

Central Board of Trustees vs Kerala Electrical and Allied Engineering Company Ltd.

Central Board of Trustees vs Kerala Electrical and Allied Engineering Company Ltd.

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/1790/2021

Appellant : Central Board of Trustees

Respondent : Kerala Electrical and Allied Engineering Company Ltd.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 WP(C) NO. 1780 OF 2021 PETITIONER: CENTRAL BOARD OF
TRUSTIES, EPF THROUGH THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, PARAMESWAR NAGAR, PONNAMMA
CHAMBERS, KOLLAM-691 001. BY ADVS. SHRI.PIRAPPANCODE
V.S.SUDHIR SHRI. AKASH S. SMT.A.MEGHA RESPONDENT:
KERALA ELECTRICAL AND ALLIED ENGINEERING COM LTD. POST

BOX NO.8, KUNDARA-691 501, KOLLAM, REPRESENTED BY ITS ASST. MANAGER (F AND A). BY ADVS. P.BENNY THOMAS D.PREM KAMATH(K/1285/1998) TOM THOMAS (KAKKUZHIYIL)(K/000821/2008) ABEL TOM BENNY(K/1381/2018) AARON ZACHARIAS BENNY(K/001533/2023) BHARATH NAIR(K/002569/2022) AMRUTHA SELVAM(K/001249/2023) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2024, ALONG WITH WP(C).1790/2021, DELIVERED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945 WP(C) NO. 1790 OF 2021 PETITIONER: CENTRAL BOARD OF TRUSTIES EPF THROUGH THE REGIONAL PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION, REGIONAL OFFICE, PARAMESWAR NAGAR, PONNAMMA CHAMBERS, KOLLAM-691 001. BY ADVS. SHRI.PIRAPPANCODE V.S.SUDHIR SHRI. AKASH S. SMT.A.MEGHA RESPONDENT: KERALA ELECTRICAL AND ALLIED ENGINEERING COMPANY LTD., KUNDARA, KOLLAM 691 501, REPRESENTED BY ITS MANAGER (F AND A). BY ADVS. P.BENNY THOMAS D.PREM KAMATH(K/1285/1998) TOM THOMAS (KAKKUZHIYIL)(K/000821/2008) ABEL TOM BENNY(K/1381/2018) AARON ZACHARIAS BENNY(K/001533/2023) BHARATH NAIR(K/002569/2022) AMRUTHA SELVAM(K/001249/2023) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2024, ALONG WITH WP(C).1780/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 WP(C) NO. 24681 OF 2020 PETITIONER: THE KERALA
ELECTRICAL AND ALLIED ENGINEERING CO.LTD., POST BOX NO.8,
KUNDARA, KOLLAM-691501, REPRESENTED BY ITS MANAGER (F
AND A), MR.SUBRAMANIAN R.R. BY ADVS. SRI.P.BENNY THOMAS
SRI.D.PREM KAMATH SRI.TOM THOMAS (KAKKUZHIYIL) SHRI.ABEL
TOM BENNY SHRI.JYOTHISH KRISHNA SMT.MEENAKSHY S DEV
SHRI.AHAMMAD SACHIN K. SHRI.KURIAN OOMMEN THERAKATH
RESPONDENTS:

1 REGIONAL PROVIDENT FUND COMMISSIONER EMPLOYEES
PROVIDENT FUND ORGANIZATION, SUB REGIONAL OFFICE,
PONNAMMA CHAMBERS-1, PARAMESWARA NAGAR, OPP.
ARCHANA-ARADHARA THEATRE, KOLLAM-691 001. 2 CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
38/377 A-2, KARITHALA LANE, KARSHAKA ROAD, COCHIN-
682016.THIRUVANANTHAPURAM, PIN-695 501. BY ADVS.
SRI.PIRAPPANCODE V.S.SUDHIR (FOR R1) SHRI. AKASH S.
SMT.A.MEGHA SRI. S.MANU (DSGI)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31.01.2024, ALONG WITH WP(C).1780/2021 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: -:4:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 WP(C) NO. 24720 OF 2020 PETITIONER: THE KERALA
ELECTRICAL AND ALLIED ENGINEERING CO.LTD., POST BOX NO.8,
KUNDARA, KOLLAM-691 501, REPRESENTED BY ITS MANAGER (F
AND A), MR. SUBRAMANIAN R R. BY ADVS. SRI.P.BENNY THOMAS

SRI.D.PREM KAMATH SRI.TOM THOMAS (KAKKUZHIYIL) SHRI.ABEL TOM BENNY SHRI.JYOTHISH KRISHNA SMT.MEENAKSHY S DEV SHRI.AHAMMAD SACHIN K. SHRI.KURIAN OOMMEN THERAKATH RESPONDENTS:

1 ASSISTANT PROVIDENT FUND COMMISSIONER EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB REGIONAL OFFICE, PONNAMMA CHAMBERS-1, PARAMESWARA NAGAR, OPP. ARCHANA-ARADHANA THEATRE, KOLLAM-691 001. 2 CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, 38/377, A-2, KARITHALA LANE, KARSHAKA ROAD, COCHIN-682 016. BY ADVS. SRI.PIRAPPANCODE V.S.SUDHIR SMT.M.S.KIRAN, CGC SHRI. AKASH S. SMT.A.MEGHA SRI.S.MANU (DSGI) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

31.01.2024, ALONG WITH WP(C).1780/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:5:-

JUDGMENT

[WP(C) Nos.1780 & 1790 of 2021 and WP(C) Nos. 24681 & 24720 2020] WP(C)Nos.24681 and 24720 of 2020 have been filed by the Kerala Electrical & Allied Engineering Co.Ltd. (a Government of Kerala Company) challenging the orders on Appeal Nos.233 and 447 of 2018 on the file of the Central Government Industrial Tribunal cum Labour Court, Ernakulam, through which, the appeal filed by the said company against orders imposing damages under Section 14 B of the The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act, 1952) has been reduced only to

70%. It is the case of the company that, considering the facts

and circumstances under which there was delay in remitting the Provident Fund contributions, the Tribunal ought to have completely waived damages under Section 14 B of the EPF Act, 1952 or should have at least restricted the amount of

damages to a nominal amount. The orders in Appeal Nos.447 and 233 of 2018 have also been challenged by the Central Board :-6:- of Trustees of the Employees Provident Fund Organization by filing WP(C)Nos.1780 and 1790 of 2021. It is the case of the Provident Fund Organization that the Tribunal ought not to have interfered with the levy of damages at 100% and the reduction of damages to 70% on the appeals filed by the company is unsustainable.

2. When these matters were taken up for consideration

today, it is the submission of Sri. Pirappancode V. S. Sudhir, the learned counsel appearing for the petitioner in W.P(C)Nos.1780 and 1790 of 2021, that, it is now clear from the judgment of the Supreme Court in Horticulture Experiment Station Gonikoppal, Coorg v. Provident Fund Organization ;

(2022) 4 SCC 516, that mens rea is no longer required to be

established for the purposes of imposing damages under Section 14 B of the EPF Act, 1952. It is submitted that in such circumstances, the levy of damages at 100% under Section 14 B of the EPF Act, 1952, cannot be faulted and the

order of the Tribunal to the extent it reduces the penalty from

100% to 70% is unsustainable in law.

3. Sri. P. Benny Thomas, the learned counsel appearing

for the petitioner in W.P(C)Nos.24681 and 24720 of 2020 would :-7:- submit that, even when the requirement of mens rea has been taken away on account of the law laid down by the Supreme Court in Horticulture Experiment Station Gonikoppal, Coorg (Supra), the provisions of Section 14 B of the EPF Act, 1952 indicate that 100% damages need not be imposed invariably in every case and the amount of damages to be imposed has to be determined by the authority having regard to the facts and circumstances of each case. He refers to the

judgment of this Court in Central Board of Trustees v.

Bake N Joy Hot Bakery ; 2024 (1) KLT 391 to contend that this Court after referring to Horticulture Experiment Station Gonikoppal, Coorg (Supra) held as follows:

4. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent, I am of the view that there is considerable merit in the contention taken by the learned counsel appearing for the 1st respondent. The facts which compelled the Tribunal to take a view that this was not a case where the damages had to be levied at 100% is spelt out in the order itself. These reasons have already been noticed by this Court while considering the submissions of the learned counsel appearing for the 1st respondent. Indeed, the requirement of mens rea and/or actus reus is no longer a necessary ingredient to be proved to impose damages. In Horticulture Experiment Station v. -:8:-

Provident Fund Organization, (2022) 4 SCC 516 after referring to HMT (supra), McLeod Russel (India) Ltd. (supra), Provident Fund Commr. v. RSL Textiles (India) (P) Ltd.; (2017) 3 SCC 110, SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361 & Union of India v. Dharamendra Textile Processors; (2008) 13 SCC 369 it was held:- 15. Taking note of the exposition of law on the subject, it is well settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

It is no doubt true that in Horticulture Experiment Station (supra), while dealing with the question of damages under the EPF Act, the Supreme Court followed the view in SEBI v. Shriram Mutual Fund (which was decided in the background of penalty provisions in the SEBI Act) that a breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the

presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. The above view in respect of penalty provisions in the SEBI Act, in *Shriram Mutual Fund (supra)* was followed by a three-judge bench of the Supreme Court in *Union of India v. Dharamendra Textile* -:9:-

Processors (supra) (which was decided in the background of penalty provisions in the Income Tax Act). However, the said decision of the Supreme Court does not hold that 100% damages must be invariably imposed. The decision is also not authority for the proposition that the circumstances that led to the default cannot be considered while deciding the quantum of damages to be imposed. In the facts of the present case, the Tribunal has not set aside the damages under Section 14-B of the EPF Act. It has only reduced the quantum of penalty to 50%. This, in my view is permissible even when the requirement of mens rea and/or actus reus is no longer a necessary ingredient for levy of damages under Section 14-B of the EPF Act. It is to be noted that the provisions of Section 14-B of the EPF Act do not prescribe that a penalty at 100% is to be mandatorily imposed.

4. Having heard learned counsel as above, I am of the

view that the orders in Appeal Nos.447 and 233 of 2018 on the file of the Central Government Industrial Tribunal cum Labour Court, Ernakulam, can be set aside and those appeals can be restored to the file of the Tribunal, and the Tribunal can be directed to reconsider the appeals having regard to the law laid down in *Horticulture Experiment Station Gonikoppal, Coorg (Supra)* as also the judgment of this Court in *Central Board of Trustees (Supra)*. The Tribunal shall, having regard to the facts and circumstances of the case, consider as to the -:10:- reasonable amount of damages that can be imposed under Section 14 B of the EPF Act, 1952. Accordingly, these writ petitions will stand disposed of setting aside the orders of the Central Government Industrial Tribunal cum Labour Court in Appeal Nos.447 and 233 of 2018 and restoring Appeal Nos.447 and 233 of 2018 to the file of the Tribunal. The Tribunal shall reconsider the matter as

directed above within the shortest possible time, after affording an opportunity of hearing to both sides. Sd/- GOPINATH P. JUDGE ats -:11:- APPENDIX OF WP(C) 1780/2021 PETITIONERS EXHIBITS EXHIBIT P1 TRUE COPY OF THE MEMORANDUM OF APPEAL

NO.447/2018 FILED BY THE RESPONDENT BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM. EXHIBIT P2 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL IN APPEAL NO.447/2018. EXHIBIT P3 TRUE COPY OF THE ORDER DATED 5.10.2020 IN APPEAL NO.447/2018 OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM. -:12:- APPENDIX OF WP(C) 1790/2021 PETITIONERS EXHIBITS EXHIBIT P1 TRUE COPY OF THE MEMORANDUM OF APPEAL NO.233/2018 FILED BY THE RESPONDENT BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM. EXHIBIT P2 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL IN APPEAL NO.233/2018. EXHIBIT P3 TRUE COPY OF THE ORDER DATED 5.10.2020 IN APPEAL NO.233/2018 OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM. -:13:-

APPENDIX OF WP(C) 24681/2020 PETITIONERS EXHIBITS EXHIBIT P1 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2008-2009. EXHIBIT P2 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2009-2010. EXHIBIT P3 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2010-2011. EXHIBIT P4 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2011-2012. EXHIBIT P5 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2012-2013. EXHIBIT P6 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2013-2014. EXHIBIT P7 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2014-2015. EXHIBIT P8 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM

2015-2016. EXHIBIT P9 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2016-2017. EXHIBIT P10 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2017-2018. EXHIBIT P11 TRUE COPY OF THE PROFIT & LOSS ACCOUNT ALONG FOR THE PERIOD FROM 2018-2019. -:14:- EXHIBIT P12 TRUE COPY OF THE ORDER DATED 3.1.2017 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P13 TRUE COPY OF THE COMMON ORDER DATED 5.10.2020 IN APPEAL NO.447/2018 WITH APPEAL NO.233/2018. EXHIBIT P14 TRUE COPY OF THE INTERIM ORDER DATED 22.10.2020 IN W.P.(C)NO.22267/2020 BY THIS HON'BLE COURT. -:15:- APPENDIX OF WP(C) 24720/2020 PETITIONERS EXHIBITS EXHIBIT P1 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2008-2009. EXHIBIT P2 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT ALONG WITH SHEET OF THE PETITIONER COMPANY FOR THE PERIOD FROM 2009-2010. EXHIBIT P3 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2010-2011. EXHIBIT P4 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2011-2012. EXHIBIT P5 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2012-2013. EXHIBIT P6 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT PETITIONER COMPANY FOR 2013-2014. EXHIBIT P7 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2014-2015. EXHIBIT P8 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2015-2016. EXHIBIT P9 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2016-2017. -:16:- EXHIBIT P10 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2017-2018. EXHIBIT P11 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT 2018-2019. EXHIBIT P12 TRUE COPY OF THE ORDER DATED 13/07/2011 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P13 TRUE COPY OF THE COMMON ORDER DATED 05.10.2020 IN APPEAL NO.447/2018 WITH APPEAL NO.233/2018. EXHIBIT P14 TRUE COPY OF THE INTERIM ORDER DATED 22.10.2020 IN WP (C) NO.22267/2020 BY THIS HON'BLE COURT.