

ITEM NO.10

COURT NO.5

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

IA 9/2016,10/2016 in Civil Appeal No(s). 2591/2006

THE KELVIN JUTE CO.LTD.WORS.P.F. AND ANR. Appellant(s)

VERSUS

KRISHNA KUMAR AGARWALA . AND ORS. Respondent(s)

WITH

IA 6/2016 IN C.A. No. 2593/2006 (XVI)

Date : 12-04-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KURIAN JOSEPH  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Sanjiv Sen,Sr.Adv.  
Dr. Kailash Chand, AOR  
  
Mr. Gopal Shankarnarayanan,Adv.  
Mr. C. Mukund,Adv.  
Mr. Satish Vig, AOR

For Respondent(s) Mr. Kailash Vasdev,Sr.Adv.  
Mr. S.N. Mitra,Adv.  
Mr. Rahul Gupta, AOR  
Mr. Satheesh Kr.Adv.  
Aporva Agarwal,Adv.  
Mr. R.M. Sharma,Adv.  
  
Mr. Sudhir Chandra,Sr.Adv.  
Mr. V. Giri,Sr.Adv.  
Mr. Bhaskar Gupta,Sr.Adv.  
Mr. Parijat Sinha, AOR  
Mr. C.K. Jain,Adv.  
Ms. Reshmi Rea Sinha, AOR  
Mr. Anirban Sen,Adv.  
Mr. Rudra Dutta,Adv.  
  
Mr. Krishnan Venugopal,Sr.Adv.  
Mr. P. V. Saravana Raja, AOR

Mr. Snehasish Mukherjee, AOR

Mr. Dipak Kumar Jena, AOR  
Ms. Minakshi Ghosh Jena, Adv.  
Mr. J. Das, Adv.  
Mr. Manish Grewal, Adv.  
Mr. Swapnil, Adv.

Ms. Aruna Gupta, AOR

Ms. Indra Sawhney, AOR

UPON hearing the counsel the Court made the following  
O R D E R

On 10.05.2016, this Court passed the following order:-

"Pending disposal of these applications, we direct the Provident Fund Commissioner, acting through its jurisdictional delegate, to determine the outstanding amounts due from the respondents and submit a report to this Court within three months.

In the meanwhile, we direct the 7th respondent - Trend Vyapar Ltd. (applicant in I.A.No.10) to deposit an amount of Rs.1.95 crores before the Provident Fund Commissioner within a period of three months from today, without prejudice to all contentions available in the pending cases.

List on 30.08.2016."

Accordingly, after complying with the procedural formalities, Mr. S.K. Padhy, Regional Provident Fund Commissioner-II (C&R) passed an order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 vide order dated 26.08.2016 and the same was filed before this Court on 29.08.2016. Copies were marked to all the parties as well. There is no covering letter for the Report this it is forwarded to the counsel nor is their any affidavit accompanying the production of that order. Mr. Kailash Vasdev, learned senior counsel, submits that the

communication was through E-mail to the counsel for the organization. In the detailed order it has been mentioned several times that there is no record available so as to pass an order and the inquiry also did not yield much results. However, since M/s. Trend Vyapaar admitted the liability to the tune of Rs.1,94,98,363/-, the following decision was taken :-

"In view of the above where both the Trusts are functioning on the border of legality and none of them submitted the particular of beneficiary-wise balances, I, Sr. S.K. Padhy, Regional Provident Fund Commissioner (C&R) in exercise of the powers conferred upon me under section 7A(1) of the EPF & MP Act, 1952 have assessed the dues under dispute as Rs.1,94,98,363.00 (Rupees One Crore ninty four lakhs ninty eight thousand three hundred sixty three only) to be paid by M/s. Trend Vyapaar and also direct that the amount shall continue to remain with RPFC Office until the Trusts submit beneficiary-wise balance as on 1986. This order is without any prejudice to initiation and further proceedings under section 7Q and 14B of the EPF & MP Act, 1952."

Having gone through the Report and having thereafter heard the matter in between, on 26.10.2016 this Court passed the following order:-

"Having regard to the prolonged litigation and after hearing learned senior counsel appearing for both sides, we are of the view that it is high time to give a quietus to the disputes.

As per our direction, M/s. Trend Vyapar Limited has deposited an amount of Rs.1.95 Crores with the Provident Fund Commissioner.

We are also informed that ever since M/s. Trend

Vyapar Limited took over the company, they are in regular payment of the Provident Fund to its workers. Be that as it may, in view of the background of the cases which have been dealt with in detail by the High Court while disposing of the appeals, we have taken the view that no interference was called for since the facts were not disputed.

In the above circumstances, we are prima facie of the view that this is an eminently fit case where this Court should invoke its discretion under Article 142 of the Constitution of India and give a quietus to all other disputes by treating the remittance of Rs.1.95 Crores as full and final settlement of all the dues without any further liability on the part of M/s Trend Vyapar Limited either by way of interest or by way of damages.

The learned senior counsel appearing for both sides to get instruction.

Post on 10.11.2016 as first item."

Thereafter, the matter was being heard on several occasions. On 27.04.2017, it was submitted on behalf of the Provident Fund Organization that there has been an assessment of interest under Section 7Q and damages under Section 17-B of the Act.

In that view of the matter, the Court permitted the Provident Fund Commissioner to file an affidavit.

Accordingly, Mr. Sunil Kumar Deb, has filed an affidavit dated 24.07.2017. The officer has referred to the order dated 10.05.2016 in paragraph 2 of the affidavit, which reads as follows:-

"2. That this Hon'ble Court vide its order dated 10.05.2016 was pleased to direct the Respondent No.2 to determine the outstanding amounts due from the other Respondents. This Hon'ble Court was also pleased to

direct Respondent No.7/Trend Vyapar Ltd., to deposit the amount of Rs.1.95 Crores with the Respondent No.2.”

In paragraph 3, it is stated that an amount of Rs.1.95 Crores has been deposited with the Organization. Thereafter, it is stated that the assessee is also liable to pay damages and interest for the belated remittance of the dues. In view of the statutory limit, the amount of damages was assessed/quantified as Rs.1,94,98,363/-. Paragraph 7 deals with interest and paragraph 8 is the concluding paragraph. Paragraphs 7 and 8 read as follows:-

“7. That the belated remittance by the establishment also attracts interest payable @ of 12% per annum simple interest, till the date of its payment in terms of 7Q of the Act, the same has also been calculated by the means of in-house software to the tune of Rs.4,44,66,412/- (Rupees Four Crores Forty Four Lakhs Sixty Six Thousand Four Hundred and Twelve only). The system generated calculation sheet for interest payable u/s 7Q of the Act is annexed as Annexure R2/2.

8. That in view of the foregoing the establishment is liable to pay Penal Damage u/s 14B of the Act to the tune of Rs.1,94,98,363/- (Rupees One Crore Ninety Four Lakhs Ninety Eight Thousand Three Hundred and Sixty Three only); and interest u/s. 7Q of the Act to the tune of Rs.4,44,66,412/- (Rupees Four Crores Forty Four Lakhs Sixty Six Thousand Four Hundred and Twelve only).”

It is very interesting to note that the calculation of interest and damages had been communicated vide letter dated 26.08.2016 to the counsel for necessary action. The communication reads as follows:-

**"No.R-Legal/WB/23/SLP7930 of 2016/E&J/1204 Dated 26.08.2016**

To

**Shri Saugata Nath Mitra, Advocate  
37/24, Old Rejendra Nagar,  
New Delhi-110060**

**Sub: Forwarding of determination of dues u/s.7A of EPF and MP Act, 1952 in the matter of Supreme Court order dated 10.05.2016 in I.A. No.9 & 10 in Civil Appeal No.2591/2006 with I.A. No.6 of 2016 in C.A. No.2593/2006.**

Sir,

With reference to above order passed under Section 7A dated 26.08.2016 and amount of interest u/s 7Q amounting to Rs.4.44,66,412.00 (Rupees Four Crores Forty Four Lakhs Sixty Six Thousand Four Hundred and Twelve only) for the period from 01.07.1997 to 11.08.2016 and penal damage u/s 14B amounting to Rs.1,94,98,363/- (Rupees One Crore Ninety Four Lakhs Ninety Eight Thousand Three Hundred and Sixty Three only) have been calculated and forwarded herewith for taking necessary action.

Yours faithfully,

(S.K. Padhy)

Regional P.F. Commissioner-II(C&R)"

It is not clear as to when the counsel received the same. In any case, prior to the permission sought to file the affidavit in April, 2017, there was no case for the department that any calculation has been made with regard to penal interest or damages.

A counter affidavit was filed by M/s. Waverly Jute Mills Worker's Provident Fund (Waverly Trust) to the reply on behalf of the applicant, filed on 09.11.2017. Paragraph 12 of the same, reads as follows:-

"12. Pursuant to the order dated 10.05.2016 passed by the Hon'ble Court to determine the amount due, the Provident Fund Authority passed an order under Section 7A of the said Act of 1952 assessing the contribution of Rs.1.95 Crores as principal dues upto the period of transfer of the unit known as Waverly Jute Mills in 1986. For the period July, 1997 to July, 2016, the Provident Fund Authority also assessed the interest to be Rs.4,44,66,412/- and damages to be Rs.1,94,98,363/- under Section 14B of the said Act of 1952 for the said period. The quantification for damages was arrived at by the Provident Fund Authorities after providing several hearings to the Applicant/Trend Vyapar Ltd. The said amounts of interest and damages have been claimed by the respondent No.1/Waverly Trust for the belated remittance of Rs.1.95 Crores by the Applicant/Trend Vyapaar Ltd., with the Provident Fund Authorities."

It is pointed out that there was hearing as far as this calculation is concerned.

We had the presence of both the officers. As to one pointed question, whether there is any covering letter for forwarding the Section 7A order dated 26.8.2016, as we have already noted above, the answer is that it is an E-mail communication, but there is no file number unlike the communication regarding interest and damages, which contains a specific file number, which we have noted above.

The picture is not quite clear to us. We do not want to say anything further. However, we are of the view that being a very serious issue and on a matter pending before this Court, it is only appropriate that a competent Authority conducts an appropriate inquiry as to what is behind these developments. We direct the

Central Provident Fund Commissioner to conduct an appropriate inquiry and submit a Report to this Court, within three months from today.

List the matter for hearing on 24.04.2018 at 2.00 P.M.

Original records (in three volumes) are returned back to Mr. S.K. Padhy and Mr. Sunil Kumar Deb, who are present in the Court today.

(NARENDRA PRASAD)  
COURT MASTER

(RENU DIWAN)  
ASSISTANT REGISTRAR