
(2016) 08 DEL CK 0082

DELHI HIGH COURT

Case No: Writ Petition (Civil) No. 6673 of 2016

M/S Net 4 India Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Aug. 2, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1)(g), 265
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 7Q

Citation: (2016) 8 ADDelhi 253

Hon'ble Judges: Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench: Division Bench

Advocate: Mr. Ranvir Singh and Mr. S.P. Arora, Advocates, for the Petitioner; Ms. Anubha Bhardwaj and Mr. Dev. P. Bhardwaj, Advocates, for the Respondent No. 1/UOI; Mr. R.C. Chawla, Standing counsel along with Ms. Inderjeet Sidhu, Advocate, for the Respondent No. 2

Final Decision: Partly Allowed

Judgement

Mr. Sanjiv Khanna, J.(Oral)—M/s. Net 4 India Ltd. by this writ petition has challenged the vires of Section 7Q of the Employees Provident Fund Act, 1952 (Act) as being unconstitutional and violative of constitutional rights granted under Article 14, 19(1) (g) and Article 265 of the Constitution of India. In addition, the petitioner has prayed for direction to the Assistant Provident Fund Commissioner (respondent No. 2) to refund Rs. 6,00,375/- along with interest. Another prayer made in the writ petition is for setting aside and quashing of the order dated 16th February, 2016 issued under the cover of letter dated 17th February, 2016.

2. The challenge to Section 7Q of the Act is primarily predicated on the ground that the establishment does not have the right to appeal. Reliance is placed upon the decision of a Division Bench of this Court in **M/s. Wire Netting Stores, Delhi and another v. The Regional Provident Fund Commissioner and Others, ILR (1984) 1 Del 76**. The levy of interest u/s 7Q has been challenged on the ground of irrationality, being arbitrary and

unjustifiable, as delay or non deposit entails penalty in the form of damages levied u/s 14B of the Act. Attention is drawn to the decision of the Supreme Court in **Organo Chemical Industries v. UOI, 1979(4) SCC 573**, a decision of the Division Bench of this Court to which one of us (Sanjiv Khanna, J.) was also a party-in **M/s. System Stampings and anr. v. EPFAT and ors., 2008(2) LLJ 939 Del** and a judgment of Full Bench of this Court in **Roma Henny Security Services P. Ltd. v. Central Board of Trustees, 2012 (132) DRJ 753 (FB)**. It is submitted that the interest chargeable is included in damages imposed u/s 14B and, therefore, the respondents could not have passed a separate order under Section 7Q levying interest. Referring to Organo Chemicals (supra) it is urged that the legislature could not have overruled or overstepped the ratio expounded without removing the basis and foundation of the said judgment as it amounts to usurpation and negates the power of judicial review.

3. The petitioner has challenged the order u/s 14B of the Act imposing damages of Rs. 25,94,814/- before the Appellate Tribunal. During the course of hearing, reference was made to the order dated 5th May, 2016 passed by the Appellate Tribunal in the Appeal No ATA No. 551(4)/2016 preferred by the petitioner. The order records that the petitioner/Establishment had already deposited the 7Q amount. The prayer made in the writ petition reflects that the interest amount has been deposited. It is, however, stated at the Bar that Rs. 6,03,095/- as against the demand of Rs. 16,98,827/- towards interest under Section 7Q of the Act has been deposited.

4. In order to decide the contentions raised, we would like to first refer to the decision of the Supreme Court in Organo Chemical Industries (supra) wherein the provision of Section 14B was examined and elucidated upon. A.P.Sen, J. in his judgment, referring to the expression "damages" as used in Section 14 B had held as under:-

"11. In support of the petition, learned Counsel for the petitioners assails the impugned order on two grounds, namely, (i) Section 14B of the Act is violative of Article 14 of the Constitution as it confers un-guided, uncontrolled and arbitrary power on the Regional Provident Fund Commissioner to impose damages which may be to the extent of 100% i.e., equal to the amount of arrears. The conferral of such unguided, uncanalised and arbitrary power on the Regional Provident Fund Commissioner to arrive at a decision, without any guidelines whatsoever, makes Section 14B constitutionally invalid as offending against Article 14, and (ii) Section 14B deals with the power to recover damages. It is not the power to impose penalties. The word "damages" in Section 14B must, therefore, be understood in the legal sense. Damages must have some correlation with the loss suffered as a result of delayed payments. The authority imposing the penalty or damages must, therefore, apply its mind to this aspect of the matter. The defaulting employer under Section 14B is, accordingly, liable to pay damages which represents the loss to the beneficiaries of the scheme, such as recovery of interest; but not anything more, as such recovery would amount to penalty, and that is not permitted under the section. There is no substance in any of the contentions.

12. Section 14B of the Act reads as follows : 14B. Power to recover damages :-Where an employer makes defaults in the payment of any contribution to the Fund (the Family 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 this Act or of (any scheme or Insurance Scheme) or under any of the conditions specified under Section 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 such damages, not exceeding the amount of arrear, as it may think fit to impose. Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

13. The contention that Section 14B confers unguided and uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such damages "as he may think fit" is, therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guide-lines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under Section 14B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable under Section 14B and the consequences that ensue therefrom, an order under Section 14B must be a "speaking order" containing the reasons in support of it. The guide lines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which under Section 14B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word "damages" in Section 14B lays down sufficient guidelines for him to levy damages. xxxx 22. The expression "damages" occurring in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty Under Section 14B is not merely to provide compensation for the employees". We are clearly of the opinion that the imposition of damages Under Section 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Schemes. The word "damages" in Section 14B is related to the word "default". The words used in Section 14B are "default in the payment of contribution" and, therefore, the word "default" must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word "default" in Section

14B must mean "failure in performance", or "failure to act." At the same time; the imposition of damages Under Section 14B is to provide reparation for the amount of loss suffered by the employees.

5. A reading of the aforesaid passages would show that the Supreme Court rejected the contention of the petitioner therein that Section 14B was unconstitutional because it had given unguided, uncanalised and arbitrary power to the Regional Provident Fund Commissioner to arrive at his own decision without any guidelines whatsoever. The word "damages", it was observed, must be understood in the legal sense as imposing penalty and, therefore, the authority must apply its mind to the said aspect. The Regional Provident Fund Commissioner while imposing damages u/s 14B would act as a quasi judicial body and the defaulter has to be given a reasonable opportunity of being heard. The award of damages must be within the limit fixed by the statute and having regard to the punitive nature of the power, the order must be a speaking one.

6. The Supreme Court had also referred to the reason why the Section 14B was incorporated and brought into the statute book by Act 37 of 1953. The object and purpose was that there were administrative difficulties in implementing the Act and ensuring compliance with the provisions by the employer/establishment. Earlier, no punishment was prescribed for contravention of provisions of the Act. Paragraph 24 of the decision in *Organo Chemical Industries* (supra) is relevant and reads as under:-

"24. There appears to be a misconception that the object of imposition of penalty under Section 14B is not "to provide compensation for the employees" whose interest may be injured, by loss of interest and the like. There is also a misconception that the damages imposed under Section 14B are not transferred to the Employees' Provident Fund and the Family Pension Fund, of the employees who may be adversely affected, but the amount is transferred to the General Revenues of the appropriate Government. We find that this assumption is wholly unwarranted. In assessing the damages, the Regional Provident Fund Commissioner is not only bound to take into account the loss to the beneficiaries but also the default by the employer in making his contributions, which occasions the infliction of damages. The learned Additional Solicitor General was fair enough to concede that the entire amount of damages awarded under Section 14B, except for the amount relatable to administrative charges, must necessarily be transferred to the Employees' Provident Fund and the Family Pension Fund. We hope that those charged with administering the Act will keep this in view while allocating the damages under Section 14B of the Act to different heads. The employees would, of course, get damages commensurate with their loss i.e., the amount of interest on delayed payments; but the remaining amount should, go to augment the "Fund" constituted under Section 5, for implementing the Scheme under the Act."

7. Krishna Iyer, J. concurring the judgment has said as under:-

"37. The power under the Section permits award of "damages" and that word has a wealth of implications and limitations, sufficient to serve as guideline in fixing the impost. In **Arvinder Singh's case, [1979] 1 SCR 845** this Court upheld an otherwise unbridled power to levy tax by importing a variety of factors gathered from the statute and relied on many precedents. Likewise, in **Radhakrishnan's case, [1979] 118 ITR 534(SC)** this Court rejected the plea that a power in the Commissioner to choose one of the two remedies was invalid in the absence of guidelines and observed, on a review, of the case-law:

When power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties and the circumstances under which they will choose either of the remedies available should be left to them. The vesting of discretionary power in the state or public authorities or an officer of high standing is treated as a guarantee that the power will be used fairly and with a sense of responsibility.

It has been held by the Privy Council in **Province of Bombay v. Bombay Municipal Corporation 73 LA. 271 : AIR 1947 P.C. 34**, that every statute must be supposed to be for public good at least in intention and therefore of few laws can it be said that the law confers unfettered discretionary power since the policy of law offers guidance for the exercise of discretionary power. Although our democratic ethos is incongruous with the assumption that highly paid officials are more responsible than low-paid minions, the jurisprudence of power must be applied workably and not untouched by reality. More to the point is the decision in **Kaushal's case [1973] 3 S.C.C. 558**. There this Court accepted the submission that the seemingly naked power under Section 59 of the Punjab Excise Act was guided by the requirement that it was to be exercised for control of consumption of intoxicants. (The whole scheme of the statute proclaims its purpose of control in time and space and otherwise observed the Court). Here the conceptual limitations of "damages" serve as guideline and barricade the exercise. The Commissioner cannot award anything more than or unrelated to "damages". Nor can he go beyond 100% of the amount defaulted. Such limitations without further guidelines are not uncommon, in taxing laws to penalise defaults and suppression's.

38. What do we mean by "damages"? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrong-doing of another (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, "exemplary damages, are damages

on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behaviour or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money". (See Black's Law Dictionary, 4th Edition p. 467/468). It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14B is good for these reasons."

8. One of the contentions raised in the case of Organo Chemical Industries (supra) was that the absence of any provision for an appeal, leaves the defaulting employer with no remedy. Thus Section 14B was unconstitutional, being draconic and arbitrary. This contention was rejected by the Supreme Court in that judgment observing as under:-

"15. In this connection, it was also urged that the absence of any provision for appeal, leaves the defaulting employer with no remedy. The conferral of arbitrary and uncontrolled powers on the Regional Provident Fund Commissioner to quantify damages, it is said, without a corresponding right of appeal or revision, makes the provision contained in Section 14B per se void and illegal and it is liable to be struck down on that ground. We are afraid, the contention is wholly devoid of substance. Mere absence of provision for an appeal does not imply that the Regional Provident Fund Commissioner is invested with arbitrary or uncontrolled power, without any guide-lines. The conferral of power to award damages under Section 14B is to ensure the success of the measure. It is dependent on existence of certain facts, there has to be, an objective determination, not subjective. The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of Section 14B but is cast with the duty of making a "speaking order", after conforming to the rules of natural justice."

9. We fail to understand how the aforesaid judgment helps or aids the arguments raised by the petitioner. The ratio and findings recorded in the aforesaid passages clearly show that the Supreme Court has held that the expression "damages" occurring in Section 14B is a penalty for breach of a statutory obligation and not merely to provide compensation to the employees. The provision establishes means to penalise the defaulting employer and also to ensure the reparation of the amount of loss suffered by the employees. It warns the employer in general not to commit breach of the statutory requirements.

10. The issue raised in M/s. System Stampings (supra) was predicated on a circular/office memorandum dated 29th May, 1990, quantifying the damages. As per the said circular an order u/s 14B would also take into account the interest chargeable u/s 7Q. Thus, the damages computed u/s 14B of the Act in terms of the Circular would include the interest

element payable u/s 7Q. In view of the said Circular, it was held that once the establishment has paid the total amount quantified u/s 14B, it would be inclusive of the interest element payable under Section 7Q. Therefore, the Provident Fund Authorities could not have separately imposed interest under Section 7Q, for the said interest had already been charged and included in the damages under Section 14B of the Act.

11. The legal position and ratio was clarified in Roma Henny Security Services P. Ltd. (supra) by the Full Bench on a reference being made as another Division Bench had reservations about the ratio and findings recorded in M/s. System Stampings(supra). The Full Bench referred to the subsequent circulars issued by the Provident Fund Authorities and also the change introduced with effect from 26th September, 2008. It was noticed that after 26th September, 2008, the order under section 14 B would not include the interest element under section 7Q. This is clear from the following observations and findings of the Full Bench:-

"12. It is not in dispute that if the judgment of M/s System and Stamping (supra) is to be followed, the case is covered in favour of the petitioner. However, we find substance in the submission of learned counsel for the respondent that in the said judgment the Division Bench entirely rest upon the Office Memorandum dated 29.5.1990 on the basis of which the Bench came to the conclusion that interest element chargeable under Section 7-Q of the Act was included in the table prescribing damages payable under Section 14-B of the Act. As we will demonstrate hereinafter, there were various other subsequent Circulars which were not taken into account. In the first instance, it needs to be pointed out that the Office Memorandum referred to by the Division Bench was dated 29.5.1990. It was issued at the time when Section 7-Q was not made effective.

Pertinently, this provision was introduced in the Act in the year 1988 but was made effective only from 1.7.1997. Since the provision was not in force as on 29.5.1990, it appears that by that mechanism which was applied administratively was to include the component of interest while imposing the damages under Section 14-B of the Act. However, the position changed after Section 7Q of the Act was in force w.e.f. 1.7.1997. The interest on delayed contribution of provident fund became payable statutorily. While this was so, the aforesaid table continued to operate which has now been modified and replaced by the another table made effective from 26.9.2008 and the rates of damages as per the revised table are as under:-

Sl. No.	Period of default	Rate of damages (Effective 26.9.2008)
1.	Less than two months (upto 59 days)	5%

2.	Two months and above but less than four months (upto 119 days)	10%
3.	Four months and above but less than Six Months (upto 179 days)	15%
4.	Six months and above (180 days and above)	25%

13. It is clear from the above that w.e.f. 26.9.2008 the damages under Section 14-B of the Act are charged on the aforesaid basis which would show, for example if the period of default is less than two months, the damages payable are 5%. However, the table which was governing upto this date and is noted in the judgment of M/s System and Stamping (supra), the damages for the period of default of less than two months were 17%. Same is the position in respect of other periods of default when the two tables are kept in juxtaposition it would clearly revealed that the damages are now reduced by 12% at every stage meaning thereby component of interest under Section 7- Q is now removed. The comparison of the aforesaid two would show that upto 26.9.2008 the earlier table continue to govern which included the element of interest under Section 7-Q of the Act. From 26.9.2008 onwards, however the two are segregated. This would clearly bolster the stand of the petitioner that if the earlier table is applied which was so done, interest payable under Section 7Q of the Act was already included.

14. In the present case, the period for which damages under Section 14-B of the Act are levied is from June, 1999 to October, 2008. Therefore, for almost the entire period interest stands charged by imposing damages under Section 14-B of the Act with the application of rates mentioned in the table prevailing prior to 26.9.2008. It is not the case of the Department that for one month i.e. 27.9.2008 to October, 2008 damages were charged on the rates specified in the new table. When the matter is examined from this angle also we find substance in the argument of the learned counsel for the petitioner that the clarification issued by the Department that interest is to be charged separately would be of no avail. Of course, that may be the legal position. However, the mechanism to charge interest separately was not enforced by modifying the existing table which step was taken only in issuing fresh table making effective from 26.9.2008."

The aforesaid paragraphs unmistakably hold that orders passed u/s 14B prior to 26th September, 2008 would include the interest element payable under section 7Q, albeit the orders passed u/s 14B on or after 26th September, 2008 would not include the interest element under section 7Q of the Act. Post 26th September, 2008, the damages to impose u/s 14B, would not include the interest payable under Section 7Q. In these circumstances, the contention of the appellant that the respondents have tried to overrule the decision of the Supreme Court in Organo Chemical Industries (supra) is fallacious and merits rejection. The two provisions of Section 14B and 7Q operate in different fields

and have different purposes and objects. The difference between a "penalty" and "interest" provision is well recognised. The terms represent different concepts. Penalty is ordinarily levied for contumacious or wrong conduct and violation of a provision of a particular statute. Interest is compensatory when imposed to set off the loss or prejudice caused on account of nonpayment [see **Pratibha Processors v. Union of India, (1996) 11 SCC 101** and **Bhai Jaspal Singh and anr. v. Assistant Commissioner of Commercial Taxes and ors., (2011) 1 SCC 39**]. Sometimes penalty or interest imposed can partake character of both "penalty" and "interest". Whether an impost is compensatory in essence and penal or a combination of the two has to be determined in the context and mere nomenclature in some cases may not be conclusive. Section 14-B provides for levy of damages for delayed payment as a percentage of the amount subject to a prescribed maximum. Organo Chemical Industries (supra) has to be understood in the context as at the prevailing time an order under Section 14-B also included the interest component. The circular dated 29th May, 1990 had significance. However, the position underwent a change with effect from 26th September, 2008, when there was a clear demarcation between levy of compensatory interest under Section 7-Q and penalty under Section 14-B. This aspect has also been elucidated below and would become clear when we refer to the recent decision of the Supreme Court in **Arcot Textiles Mills Ltd. v. Regional Providence Fund Commissioner and ors., (2013) 16 SCC 1**.

12. Reliance placed by the learned counsel for the respondent on the decision in the case of M/s. Wire Netting Stores (supra) is entirely misconceived. The said judgment was subsequently overruled by the Full Bench of this Court in **Jay Prestressed Products Ltd. and anr. v. UOI and ors., 2001 (60) DRJ 661 (FB)** observing as under:-

"2. Though the question has become of academic interest, in view of insertion of Section 7D to 7P of the Act inter alias dealing with Constitution and functioning of Tribunal to deal with appeal from an order under Section 7-A even otherwise the view expressed in that case is not correct. Mere absence of an appellate forum would not render the provision relating to adjudication unconstitutional. A similar view was expressed by a Constitutional Bench of the Apex Court in **M/s. Gammon India Ltd. etc. v. Union of India and others, (1974) 111 SCR 489** SC.

3. While testing the validity of the Maharashtra Debt Relief Act, on the ground of procedural unfairness in the absence of the appellate provision, in the case of the **Fatehchand v. State of Maharashtra, [1977] 2 SCR 828**, it is observed:

"Does the absence of a right of appeal render the procedure unreasonable? It depends. Where the subject matter is substantial and fraught with serious consequences and complicated questions are litigatively terminated summarily, without a second look at the findings by an appellate body, it may well be that unfairness is inscribed on the face of the law, but where little men, with petty debts, legally illiterate and otherwise handicapped, are pitted against money-lenders with stamina, astuteness, awareness of legal rights and other superiority, if the purpose of instant relief is to be accomplished, the provision of an

appeal may, in many cases, prove a built-in body trap that frustrates and ruins the hand-to-mouth debtor. No surer method of baulking the object can be devised than enticing the debtor into an appellate bout. Daughter gone and ducats too, will be the sequel . Of course, where the enquiry is a travesty of justice or violation of provision, where the finding a perversity of adjudication or fraud on power, the High Court is not powerless to grant remedy even after the recent package of Constitutional amendments."

4. Merely because no appeal is provided against the order under Section 7-A "is a matter of no moment" (vide **K.L. Gupta v. Corporation Greater Bombay**, [1968] 1 SCR 274, **Chinta Lingam v. Government of India** [1971] 2 SCR 871, **Pannalal Binjraj v. Union of India**, [1957] 1 SCR 233. The decision of the Supreme Court while considering the virus of Section 14-B of the Act, puts the controversy beyond a shadow of doubt. In **Organo Chemical Industries v. Union of India**, AIR 1979 S.C. 1803 it was held "the absence of a provision for appeal or revision can be of no consequence. "We may also note that the validity of the provision had been considered by the various High Courts and there is almost unanimity that the provision is intra vires. We are in a agreement with the views expressed by the various High Courts i.e. in **M/s. Inter State Transport Agency Sitamarhi v. Regional Provident Fund Commissioner, Patna** 1983 L.I.C. 940 (Patna); **T. Marimuthu Handloom Factory, Madurai** **M/s. Kandasamy Textiles, Handloom Merchants v. The Regional Provident Fund Commissioner, Madras and another**, (1990) 1 LLJ 555; **Prakash Kothari v. Regional P.F. Commissioner, Maharashtra & Goa**, (1990) 2 LLJ 217; **Kshetriya Khadi Gramodyog Samiti Kumher v. Union of India and others**, 1995 L.I.C. 315. Additionally in **Sumedico Corporation and another v. Regional Provident Fund Commissioner**, (1999) ILLJ 1170 SC, it has been held that after establishment of the Tribunal the controversy has really become academic. Accordingly, we dismiss this writ petition."

13. We have already quoted the relevant portion of the observation of the Supreme Court in the case of **Organo Chemical Industries** (supra) on the question of right to appeal.

14. The Supreme Court in **Arcot Textile Mills Limited** (supra) had examined the scope and ambit of an order u/s 7Q and 7-I. After exhaustively examining the said provisions it was held that an appeal would not be maintainable against an order passed under Section 7Q, but when interest under Section 7Q is included in the order passed under Section 7A, 7B or Section 14B, the same could be made subject matter of challenge in the appeal, when an appeal is preferred against an order passed under the said sections.

15. The Supreme Court in **Arcot Textile Mills Limited** (supra) had observed :-

"20. On a scrutiny of Section 7I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly

nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See: **Ganga Bai v. Vijay Kumar and ors.**, (1974) 2 SCC 393, **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and ors.**, (1999) 4 SCC 468, **State of Haryana v. Maruti Udyog Ltd. and Ors.**, (2000) 7 SCC 348, **Super Cassettes Industries Limited v. State of U.P. and anr.**, (2009) 10 SCC 531, **Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and anr.**, (2010) 4 SCC 772, **Competition Commission of India v. Steel Authority of India Limited and anr.**, (2010) 10 SCC 744.

21. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable." Referring to the scope and ambit of Section 14B and elucidating upon the difference between the said Section and Section 7Q, it was highlighted that when an establishment does not have any cavil with regard to the dues payable towards the provident fund, then possibly the authorities had only to compute the interest payable as per the provisions of Section 7Q of the Act on the belated remittance or on non payment. On the question whether in an order passed in exercise of Section 7Q, which results in a demand, principles of natural justice have to be followed, reference was made to the decision of the Supreme Court in **C.B. Gautam v. Union of India**, (1993) 1 SCC 78 and certain other decisions and it was held as under:-

"27. Presently we shall address to the nature of the lis that can arise under this provision. There cannot be any dispute that the Act in question is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under statutory obligation to make the deposit that is due from him. In the event of default committed by the employer Section 14B steps in and calls upon the employer to pay the damages. (See: **Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur**

and ors., (1997) 1 SCC 241). Section 7Q which provides for interest for belated payment is basically a compensation for payment of interest to the affected employees. This provision has been made to secure just and humane conditions of work as has been opined in **Regional Provident Fund Commissioner v. Hooghly Mills Co. Limited and ors., (2012) 2 SCC 489**. The language employed in Section 7Q provides for levy of interest on delayed payment and the rates have been stipulated. When a composite order is passed or order imposing interest becomes a part of the order or levy in any of the provisions of the Act the authority grants a reasonable opportunity of hearing to the employer/affected party.

28. The issue that falls for consideration in this case when the employer volunteers may be after long delay to pay the dues, can he claim any right to object pertaining to the interest component. On certain occasions the authority on its own may issue a demand notice under Section 7Q after long lapse of time by computing the delay committed by the employer in payment of the dues. We repeat at the cost of repetition that it is a matter of computation but sometimes computation is done when the main order is passed and at times an interest component is demanded separately by the competent authority. To say that there cannot be any error at any point of time will be an absolute proposition. There can be errors in computation. It is difficult to hold that when a demand of this nature is made in a unilateral manner and the affected person is visited with some adverse consequences no prejudice is caused. Learned Counsel for the Respondent would contend that the natural justice has been impliedly excluded and for the said purpose she would emphasise upon the scheme and the purpose of the Act. There is no cavil for the fact that it is social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty. It is contended that it is luminous that the legislature always intended that when hearing takes place for determination of the money due, the component of interest would be computed and in that backdrop the affected person will have opportunity of hearing. But in reality when an independent order is passed under Section 7Q which can also be done as has been done in the present case the affected person, we are inclined to think, should have the right to file an objection if he intends to do. We are disposed to think so, when a demand of this nature is made, it can not be said that no prejudice is caused. It is highlighted by the Respondents that once the amount due is determined the levy of interest is automatic. The rate of interest is stipulated at 12 per cent or at a higher rate if so is provided in the scheme. Despite this, there can be errors with regard to the period and the calculation. It is a statutory power which is exercised by the competent authority under the Act. Once the said authority takes recourse to the measure for computation and sends a bald order definitely the affected person can ask for clarification and when computation sheet is provided to him he can file an objection. Though, the area of delineation would be extremely limited yet the said opportunity cannot be denied to the affected person."

16. Elucidating on the contention of the authorities that once the amount due is determined, the levy of interest is automatic as the rate of interest has been stipulated and that there could be no question of right to hearing, it was observed that despite the said submissions, there could be errors with regard to the period and the calculation. Once the Authority has taken recourse to the measure for computation and sends a bald computation order, the affected person can definitely ask for clarification or file objections. After referring to the case law on the right to hearing, the Supreme Court held:-

"34. Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the Competent Authority."

A reading of the aforesaid paragraph would indicate that the authority while exercising power u/s 7Q has to compute the interest and inform the establishment. Computation sheet has to be furnished. Once the computation sheet is made available to the Establishment, they have the right to file objections before the authorities raising contentions and issues relating to computation of interest. The objections have to be dealt with summarily and decided. Learned counsel for the petitioner accepts that they have not separately filed objections after the order under section 7Q dated 16th February, 2006 was served. He however submits that the petitioner had received show cause notice dated 16th May, 2014 which included the interest payable under section 7Q and a detailed representation dated 31st July, 2014 was made. This included objections to the levy of interest. In particular, attention was drawn to paragraph 4 wherein it is stated that the date of tendering of cheque, including the five days gross period should be taken and counted towards the date of payment, whereas the respondents have treated the date of actual encashment of the cheque as the date of payment. This aspect, it is submitted, has not been examined by the respondents/authorities in the impugned order. It is also submitted that interest has been levied u/s 7Q for a period from March, 2008 till September, 2008. In view of the decision of the Full Bench in Roma Henny Security Services P. Ltd. (supra) and M/s. System Stampings & Anr., interest would not have been separately levied u/s 7Q till 26th Sept, 2008 for it could be included in the damages imposed for the said period u/s 14B of the Act.

17. Learned counsel appearing for the respondent/authorities states that the petitioner may make a representation to the authority raising objections with regard to computation of interest u/s 7Q and on representation being filed, the same would be disposed of by the authorities with a speaking order. Counsel for the petitioner is agreeable. We take the

statement made by the counsel for the respondent and the petitioner on record. The petitioner will be at liberty to make a written representation within a period of three weeks from the date copy of this order is made available and thereafter personal hearing would be given to him and a speaking order passed by the respondent authority within a period of four weeks from the date of personal hearing. The petitioner, if aggrieved by the said order, would be entitled to challenge the same in accordance with law.

18. Accordingly the writ petition is partly allowed. We dismiss the writ petition and reject the challenge to the constitutional validity of Section 7Q of the Act. However, with regard to the question of computation, the petitioner is given liberty to file a representation/objections before the Authorities who shall thereafter pass a speaking order.

19. The petitioner while filing the representation will also quantify the amount of undisputed interest payable under Section 7Q and in case there is any amount payable, the petitioner would pay the same. The balance amount of interest can be recovered by the respondents by taking recourse to coercive methods or otherwise after the order is passed. The right to enforce/coercive recovery, is subject to the right of the petitioner to challenge the order and obtain a stay of the demand/recovery.

20. The petition stands disposed of. No Costs.