



सत्यमेव जयते

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

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

(Monday the 20th day of September, 2021)

APPEAL No.785/2019

Appellant

Secretary,
Office of the Karunagapally
Municipality,
Karunagapally, Kollam-690518

Adv.Ajith S Nair

Respondent

The Assistant PF Commissioner
EPFO, Regional Office,
Ponnamma Chambers-I,
Parameswar Nagar, Kollam 691001

Adv. Pirappancode V.S.Sudheer &
Adv. Megha.A

This case coming up for final hearing on 14.09.2021 and this Tribunal-cum-Labour Court on 20.09.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KLM/25512/PD/2019-20/1302 dated 17.10.2019 assessing damages U/s 14B of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') for

belated remittance of contribution for the period 01.2011 to 01.2017. The Total damages assessed is Rs. 24,34,056/-.

2. The appellant, Karunagapally Municipality was a village Panchayat coming under the Kerala Panchayat Raj Act. Karunagapally Panchayat was upgraded to Municipality during November 2010. The Municipality is engaging contingent employees on daily wages to carry out various contingent works. The respondent informed that the appellant establishment is covered from 01.02.2011 as per communication dated 07.02.2014. The appellant took some time to collect the details of the contingent staff, calculate their contribution and remit the same with the respondent organisation. The revenue generated by the appellant Municipality was very low and the same was not adequate to remit the contribution of the contingent employees. However the appellant remitted the contribution in installments. The respondent thereafter issued a notice dated 28.06.19 directing the appellant to show cause why the damages shall not be levied for belated remittance of contributions. The appellant appeared before the respondent and filed Annexure A3 written statement. Ignoring the contentions in the written statement, the respondent issued the impugned order assessing maximum

damages. The respondent failed to notice that the appellant is a Municipality and is a local self Government, functioning for the welfare of general public. Taking out huge amounts from the funds of the appellant ought to have affected the welfare activity of the appellant which is mandated under the Panchayat Raj Act. There was no wilful delay or laches or omissions on the part of officials of the appellant or on the part of the Municipal Council in remitting the contributions. It is not correct to say that the appellant has not produced any document to substantiate the claim of financial difficulties. The appellant was, in fact, not given adequate opportunity to substantiate the claim. The respondent failed to notice that there was no mensrea on the part of the appellant in delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. Municipality and municipal corporations are included in the class of establishment to which Employees' Provident Fund & M.P Act, 1952 is applicable, by No. S.O 30(E) dated 8.1.2011 of the Government of India issued U/s 1(3)(b) of the Act. Accordingly the office of Karunagappally Municipality, Kollam was covered under the Employees' Provident Funds and MP Act, and the schemes formed thereunder with code

No.KR/KLM/25512 with effect from 08.01.2011. A coverage notice dt.10.2.2012 was also issued to the appellant. The coverage notice was acknowledged by the appellant on 15.2.2012. In the coverage notice the appellant was directed to remit the contribution envisaged under the Act & Schemes with effect from 01/2011. Since the appellant establishment failed to start compliance, enquiry U/s 7A of the Act was initiated and the dues were assessed for the periods from 01/2011 to 02/2015 and 03/2015 to 07/2016. The appellant remitted the contribution finally, only by 03.10.2019. The delay in remitting the contribution under the Act attracts damages U/s 14(B) of the Act read with para 32(A) of EPF scheme. Hence a notice dated 28.06.2019 was issued to the appellant along with a delay statement containing information such as the due date of payment of contribution, the actual date of remittance and the delay in remittance. The appellant was also given an opportunity for personal hearing on 12.07.2019. None appeared before the respondent on behalf of the appellant on 12.07.2019. The respondent authority received a request for adjournment by mail, and the enquiry was therefore adjourned to 29.08.2019. On 29.08.2019 Secretary of Municipality attended the hearing and

requested for an adjournment. The enquiry was further adjourned to 14.10.2019. On 14.10.2019 a representative of the appellant attended the hearing and filed Annexure A3 statement. Since the appellant had no dispute regarding the delay statement, the respondent issued the impugned order, after considering the written submissions made by appellant. Since the appellant failed to remit the damages U/s 14(B) of the Act, respondent initiated action for recovery by issuing order U/s 8F of the Act by attaching the Bank Account of the appellant. State Bank Of India forwarded an amount of Rs. 4,23,340/- on 01.01.2020. In view of the stay issued by this Hon'ble Tribunal, further action for recovery was kept in abeyance.

4. The Municipalities and Corporations in the country were brought under the provisions of the Act by Government of India w.e.f 08.10.2011. Though the regular employees are entitled for provident fund and pension, the contingent staff working in the Municipalities and the Corporations where not extended any social security benefits. The appellant being a Municipality is liable to extend the social security benefit under the Act to the contingent employees engaged by them wef 08.01.2011. The respondent communicated the decision of

Government of India in this regard, to the appellant on 12.01.2012. According to their own admission, the appellant municipality was engaging 24 contingent employees as on the date of converge who are entitled to the benefit of PF, with effect from 08.01.2011. Since the appellant establishment failed to start compliance the respondent initiated action U/s 7A of the Act and assessed the dues and the appellant remitted the contribution only by 03.10.2019. Since there was delay in remittance of contribution, the respondent initiated action U/s 14B of the Act to levy damages for belated remittance of contribution. The respondent issued a delay statement furnishing all the details for the appellant to evaluate the proposed damages. The representative of the appellant attended the hearing and filed written statement. Basically contention by the appellant was regarding the financial difficulties. It was also pleaded that there was delay in collecting the information regarding the contingent staff. According to the appellant, the communication regarding coverage of the appellant under the provisions of the Act was dated 07.02.2014. However it is seen that the coverage was communicated by the respondent on 12.01.2012 which was acknowledged by the appellant.

According to the learned Counsel for the respondent, the appellant failed to produce any document to substantiate the claim of financial difficulty of the appellant establishment. It is seen that the appellant failed to produce any documents to substantiate the financial difficulty either before the respondent authority or in this appeal. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 also held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B if the appellant pleads and produces documents to substantiate the same. In **Elstone Tea Estates Ltd Vs RPFC**, WP(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. According to the Learned Counsel for the respondent financial constrains cannot be a valid reason for

delayed remittance of contribution. In **M/s. Sky Machinery Limited V/s Regional Provident Fund Commissioner**, 1998 LLR 925 the Hon'ble High Court Of Orissa held that financial crunch will not be sufficient for waiving penal damages for delayed deposit of provident fund contribution. Hon'ble Supreme Court of India in **Hindustan Times Limited V/s Union of India**, 1998 SCC 242 held that financial problems are not relevant explanation to avoid liability for payment of provident fund dues. In **Elsons Cotton Mills V/s RPFC** 2001(1) SCT 1104 (Punjab and Haryana) the Hon'ble High Court of Punjab rejected the plea of financial crisis as a ground for delay in remittance of provident fund contribution.

5. As already pointed out Municipalities and Corporations are covered under the Act w.e.f. 08.01.2011. The respondent also communicated the decision of the Government of India on 12.01.2012. The delay from 2012 to 2019 in remitting the contribution could not be properly explained by the appellant. According to the appellant the contribution was paid in instalments on 03/2016, 10/2017 and 11/2017. Though the appellant pleaded financial difficulty, there is no supporting evidence to substantiate the same. The appellant would have

recovered the employees share of contribution from salary of the employees after 2012, after the receipt of communication from the respondent. There was delay in remittance of even employee's contribution deducted from the salary of employees. According to the learned Counsel for the respondent, there was dispute regarding certain employees deployed by M/s Agro Industries Corporation in solid waste management plant of the appellant. From the pleadings in the appeal it is seen that the administrative issues on the part of the appellant establishment delayed the remittance of contribution. Though it is not possible to attribute mensrea, it is clear that the casual approach of the appellant contributed to the delayed remittance. However the delay is so huge that the appellant cannot escape the liability to pay damages for at least a portion of the delay as the interest paid by the appellant U/s 7(Q) of the Act will not be adequate to compensate the loss of interest to the employees.

6. Considering all the circumstances, pleadings, and evidence in this 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.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer