



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 6<sup>th</sup> day of September 2021)

**APPEAL No. 325/2019**

(Old ATA No. 1281(7)2015)

Appellant

M/s. Chittur Thathamangalam  
Municipality  
Municipal Office, Chittur  
Palakkad -678 101

By Adv.Viju K Raphel

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kozhikode - 673 006

By Adv.(Dr.)Abraham P Meachinkara

This case coming up for final hearing on 09/04/2021 and this Tribunal-cum-Labour Court on 06/09/2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KK/28853/ENF-4(5)/14B/2015-16/1919 dt. 09/06/2015 assessing damages under section 14B of EPF and MP Act, 1952 (hereinafter referred

to as 'the Act') for belated remittance of contribution for the period 01/01/2011 to 31/03/2015.

2. The appellant is a Municipality constituted under provisions of the Kerala Municipality Act 1994. Appellant is a constitutional authority with all the rights and privileges specified in part IX A of the Constitution of India. Being a constitutional authority, the appellant is designated to carry out various functions as specified in the Municipality Act. Appellant is having only limited resources for meeting the requirements of the general public. The appellant has employed seven cleaning staff on temporary basis. Government of India vide notification No.S.O30 (E) dated 08.01.2011 brought on Municipal Councils and Municipal Corporations under the purview of the Act. The appellant can act only in furtherance of orders in compliance of constitutional provisions. Though the Central Government issued notification on 08/01/2011, the State Government has issued the order only on 01/03/2013. A true copy of the Government Order bringing Municipalities within the purview of the Act is produced and marked as **EXBT. P1**. After the circulation of P1, council of appellant has to take decision and

the council took decision to implement provision of the Act with w.e.f 2014. The appellant has not committed any default in remittance of contribution. The appellant received a notice on 21/04/2015 alleging delay in remittance of contribution for the period from 01/01/2011 to 31/03/2015 directing the appellant to show cause why damages should not be levied. A true copy of the notice dated, 21/04/2015 is produced and marked as **EXBT. P2**. The appellant appeared before the respondent on 25/05/2015 and denied the allegations in the notice. Without considering the submissions made by the appellant, the respondent issued an order U/s 14B of the Act assessing damages. A copy of the said order is produced and marked as **EXBT. P3**. The respondent also issued an order directing the appellant to remit interest U/s 7(Q) of the Act. A copy of the said order is produced and marked as **EXBT. P4**. The claim of the respondent that the authorised representative of the appellant admitted the delay is not correct. Immediately on receipt of the state government order, the appellant remitted the contribution. The legally sustainable and genuine contention of the appellant was not considered by the respondent authority. The delay in remittance of contribution was not due to a wilful

laches, negligence or omission on the part of the appellant. The statutory authority have no right to interfere with the functioning of the constitutional authority like appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment notified under the provisions of the Act. The appellant defaulted in remittance of PF contribution for period from 01/2011 to 3/2015. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with para 32 of EPF Scheme. The respondent therefore issued a notice to the appellant dated, 21/04/2015 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement in **EXBT. P2** was also forwarded to the appellant. The appellant was also given an opportunity for personnel hearing. A representative of the appellant appeared on 25/05/2015 and admitted the delay in remittance of dues indicated in the **EXBT. P2**. When there is delay in remittance of contribution, it is a statutory obligation on the part of the appellant to remit damages for the belated remittance. In **Calicut Modern Spinning and Weaving Mills Ltd. Vs R.P.F.C,**

**1982 KLT 303** the division bench of Hon'ble High Court of Kerala observed that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The imposition of damages is a penalty imposed on the employer for breach of statutory obligations. It is meant to penalize a defaulted employer and to deter him from committing the default in future. The statutory obligation under the Act in no way impinges on the welfare activity of the appellant municipality.

4. Government of India vide notification No.S.O30(E) dated, 08/01/2011 brought all the Municipalities and Municipal Corporations under the Act. It was incumbent upon the appellant to start compliance from Jan 2011 itself. The appellant establishment waited for an order to be issued by the Government of Kerala. Government of Kerala issued an order directing all the urban local bodies in the state to comply with the provisions of the Act vide its Government Order dated 01/03/2013. According to the learned Counsel for the appellant, the Municipal Counsel took the decision to implement the directions of the Government in 2014 and they started

compliance w.e.f. 25/09/2014. Admittedly there was a delay in remittance of PF contribution. The respondent authority therefore initiated action to levying damages and interest U/s 7Q. The respondent authority issued a notice along with a delay statement showing the due date of payment, actual date of payment, amount paid and delay in remittance. The appellant was also given an opportunity for personnel hearing. According to the respondent, the representative of the respondent admitted the delay. However the learned Council for the appellant submitted that there was no such admission on the part of representative of the appellant. On perusal of the delay statement in **EXBT. P2**, produced by the appellant, it can be seen that the delay in remittance varied from 1228 days to 129 days. The respondent is legally bound to pay interest to the employees at a compounded rate till the receipt of the contribution and thereafter. Hence the appellant is liable to pay damages on belated remittance of contribution. However in the circumstances explained above by the learned Counsel of the appellant, the delay in remittance cannot be intentional on the part of the appellant. Therefore, it is not possible to attribute any mensrea or malicious intension in delay in remittance of

contribution by the appellant. However the delay is so huge that the interest collected from the appellant will not be adequate to meet the shortage in the benefits to be paid to the employees.

5. Considering all the facts, circumstances, pleadings and evidence in the appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

6. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **M/s ISD Engineering School Vs EPFO**, W.P(C) No.5640/2015(D) and also in **St. Marys Convent School Vs APFC**, W.P(C) No.28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

Hence appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 70% of the damages. The appeal against Section 7Q order is dismissed as not maintainable.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer