

**(2014) 06 CAL CK 0012****Calcutta High Court****Case No:** W.P. 15368(W)/2014

Jhantu Rudra

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision:** June 19, 2014**Acts Referred:**

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 7(Q)

**Citation:** (2014) LLR 870**Hon'ble Judges:** Soumen Sen, J**Bench:** Single Bench**Advocate:** Madhusudan Sarkar, Dipanjan Dutta and Avik Dhar, Advocate for the Appellant; Mihir Kundu, Advocate for the Respondent**Judgement**

Soumen San, J.

This writ application is directed against an order passed by the Assistant Provident Commissioner, Penal and Damage Cell on 13th February, 2014 determining a sum of Rs. 12,97,115 as due and payable on account of interest u/s 7(Q) for the period from August, 2007 to January, 2012 and a sum of Rs. 5,90,642 towards damages u/s 14B of the Employees Provident Fund and Miscellaneous Provisions Act. The learned Advocate appearing for the petitioner submits that the impugned order dated 13th February, 2014 passed in violation of the principles of natural justice. It is stated that on the aforesaid day i.e., on 13th February, 2014, the writ petitioner has sought for time to make a detailed representation with regard to the determination of damages u/s 14B and although an assurance was given that the petitioner would be permitted to file a detailed representation in connection with the said proceeding but the authority concerned without giving an opportunity of hearing to the petitioner passed the said impugned order. It is further submitted that the authorized representative had never agreed to the delay and correctness for the calculation statement recorded in the said order. Prima facie, it appears that there

has been some delay in payment of the amount towards the provident fund dues. However, the fact remains that if any prayer for waiver of penalty and damages is made, the Provident Fund Authorities are required to take into consideration some relevant facts and circumstances namely condition of default, period of default, frequency of default and the amount involved. Admitted delay per se may not attract the penalty, interest and damages, if the establishment could establish unavoidable circumstances leading to delayed remittances for the period.

2. In view of the aforesaid, the writ petition is disposed of by directing the Assistant Provident Fund Commissioner, Penal and Damage Cell to reconsider the matter subject to deposit of Rs. 2.50 lakhs by the writ petitioner within a period of one week from date. In the event, such deposit is made with the Assistant Provident Fund Commissioner, then the petitioner will be permitted to make a representation within a period of one week thereafter and the Assistant Provident Fund Commissioner on receipt of such representation shall make all endeavor to dispose of the representation within a period of four weeks thereafter after giving an opportunity of hearing to the writ petitioner. The concerned authority shall dispose of the said representation by passing a reasoned order and such order shall communicate within a period of one week from the date of passing such order. In the event no such deposit is made, the order dated 13th February, 2014 shall be immediately in force. It is made clear that the parties shall decide the matter uninfluenced by any observations made in this order except the guidelines indicated in this order in deciding such an application for waiver of damage and penalty.