2022 INSC 223

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2136 OF 2012

HORTICULTURE EXPERIMENT STATION GONIKOPPAL, COORG ....APPELLANT(S)

VERSUS

THE REGIONAL PROVIDENT FUND ORGANIZATION ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 2121 OF 2012

WITH

CIVIL APPEAL NO(S). 2135 OF 2012

WITH

CIVIL APPEAL NO(S). 2141 OF 2012

J U D G M E N T

Rastogi, J.

1. The instant appeals are directed against the common judgment and order dated 26th October, 2009 passed by the Division Bench of the High Court of Karnataka at Bangalore.

2. That while setting aside the judgment of the learned Single Judge dated 3rd February, 2009, it was observed that once the employer has failed to deposit the contribution of EPF or committed default as mandated under the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act 1952"), having failed to do so after determination under Section 7A by the competent authority, levy of damages is a *sine qua non* and upheld the order for recovery of damages in the proceedings initiated under Section 14B of the Act 1952.

3. The undisputed facts culled out from the record are that the establishment of the appellant(s) is covered under the provisions of the Act 1952. On 31st December, 1974, under Code no.KN/8573 under scheduled head "Fruit Orchards", the appellant(s) failed to comply with the provisions of Act 1952 from 1st January, 1975 to 31st October, 1988. For non-compliance of the mandate of Act 1952, proceedings were initiated under Section 7A and dues towards contribution of EPF for the intervening period of 1st January, 1975 to 31st October, 1988 amounting to Rs.74,288/- were assessed by the competent authority and after adjudication, that was paid by the appellant to the office of EPF. Thereafter, the

authorities issued a notice under Section 14B of the Act 1952 to charge damages for the delayed payment of provident fund amount which was levied for the period January 1978 to September, 1988 and called upon the appellant(s) to pay damages of Rs.85,548/-. The High Court under the impugned judgment held that once the default in payment of contribution is admitted, the damages as being envisaged under Section 14B of the Act 1952 are consequential and the employer is under an obligation to pay the damages for delay in payment of contribution of EPF under Section 14B of the Act 1952, which is the subject matter of challenge in the present appeals.

4. The Act 1952 is a legislation for providing social security to the employees working in any establishment and engaging 20 or more persons on any day and casts an obligation upon the employer to make compulsory deduction for provident fund and to deposit in the workers account in the EPF office. Similar is the provision which is pari materia to recover damages under Section 85B of the Employees State Insurance Act, 1948(hereinafter being referred to as the "Act 1948") providing insurance and pensionary benefits to the employees.

5. Section 14B of the Act 1952 which is pari materia to Section 85B of the Act, 1948 is reproduced hereunder:

> **"14B. Power to recover damages.-**Where an employer makes default in the payment of any contribution to the Fund, the Pension 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 by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:
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> Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:
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> Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

6. So far as the constitutional validity of Section 14B of the Act 1952 is concerned, the same has been upheld by the judgment of this Court in ***Organo Chemical Industries and another v. Union of India and others***[1]**.**

7. Learned counsel for the appellant(s) submits that the justification tendered by the appellant(s) for which the

[1] (1979) 4 SCC 573

contribution of EPF could not have been deposited has not been looked into by the authority and the element of *mens rea* or *actus reus* is one of the essential elements which has not been taken note of by the authority while imposing damages under Section 14B of the Act 1952. In support of his submissions, counsel for the appellant(s) has placed reliance on the judgments of this Court in ***Employees State Insurance Corporation v. HMT Ltd. and another***[2]***, Mcleod Russell India Ltd. v. Regional Provident Fund Commissioner, Jalpaiguri and others***[3] and ***Assistant Provident Fund Commissioner, EPFO and another v. The Management of RSL Textiles India Private Limited through its Director***[4]***.***

8. Per contra, learned counsel for the respondent(s) in support of submissions, submitted that *mens rea* is not an essential element for imposing penalty for breach of civil obligations or liabilities and mere contravention of the provisions of the Act or default in making compliance of the mandate of law as regards the civil liabilities are concerned, *mens rea* or *actus reus* is not the requirement of law to be considered, while imposing damages like,

[2] (2008) 3 SCC 35
[3] (2014) 15 SCC 263
[4] (2017) 3 SCC 110

in the instant case, under Section 14B of the Act 1952. In support of submissions, learned counsel has placed reliance on a two-Judge Bench judgment in ***Chairman, SEBI v. Shriram Mutual Fund and Another***[5] which has been relied upon by a three-Judge Bench judgment of this Court in ***Union of India and Others v. Dharmendra Textile Processors and others***[6]**.**

9. The question that emerges for our consideration in the instant appeals is that what will be the effect and implementation of Section 14B of the Act 1952 and as to whether the breach of civil obligations or liabilities committed by the employer is a *sine qua non* for imposition of penalty/damages or the element of *mens rea* or *actus reus* is one of the essential elements has a role to play and the authority is under an obligation to examine the justification, if any, being tendered while passing the order imposing damages under the provisions of the Act 1952.

10. Undisputedly, the establishment of the appellant(s) was covered under the provisions of the Act 1952, but still failed to comply with the same and for such non-compliance of the mandate of the Act 1952, initially the proceedings were initiated under

[5] (2006) 5 SCC 361
[6] (2008) 13 SCC 369

section 7A and after adjudication was made in reference to contribution of the EPF which the appellant was under an obligation to pay and for the contravention of the provisions of the Act 1952, the appellant(s) indeed committed a breach of civil obligations/liabilities and after compliance of the procedure prescribed under the Act 1952 and for the delayed payment of EPF contribution for the period January 1975 to October 1988, after affording due opportunity of hearing as contemplated, order was passed by the competent authority directing the appellant(s) to pay damages as assessed in accordance with Section 14B of the Act 1952.

11. A two-Judge Bench of this Court in ***Chairman, SEBI*** (supra), while examining the scope and ambit of Section 15-D of SEBI (Mutual Funds) Regulations, 1996 regarding imposition of penalty for certain defaults in case of mutual funds, examined the question as to whether *mens rea* is an essential element for imposing penalty for breach of civil obligations and taking note of the binding precedent of this Court held that *mens rea* is not an essential element for imposing penalty for breach of civil obligations or liabilities. Relevant paras 33 and 35 of the judgment are reproduced as under:

"33. This Court in a catena of decisions has held that *mens rea* is not an essential element for imposing penalty for breach of civil obligations:

(*a*) *Director of Enforcement* v. *MCTM Corpn. (P) Ltd.* [(1996) 2 SCC 471

"*8.* It is thus the breach of a 'civil obligation' which attracts 'penalty' under Section 23(1)(*a*), FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 that would immediately attract the levy of 'penalty' under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any 'guilty intention' or not. Therefore, unlike in a criminal case, where it is essential for the 'prosecution' to establish that the 'accused' had the necessary *guilty intention* or in other words the requisite 'mens rea' to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the 'blameworthy conduct' of the delinquent had been established by wilful contravention by him of the provisions of Section 10, FERA, 1947. It is the *delinquency* of the *defaulter* itself which establishes his 'blameworthy' conduct, attracting the provisions of Section 23(1)(*a*) of FERA, 1947 without any further proof of the existence of 'mens rea'. Even after an adjudication by the authorities and levy of penalty under Section 23(1)(*a*) of FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law,....

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12. In ***Corpus Juris Secundum*, Vol. 85, at p. 580, para 1023**, it is stated thus:

> 'A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws.'

13. We are in agreement with the aforesaid view and in our opinion, what applies to 'tax delinquency' equally holds good for the 'blameworthy' conduct for contravention of the provisions of FERA, 1947. We, therefore, hold that mens rea (as is understood in criminal law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1)(*a*) of FERA, 1947 for contravention of the provisions of Section 10 of FERA, 1947 and that penalty is attracted under Section 23(1)(*a*) as soon as contravention of the statutory obligation contemplated by Section 10(1)(*a*) is established. The High Court apparently fell in error in treating the 'blameworthy conduct' under the Act as equivalent to the commission of a 'criminal offence', overlooking the position that the

'blameworthy conduct' in the adjudicatory proceedings is established by proof only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(*a*) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention."

(emphasis in original)

(*b*) *J.K. Industries Ltd.* v. *Chief Inspector of Factories and Boilers* (1996) 6 SCC 665

"*42*. The offences under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means liability without fault or mens rea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution, etc. in India and abroad. 'Absolute offences' are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty."

(*c*) *R.S. Joshi* v. *Ajit Mills Ltd.* (1977) 4 SCC 98

"Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that 'no mens rea, no crime' has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty."

(*d*) *Gujarat Travancore Agency* v. *CIT* (1989) 3 SCC 52

"It is sufficient for us to refer to Section 271(1)(*a*), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276-C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can

be no dispute that having regard to the provisions of Section 276-C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(*a*), however, it seems that the intention of the legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(*a*) which requires that mens rea must be proved before penalty can be levied under that provision."

(*e*) *Swedish Match AB* v. *SEBI* (2004) 11 SCC 641

"The provisions of Section 15-H of the Act mandate that a penalty of rupees twenty-five crores may be imposed. The Board does not have any discretion in the matter and, thus, the adjudication proceeding is a mere formality. Imposition of penalty upon the appellant would, thus, be a forgone conclusion. Only in the criminal proceedings initiated against the appellants, existence of mens rea on the part of the appellants will come up for consideration."

(*f*) *SEBI* v. *Cabot International Capital Corpn.* (2005) 123 Comp Cas 841 (Bom)

"*47*. Thus, the following extracted principles are summarised:

(*A*) Mens rea is an essential or sine qua non for criminal offence.

(*B*) A straitjacket formula of mens rea cannot be blindly followed in each and every case. The scheme of a particular statute may be diluted in a given case.

(*C*) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word 'penalty' by itself will not be determinative to conclude the nature of

proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(*D*) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.

(*E*) There can be two distinct liabilities, civil and criminal, under the same Act.

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52. The SEBI Act and the Regulations, are intended to regulate the securities market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of 'no mens rea, no penalty'. For breaches of provisions of the SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise of judicial discretion is a must, but not on foundation that mens rea is essential to impose penalty in each and every breach of provisions of the SEBI Act.

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54. However, we are not in agreement with the Appellate Authority in respect of the reasoning given in regard to the necessity of mens rea being essential for imposing the penalty. According to us, mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations."

(emphasis in original)

35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. 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. On a careful perusal of Section 15-D(*b*) and Section 15-E of the Act, there is nothing which requires that *mens rea* must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."

[Emphasis Supplied]

12. The three-Judge Bench of this Court in ***Union of India v. Dharmendra Textile Processors and others*** (supra) while examining the scope and ambit of Section 271(1)(c) of the Income Tax Act, 1961 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, *mens rea* or *actus reus* is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in ***Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and Another***[7] and approved the view expressed by a two-Judge Bench of this Court in ***Chairman, SEBI*** (supra) and held in paras 18 and 20 as under:

> **"18.** The Explanations appended to Section 271(1)(*c*) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in *Dilip N. Shroff case* [(2007) 6 SCC 329] has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(*c*) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act.
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> **20.** Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. *Dilip Shroff case* [(2007) 6 SCC 329] was not correctly decided but *SEBI case* [(2006) 5 SCC 361] has analysed the legal position in the correct perspectives. The reference is answered. The matter shall now be placed before the Division Bench to deal with the matter in the light of what has been stated above, only so far as the cases where challenge to vires of Rule 967-Q(5) are concerned. In all other cases the orders of the High Court or the Tribunal, as the case may be, are quashed and the matter remitted to it for disposal in the light of present judgments. Appeals except Civil Appeals Nos. 3397 &

[7] (2007) 6 SCC 329

> 3398-99 of 2003, 4096 of 2004, 3388 & 5277 of 2006, 4316, 4317, 675 and 1420 of 2007 and appeal relating to SLP (C) No. 21751 of 2007 are allowed and the excepted appeals shall now be placed before the Division Bench for disposal."

13. 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.

14. The judgment on which the learned counsel for the appellant(s) has placed reliance i.e. ***Employees State Insurance Corporation***(supra), the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85B of the Employees State Insurance Corporation Act, 1948 which is pari materia to Section 14B of the Act 1952 placing reliance on the judgment of Division Bench of this Court in ***Dilip N. Shroff*** (supra) held that for the breach of civil obligations/liabilities, existence of *mens rea* or *actus reus* to be a necessary ingredient for levy of damages and/or the quantum thereof.

15. It may be noticed that ***Dilip N. Shroff***(supra) on which reliance was placed has been overruled by this Court in ***Union of India and Others v. Dharmendra Textile Processors and***

others (supra). For the aforesaid reasons, the view expressed by this Court in ***Employees State Insurance Corporation*** (supra) may not be of binding precedent on the subject and of no assistance to the appellant(s).

16. Learned counsel for the appellant(s) further placed reliance on the judgment of this Court in ***Mcleod Russell India Ltd.*** (supra), wherein the question emerged for consideration was as to whether the damages which has been charged under Section 14B of the Act 1952 would be recoverable jointly or severally from the erstwhile as well as the current managements. At the same time, the judgment relied upon in ***Assistant Provident Fund Commissioner, EPFO and Another*** (supra) was decided placing reliance on the judgment of this Court in ***Mcleod Russell India Ltd.*** (supra), which may not be of any assistance to the appellant(s).

17. Taking note of three-Judge Bench judgment of this Court in ***Union of India and Others v. Dharmendra Textile Processors and others*** (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a *sine qua non* for imposition of levy of damages under Section 14B of the Act 1952

and *mens rea* or *actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.

18. We find no substance in the appeals and the same are accordingly dismissed.

19. Pending application(s), if any, stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(ABHAY S. OKA)

NEW DELHI
FEBRUARY 23, 2022.