effect is this. Default creates liability in principle. But damages and their amount must be decided after careful and reasoned consideration of facts.

26. Applying these principles to the present case, it becomes clear that both sides have arguable case. The Tribunal made two mistakes. First, it treated absence of mens rea as a complete bar to damages. Second, it accepted the finding that beneficiaries were not identified, even though records show otherwise. At the same time, the authority who imposed damages also failed in its duty. It did not properly examine the effect of closure. It did not analyse the pending industrial disputes. It did not clearly state why the



delay after settlement should still attract damages without reduction. There is no detailed reasoning.

27. In such a situation, the proper course is to send the matter back for fresh decision. The Tribunal's legal conclusions on mens rea and identification cannot be upheld. But the original order imposing damages also cannot be confirmed because it lacks proper reasoning.

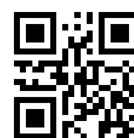
28. Therefore, the matter must go back to the competent authority for fresh consideration. The officer must record clear findings on the relevant points. Reasons must be given. Relevant judgments must be considered. Only after such careful exercise can a decision on damages be made.

ORDER

(i) The impugned order dated 23 January 2014 passed by the Provident Fund Appellate Tribunal in ATA Nos. 672(09) and 673(09) of 2007 is hereby quashed and set aside.

(ii) The order passed by the competent authority under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 imposing damages is also set aside.

(iii) The proceedings are remanded to the competent authority under Section 14B for fresh adjudication in accordance with law.



(iv) The parties shall appear before the competent authority on 16 March 2026 at 11.00 a.m. without awaiting any further notice.

(v) The authority shall reconsider the matter afresh after granting reasonable opportunity of hearing to both parties. The authority shall record clear findings on the issue of default, the period of delay, the reasons for delay including the effect of closure and subsequent settlement, the entitlement of employees to wages during the relevant period and the quantum of damages, if any.

(vi) The authority shall pass a reasoned order dealing with all material submissions and relevant factors within a period of four months from the date of receipt of this order.

(vii) Till the fresh decision is taken, no coercive steps shall be initiated for recovery of damages pursuant to the earlier order.

(viii) All contentions of both parties are kept open for consideration before the competent authority.

29. The writ petitions stand disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)