Before Rajesh Bindal, J.

BHARAT SANCHAR NIGAM LTD.—*Petitioner*

versus

EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL & ANOTHER—*Respondents*

CWP No. 7612 of 2011

September 3, 2012

A. Constitution of India 1950 - Art. 226 - Writ jurisdiction - Employees' Provident Fund and Miscellaneous Provisions Act 1952 - Ss. 7-Q & 14-B - Delayed deposit of provident fund dues - Charging of interest - Petitioner state-owned corporation - Pre-deposit for entertainment of appeal - Sections 7-Q and 7-A - Deposit of 30% of demand as a condition precedent for staying recovery and not for entertainment of appeal - No illegality in the order of Tribunal in that regard.

Held, that the impugned order does not show that it was a pre-condition for entertainment of appeal. Section 7-O of the Act, which deals with precondition for entertainment of appeal by the Tribunal, provides that the condition for deposit of 75% of the amount of demand raised before entertainment of appeal is in the cases when demand is raised by passing order under Section 7A of the Act. In the present case, the Tribunal thought it appropriate to ask the petitioner to deposit 30% of the demand raised as a condition precedent only for staying the recovery and not for entertainment of appeal. There is no illegality in the order to that extent.

(Para 9)

B. Constitution of India, 1950 - Art. 226 - Practice and procedure - Doctrine of audi alteram partem - Three essentials thereof reiterated - Cryptic order of Tribunal, which is last fact-finding authority - Requirement of indicating reasons recognized as imperative - Reason heartbeat of every conclusion and indicates application of mind by court - It also legally sustains an order - Impugned order of Tribunal set aside only on the ground that it was non-speaking.

Held, that the doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

(Para 11)

Further held, that the issue regarding passing of cryptic order was considered by Hon'ble the Supreme Court time and again. It was opined that the requirement of indicating reasons has been judicially recognised as imperative. The reason is the heartbeat of every conclusion and without the same, it becomes lifeless. The reasons at least sufficient to indicate an application of mind to the matter before the court is an indispensable part of a sound judicial system. It enables the affected party to know why the decision has gone against him. It is the reasoning alone that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the authority/court, whose order is impugned, is sustainable in law. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions. Reference can be made Auto Piston Mfg. Co. (P) Ltd. and another v. Employees Provident Fund Appellate Tribunal and others, decided on 30.8.2012.

(Para 12)

Anil Rathee, Advocate, *for the petitioner.*

Sanjay Tangri, Advocate, *for the respondents.*

RAJESH BINDAL J.

(1) The order dated 27.3.2009, passed by Regional Provident Fund Commissioner, Amritsar (for short, 'the Commissioner') and order dated 13.12.2010, passed by Employees Provident Fund Appellate Tribunal (for short, 'the Tribunal') have been impugned before this court.

(2) Briefly, the pleaded facts are that the Commissioner issued a notice dated 19.12.2008 to the petitioner to show cause as to why interest and damages be not levied under Sections 7Q and 14B of the Employees' Provident Funds and Miscellaneous ProvisionsAct, 1952 (for short, 'the Act') on account of delayed deposit of provident fund dues. The same was replied to by the petitioner vide letter dated 4.2.2009. Vide order dated 27.3.2009, the Commissioner assessed Rs. 7,24,494/- on account of interest and damages recoverable from the petitioner. As a consequence of the aforesaid order, the Commissioner withdrew the aforesaid amount on 3.6.2009 from the account of the petitioner maintained with Punjab National Bank, Pathankot. The petitioner filed appeal against the order dated 27.3.2009 before theTribunal along with an application for stay. Vide order dated 1.7.2009, theTribunal directed deposit of 30% of the amount assessed. This order was passed by theTribunal despite the fact that the Commissioner had already withdrawn the entire amount of demand raised against the petitioner from its bank account. The petitioner requested respondent No. 2 for refund of a sum of Rs. 5,07,146/- after deducting 30% of the amount already recovered in terms of the interim order dated 1.7.2009 passed by theTribunal. As no action was taken by the Commissioner on the request made by the petitioner, a sum of Rs. 2,17,348/- was deposited to comply with the order dated 1.7.2009, passed by theTribunal, along with letter dated 15.9.2009 and a further request was made to refund the amount already withdrawn from the bank account of the petitioner. Vide order dated 13.12.2010, the appeal filed by the petitioner was rejected by theTribunal. It is the aforesaid order, which is impugned before this court.

(3) Learned counsel for the petitioner submitted that in response to the notice dated 19.12.2008 issued to show cause as to why interest and damages be not levied on the petitioner under Sections 7Q and 14B of the Act on account of delayed deposit of provident fund dues, the petitioner replied back vide letter dated 4.2.2009 specifically pointing out certain errors in the notice and further explaining the reason for delay in deposit of the provident fund dues which, *inter-alia*, was for the reason that for certain employees the amount was earlier being deposited in GPF scheme of the Central Government, which amount was later on transferred to Employees' Provident Fund Organisation. He further submitted that

without considering any of the contentions raised by the petitioner in the reply, the Commissioner, by passing a totally non-speaking order, assessed a sum of Rs. 1,80,479/- on account of interest under Section 7Q and a sum of Rs. 5,44,015/- as damages under Section 14B of the Act; totalling Rs. 7,24,494/-. Even before the Tribunal, the issues were raised in detail, however, still the appeal was rejected by a totally cryptic order, which is more in the kind of a precise than a reasoned one. The petitioner is a State owned Corporation. Damages have to be levied only in case it is established that there is some *mens rea*, which is totally missing in the present case. He further submitted that even though there was no requirement of pre-deposit for entertainment of appeal against an order assessing interest and damages under Sections 7Q and 14B of the Act, but still the Tribunal imposed a condition of deposit of 30% of the demand raised. He prays for setting aside of the order and remanding the case back to the Tribunal for fresh consideration.

(4) On the other hand, learned counsel for the respondents submitted that coverage of the petitioner-establishment under the provisions of the Act is not in dispute. The delay in deposit of provident fund dues is also not in dispute. Once that is so, as a necessary consequence, in terms of mandatory provisions of the Act, interest and damages were leviable. There is no jurisdiction vested with any authority to waive off the same. The Commissioner has calculated the same strictly as per the rates prescribed in Employees' Provident Fund Scheme, 1952. He further submitted that it was for the petitioner to have pointed out before the Tribunal that the amount of demand raised against it having already been recovered by the Commissioner, prayer for stay had been rendered infructuous. At that time, the Commissioner was not represented before the Tribunal, hence, he was not at fault. The petitioner has to set its own house in order.

(5) He further submitted that merely number of pages in an order will not show that the same is speaking and well-reasoned. In substance, the matter was considered by the Commissioner as well as the Tribunal. Once no legally sustainable argument was raised by the petitioner, addition of more paragraphs in the order would not make any difference. He further

submitted that the amount of demand raised against the petitioner is not Rs. 7,24,494/-, rather, the same is Rs. 9,05,273/-, as is even evident from the order of the Commissioner. However, he did not dispute the fact that a sum of Rs. 7,24,494/- was withdrawn from the account of the petitioner and further a sum of Rs. 2,17,348/- was deposited by it subsequently. He prayed for dismissal of the writ petition.

(6) Heard learned counsel for the parties and perused the paper book.

(7) The petitioner is a State owned Corporation. There is no dispute that it is covered under the provisions of the Act. In the notice issued to the petitioner on 19.12.2008 to show cause as to why interest and damages be not levied under Sections 7Q and 14B of the Act on account of delayed deposit of provident fund and other dues, details of the period for which the amount was deposited belatedly had been furnished. The petitioner replied back to the aforesaid show cause notice furnishing information including the fact that for certain employees the amount was earlier being deposited with General Provident Fund Scheme of the Central Government, however, later on they were enrolled as members of the scheme under the Act and the amount lying in their credit was deposited with Provident Fund Organisation. Certain other issues were also raised. Vide order dated 27.3.2009, the Commissioner merely recorded that he had examined the case carefully and found that interest and damages are leviable on account of delayed payments. The amount was determined at Rs. 1,80,479/- on account of interest under Section 7Q and Rs. 5,44,015/- on account of damages under Section 14B of the Act. In total, the amount is Rs. 7,24,494/-.

(8) Aggrieved against the aforesaid order, the petitioner preferred appeal before the Tribunal. Vide order dated 1.7.2009, the Tribunal admitted the appeal and issued notice to the Commissioner. Operation of the impugned order was stayed subject to deposit of 30% of the amount assessed. However, the fact, which is not in dispute, is that prior to passing of the aforesaid order by the Tribunal , the Commissioner had already recovered the entire amount from the account maintained by the petitioner with Punjab National Bank, Pathankot on 3.6.2009. The fault on this account lies with

the petitioner. In case, the amount, in terms of the order impugned before the Tribunal, had already been recovered, the petitioner should have apprised its counsel about this fact who could have made a statement before the Tribunal accordingly. As the petitioner had prayed for stay of the impugned order before the Tribunal, it directed for deposit of 30% of the amount assessed. The conduct of the petitioner is further evident from the fact that despite the entire amount of demand impugned before the Tribunal had already been recovered, still the petitioner was ill-advised to deposit further 30% of the amount, as directed by the Tribunal for staying operation of the impugned order. In a way the petitioner deposited 130% of the demand raised.

(9) The impugned order does not show that it was a pre-condition for entertainment of appeal. Section 7-O of the Act, which deals with precondition for entertainment of appeal by the Tribunal, provides that the condition for deposit of 75% of the amount of demand raised before entertainment of appeal is in the cases when demand is raised by passing order under Section 7A of the Act. In the present case, the Tribunal thought it appropriate to ask the petitioner to deposit 30% of the demand raised as a condition precedent only for staying the recovery and not for entertainment of appeal. There is no illegality in the order to that extent.

(10) As far as consideration of the case on merits is concerned, a bare perusal of the impugned orders shows that the contentions raised by the petitioner were neither considered by the Commissioner nor the Tribunal. The order passed by the Tribunal, which is the last fact finding authority, is totally cryptic.

(11) The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

(12) The issue regarding passing of cryptic order was considered by Hon'ble the Supreme Court time and again. It was opined that the requirement of indicating reasons has been judicially recognised as imperative.

The reason is the heartbeat of every conclusion and without the same, it becomes lifeless. The reasons at least sufficient to indicate an application of mind to the matter before the court is an indispensable part of a sound judicial system. It enables the affected party to know why the decision has gone against him. It is the reasoning alone that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the authority/court, whose order is impugned, is sustainable in law. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions. Reference can be made to C.W.P. No. 1526 of 2011—***Auto Piston Mfg. Co. (P) Ltd. and another*** v. ***Employees Provident Fund Appellate Tribunal and others,*** decided on 30.8.2012.

(13) If the order passed by the Tribunal is examined on the principles of the law laid down by Hon'ble the Supreme Court, it does not fall within the category of a speaking order, hence, deserves to be set aside on this score alone and the matter is to be remitted back to the Tribunal for fresh consideration after hearing both the parties. Ordered accordingly.

(14) The parties through their counsels are directed to appear before the Tribunal on 1.11.2012 for further proceedings.

(15) In the present case, demand of Rs. 7,24,494/- in total was raised against the petitioner vide order dated 27.3.2009 on account of interest and damages, which was recovered by the Commissioner from the bank account of the petitioner maintained with Punjab National Bank, Pathankot on 3.6.2009. While filing the appeal before the Tribunal, a prayer for stay of the impugned order was made. Though on the date when the application for stay came up for hearing on 1.7.2009, the prayer for stay had been rendered infructuous as the entire amount of demand had already been recovered on 3.6.2009. Still the matter having not been brought to the notice of the Tribunal, it directed for deposit of 30% of the demand raised while staying operation of the impugned order. Thereafter, the petitioner vide communication dated 28.7.2009 requested the Commissioner to refund the excess amount already recovered from its account beyond 30%, i.e.,

Rs. 5,07,146/-. The same having not done, in its wisdom, the petitioner deposited further sum of Rs. 2,17,348/- with the Commissioner as 30% of the total amount assessed in terms of the order passed by the Tribunal along with letter dated 15.9.2009 and requested that amount of Rs. 7,24,494/- already recovered from its bank account be refunded. But the excess amount recovered has not been refunded till date.

(16) Though learned counsel for the respondents sought to raise dispute regarding the amount assessed while submitting that the same is Rs. 9,05,273/-, however, the contention is misconceived. No doubt, the language of the order passed by the Commissioner is confusing, however, table of the amount assessed as interest and damages clearly shows that it is Rs. 1,80,479/- as interest and Rs. 5,44,015/- as damages; totalling Rs. 7,24,494/-.

(17) No doubt, there is fault on the part of the petitioner for having deposited additional amount, i.e., Rs. 2,17,348/- stating the same to be in compliance of the order passed by the Tribunal despite the fact that the entire amount had already been recovered. But still the fact remains that while depositing the aforesaid amount along with letter dated 15.9.2009, a request was made to the Commissioner to refund the amount of Rs. 7,24,494/-, which had already been recovered. The Commissioner was required to ascertain the fact, which though was already in his knowledge, and should have refunded at least Rs. 2,17,348/-, the amount which had been recovered in excess of the demand raised against the petitioner. As on today, the petitioner is entitled to refund of that amount. It is also entitled to get interest thereon, which should be at the same rate at which the Provident Fund Organisation charges interest on account of delayed deposit of provident fund dues.

(18) Accordingly, it is directed that the Commissioner shall refund a sum of Rs. 2,17,348/- to the petitioner along with interest from 1.10.2009 till the amount is refunded. The interest shall be at the same rate at which it is charged on delayed deposit of provident fund dues.

(19) The petition stands disposed of accordingly.

S. Gupta