



सत्यमेव जयते

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

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

(Tuesday the, 11th day of January 2022)

APPEAL No. 122/2018 & 288/2019

Appellant : M/s. Idukki District Co-operative
Hospital Society Ltd.
No. 1/77, Thodupuzha
Idukki – 685 584

By Adv.Rajesh Nair

Respondent 1: The Assistant PF Commissioner
EPFO, Sub Regional Office,
Post Office Road, Thirunakkara
Kottayam – 686 001

Respondent 2 : The Recovery Officer
EPFO, Aditya Sabari Tower
Post Office Road, Thirunakkara,
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 11.10.2021 and this
Tribunal-cum-Labour Court on 11.01.2022 passed the following:

ORDER

Appeal No. 122/2018 is filed from order No. KR/KTM/
20029/APFC/Penal Damage/2017-18 dated 27.03.2018 assessing

damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 12/2012 – 12/2016 (remittance of EPF dues between 22.07.2014 and 31.03.2017). The total damages assessed is Rs. 5,16,365/- (Rupees Five lakh sixteen thousand three hundred sixty five only).

Appeal No. 288/2019 is filed from order No.KR/KTM/20029/APFC/Penal Damage/14B/2019-2020/1018 dated 03.06.2019 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 05/2014 – 08/2018 (remittance between 28.01.2017 and 30.09.2018). The total damages assessed is Rs. 3,49,880/- (Rupees Three lakh forty nine thousand eight hundred and eighty only)

2. Since common issues are raised, both the appeals are heard and disposed of by a common order.

3. The appellant is a society registered under the Kerala Co-operative Societies Act, 1969. A true copy of the registration certificate is produced and marked as Annexure A2. The appellant society is running a hospital and a network of dispensaries to conduct special clinics such as Family Welfare Clinic, Child

Welfare Clinic, implement Health Insurance Schemes etc. A true copy of the Bye Laws of the appellant is produced and marked as Annexure 3. The hospital is run on no profit no loss basis. From the year 2012, the appellant hospital is running under loss. The society was receiving funds for expenses and costs incurred for providing medical treatment as per RSBY Scheme of the Central Government until 2012. While so the respondent issued notices alleging delay in remittance of contribution and to show cause why damages shall not be levied for belated remittance of contribution. The appellant society only defaulted with regard to the payment of employer's share of contribution due to its unavoidable financial crisis. The appellant hospital paid the employees' share of contribution deducted from the salary of the employees. In response to the notice, the appellant appeared before the respondent through its Secretary and stated that the delay in remittance of contribution was due to the financial difficulty of the appellant establishment. It was pointed out that the loss incurred by the appellant society during the year 2016 – 2017 is Rs.5,05,26,920/- as per the audit certificate issued by the Co-operative Department, Government of Kerala. It was also brought

to the notice of the respondent that the Government of Kerala considered the appellant society as a Sick Co-operative Society and included it in the rehabilitation package. A true copy of the order dated 31.03.2010 issued by Government of Kerala, (G.O(Rt)No.288/2010/Co-op dated 31.03.2010) is produced and marked as Annexure A6. The appellant hospital spent for cost and expenses for medical services including treatment and aid to the poor. The amount expended was insured under the RSBY Scheme of the Central Government by which an insurance company was required to reimburse the said amount. However w.e.f 2012, the concerned insurance company, in this case, the Reliance Insurance, did not reimburse the appellant society with the amount already spend by it for medical services. The appellant hospital ran into deep financial crisis due to the non reimbursement of the money spent on medical services under RSBY Scheme. In view of the financial difficulty, the appellant was constrained to stop the payment of contribution under the Act. Though the appellant approached the insurance company, the Central Government and the State Government and other responsible authorities for effecting reimbursement, the exercise

remained futile. A copy of the letter issued by “Chiak” which is a Kerala Government undertaking to Reliance Insurance for reimbursement of Rs. 17,64,500/- is produced and marked as Annexure A7. The insurance company did not remit any money in spite of the intervention by the State Government. The audit certificate issued by Government of Kerala for the year 2016 – 2017 shows the appellant is running in huge loss. A true copy of the audit certificate issued by the Co-operative department of Government of Kerala is produced and marked as Annexure A8. In spite of the above pleadings, the Recovery Officer of the respondent authority issued notice for recovery of the damages and interests. The respondent authority issued an order under Sec 7A assessing the dues on 01.06.2016, a copy of which is produced and marked as Annexure A10. The appellant approached the respondent authority for instalment facility to remit the dues and the appellant granted instalment facility to remit the same. A copy of the order granting instalment facility is produced and marked as Annexure A11. It is not clear from the impugned order as to how the damages are calculated. The claim is also barred by limitation. The damages under Sec 14B can be

claimed only when there is a wilful default on the part of the employer. As already stated, the delay in remittance was due to financial constraint due to the non reimbursement of money spent on medical services under RSBY Scheme of the Central Government. It is well settled that the action for assessing damages shall be initiated within reasonable time. There is no finding by the respondent authority that there is wilful and deliberate delay in remittance of Provident Fund contribution.

4. The respondent filed counter denying the above allegations. The Appeal No. 122/2018 is bad for non joinder of necessary parties since the Central Board of Trustees is required to be a party, as competent authority to be sued for the action taken or omission by the respondent. The losses suffered by the appellant establishment were due to its own failure to run the hospital in an efficient manner as evidenced by Annexure A8 audit certificate issued by the Joint Director of Co-operative audit. In the Annexure A8, under head 'summary of drawbacks' it is clearly stated that accounts of amounts due to and due by the appellant establishment have not been maintained, contingency expenses are exorbitant, no steps have been taken to reduce losses by the

appellant establishment, no steps are taken to transfer undivided profit to legal funds by the appellant establishment, the amounts allocated under the head advance due to as building advance without obtaining sanction from the registrar should be regularised by obtaining sanction and the drawbacks pointed out in the earlier audit have not been rectified. Thus the appellant establishment due to mismanagement, diversion and misuse of funds has gone into loss, leading to default in payment of dues under the Act. The appellant cannot take advantage of its own omissions and mismanagement to content that the default in making remittance of Provident Fund dues was without mensrea. Further there is no material on record or pleadings as to whether the appellant has taken any steps to recover the amount from Reliance Insurance indicating gross negligence and omission on the part of the appellant. Hence the default on the part of the appellant was entirely due to wilful mismanagement and negligence and therefore warrants imposition of damages under the Act. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 LAB IC 1261, held that Sec 14B is incorporated as a warning to the employers in general not

to commit a breach of statutory requirement under Sec 6 of the Act. There is no dispute regarding the delay. The Hon'ble Supreme Court of India in ***M/s. Hindustan times Vs Union of India***, AIR 1998 SC688, held that the delay in remittance of contribution on the ground of financial difficulties cannot be a justifiable ground for the employer to escape liability. There is no limitation provided under the Act for recovery of damages under Sec 14B of the Act. The appellant has no case of irretrievable prejudice. The method of calculation of damages and interests has already been communicated along with the notice as provided in the Act and Schemes thereunder. The appellant was provided with a copy of the calculation sheet of damages monthwise and in the proceedings the representative of the appellant admitted the delay and pleaded that the delay was due to financial constraints of the appellant establishment. In ***Organo Chemical case (supra)*** the Hon'ble Supreme Court held that "even if it is assumed that there was a loss as claimed, it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time".

5. The appellant filed a rejoinder retreating its pleadings in the appeal memorandum. In the rejoinder it was also pointed out that though the respondent authority is insisting for damages and interests for belated remittance of contribution, the service delivery of the respondent organisation towards the employees of the appellant establishment is not satisfactory.

6. The appellant also filed an impleading petition to implead Central Board of Trustees Employees Provident Fund Organisation as additional 3rd respondent. The IA was heard and Central Board of Trustees is impleaded as the 3rd respondent in Appeal No.122/2018. The appellant establishment is a cooperative society, running a hospital. The appellant delayed remittance of contribution during the period from 2012. The respondent therefore initiated action for levy of damages under Sec 14B and interest under Sec 7Q of the Act. The respondent issued notices enclosing therewith detailed statements of month wise delay, the due date of payment, the actual date of payment and the proposed damages and interest. The appellant entered appearance through its Secretary. The appellant filed a detailed written statement in Appeal No.122/2018. The representative of the appellant sought

time to verify the delay statement. On the next date of posting, the representative admitted the delay but pleaded that the delay in remittance was due to financial constraints of appellant establishment. In Appeal No. 288/2019, the representative of the appellant pointed out certain anomalies in the delay statement. After verification of the same, the respondent authority incorporated the corrections and issued a revised delay statement, and thereafter issued the order.

7. The basic contention of the appellant in both the appeals are that the delay in remittance was due to the financial constraints of the appellant establishment. According to the learned Counsel for the appellant, the appellant hospital was a service provider under the RSBY Scheme of the Central Government. Reliance Insurance was required to refund the expenditure under the Scheme to the appellant establishment. From the year 2012 onwards, the insurance company stopped reimbursing the money already spent by the appellant establishment and all the efforts made by the appellant to get the amount reimbursed ended up in failure. The appellant produced Annexure A7 to establish their case. The learned Counsel for the

appellant also relied on the audit certificate for the year 2016-17 issued by the co-operative department of the State Government. According to him there is a huge loss of more than 5 crores during the year which will prove the financial constraints of the appellant establishment. The learned Counsel for the appellant also pleaded that the respondent authority assessed the dues for the period 09/2013 to 08/2015 under Sec 7A of the Act and on the request from the appellant, the respondent authority vide Annexure A11 granted instalment facility for remitting the contribution. The learned Counsel for the respondent on the other hand argued that the financial constraints pleaded by the appellant is their own making, as evident from the Annexure 8 audit certificate issued by the co-operative department of the State Government. He highlighted the mismanagement of the appellant establishment on the basis of the audit observations in Annexure A8 audit certificate.

8. It is a fact that the appellant establishment was under severe financial constraints during the relevant point of time. The non reimbursement of medical expenses under RSBY Scheme of the Central Government may be one of the reasons for the

financial difficulty of the appellant establishment. But the reimbursement alone cannot be attributed for the huge losses as reflected in the Annexure A8 audit certificate. The mismanagement as pointed out by the audit can be one of the ground for the huge losses sustained by the appellant establishment.

9. Another ground taken by the learned Counsel for the appellant is that of limitation. The learned Counsel for the respondent opposed the plea on the ground that there is no limitation provided under Sec 14B of the Act. The learned Counsel for the appellant pleaded that there was delay in initiating the process under Sec 14 B of the Act. The learned Counsel for the respondent argued that there is no limitation as far as assessment of damages under Sec 14B is concerned. The Hon'ble Supreme Court in **RPFC Vs KT Rolling Mills Pvt Ltd**, 1995 (10) LLJ 882, **Hindustan Times Vs Union of India**, 1998 (1) LLJ 682, and **M/s. K. Street Lite Electric Corporation Vs RPFC**, 2001 (1) LLJ 1703 held that there is no limitation provided under Sec14B of the Act and therefore introducing the concept of limitation in Sec 14B will be in violation of the legislative intention. Any different stand would only encourage the employers to thwart the object of the

Act. Another ground pleaded by the learned Counsel for the appellant is that there was no intentional delay in remittance of Provident Fund contribution. The learned Counsel for the respondent opposed the plea on the ground that the intention of parties is not relevant while assessing damages under Sec 14B. The learned Counsel for the appellant pointed out that the employees share of contribution to the extent possible was remitted in time and mainly the delay is in the remittance of employer's share of contribution. The learned Counsel for the appellant also pleaded that there was no mensrea in belated remittance of contribution by the appellant establishment. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in ***Mcleod Russell India Ltd. Vs Regional Provident Fund Commissioner***, 2014(15) SCC 263 and ***Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Pvt. Ltd.***, 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”*

The above judgement of the Hon’ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

10. The appellant establishment is a Co-operative Society running a hospital on no profit no loss basis. The appellant succeeded in proving that huge amounts are required to be reimbursed by the insurance company for the medical services rendered by them free of cost to poor employees. Though, that is not the exclusive reason, the appellant establishment is running

under huge losses during the relevant point of time. In view of the position explained above, the appellant establishment is entitled for some relief with respect to the damages under Sec 14B of the Act.

11. Considering the facts, circumstances, pleadings, evidences and arguments in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 75% of the damages assessed under Sec 14B of the Act.

Hence the appeals are partially allowed, the impugned orders are modified and the appellant is directed to remit 75% of the damages.

Sd/-

(V.Vijaya Kumar)
Presiding Officer