



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

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

(Monday the, 3rd day of January 2022)

APPEAL No. 215/2019

(Old ATA No. 525 (7) 2015)

Appellant : M/s. Mangalam Publications (India)
Pvt. Ltd.
S.H.Mount P.O.,
Kottayam – 686 006

By Adv. Prinsun Philip

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 22.09.2021 and this Tribunal-cum-Labour Court on 03.01.2022 passed the following:

ORDER

Present appeal is filed from order No. KR/KTMKR/ 5975/PD/2014/2335 dated 29.04.2015 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as ‘the Act’) for belated remittance of contribution from to 04/2001-

12/2013 and 02/1989 – 03/2014. The total damages assessed is Rs. 54,94,395/- (Rupees fifty four lakh ninety four thousand three hundred and ninety five only)

2. Appellant is a newspaper establishment covered under the provisions of the Act. The appellant could not remit contribution for the period from 04/2001 to 12/2013 and 02/1989 to 03/2014 in time. The delay in remittance happened due to reasons beyond the control of the appellant. There was no intentional or deliberate delay in paying the contribution. The respondent issued show cause notice dated 16.06.2014 directing to show cause why damages shall not be levied for belated remittance of contribution. True copy of the notice dated 16.06.2014 is produced and marked as Annexure A1. The appellant filed written objection dated 16.07.2014 and an additional written statement dated 12.03.2015 against the proposed imposition of damages. The true copy of the preliminary written objection dated 16.07.2014 and the additional objection dated 24.02.2015 and 12.03.2015 are produced and marked as Annexures A2, A3 and A4 respectively. A representative of the appellant attended the hearing. The representative submitted that the delay in remittance of

contribution was only due to heavy financial constraints. The relevant records for the same has also been produced before the respondent. The respondent issued the impugned order dated 29.04.2015, a copy of which is produced and marked as Annexure A5. The respondent failed to give reasons to show that there was intentional delay in payment of contribution. Imposition of damages is not mandatory. The respondent authority failed to exercise its discretion while assessing damages for belated remittance of contribution. The respondent failed to consider the dictum laid down by the Division Bench of Hon'ble High Court of Kerala in ***Regional Provident Fund Commissioner Vs Harrison Malayalam Ltd.*** 2013 (3) KLT 790, holding that while considering penal damages under Sec 14B of the Act, financial constraints of the establishment is also a relevant consideration. The decisions of the Hon'ble Supreme Court cited by the respondent are prior to the amendments in the Act in 1988 and are not relevant to the facts and circumstances of the present case. The respondent urged not to impose damages on the amount of Rs.12,801/- that was remitted on 24.07.2013. The respondent failed to consider the statement

dated 24.02.2015 wherein various discrepancies were shown by the appellant.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act. The appellant made belated remittances for the period from 04/2001 to 12/2013 and 02/1989 to 03/2014. A notice was therefore issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and filed written statements. After considering the representations of the appellant, the respondent issued the impugned order. The main ground pleaded by the appellant was that of financial constraints. The Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Vs Regional Provident Fund Commissioner***, 1982 LAB IC 1422, held that Para 38 of the Scheme obliged the employer to make payments within 15 days of close of every month and Para 30 cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the member employed by him, in the first instance. It was also made clear in the above judgement that the financial constraints is not sufficient to mitigate the damages payable by

the appellant. The claim of the appellant that the respondent failed to exercise its discretion is not correct. The Act is a social welfare legislation and the successful working of the social Security Scheme depends on the prompt compliance made by the employers. The respondent issued the impugned order after careful examination of all the facts and contentions of the appellant. The ground of financial difficulty pleaded by the appellant for non-remittance of Provident Fund contribution was denied by the Hon'ble Supreme Court of India in ***Hindustan times Vs Union of India***, Air 1998 SC 688. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 LAB IC 1261 held that "there is nothing in the Section to show that damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme". The objective of the legislature in enacting Sec 14B is clearly to punish the recalcitrant employers. The question whether there was intentional delay is not relevant while deciding damages. The only difference after amendment in 1988 is with regard to the rate of damages to be levied. Prior to the amendment, the commissioner had power to levy damages at the rate, the maximum which was fixed at 100% of arrears.

4. The appellant establishment delayed remittance of contribution for the period from 04/2001 to 12/2013 and 02/1989 to 03/2014. The respondent therefore initiated action for levy of damages and issued notice dated 16.06.2014 which is produced as Annexure A1. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing, filed Annexure A2, A3 and A4 pointing out certain errors in the delay statement enclosed along with Annexure A1 notice. The respondent authority considered the written statement and made necessary corrections. The main grounds pleaded by the appellant were financial constraints and lack of mensrea in delayed remittance of contribution. After taking into account the written statement and after incorporating the necessary corrections, the respondent authority issued the impugned order.

5. In this appeal also the learned Counsel for the appellant pleaded that there was no intentional delay in remittance of contribution and the delay in remittance was only due to the financial constraints of the appellant establishment.

6. During the course of argument, the learned Counsel of the appellant pointed out that there is a variation in the proposed amounts in Annexure A1 notice and in the impugned order. According to him, in the Annexure A1 notice the amount of damages proposed is Rs. 49,63,922/- and in the impugned order the damages assessed is Rs.54,94,395/-. He also pleaded that many of the errors in the delay statement pointed out by the appellant during the course of 14B proceedings were not considered by the respondent authority. The respondent filed a detailed statement explaining the variation in amounts and also how the so called errors pointed out by the appellant were considered by the respondent authority in the impugned order itself. According to the learned Counsel for the respondent, the original notice for assessment of damages was issued for delayed remittance of contribution for the period 04/2001 – 12/2013 and the proposed damages was Rs. 49,63,922/-. During the course of hearing, the respondent noticed that some periods during 02/1989 – 03/2014 was left out and it was brought to the notice of the representative of the appellant. A revised delay statement was also provided to the representative of the appellant which would show that there is a slight increase in the proposed

damages because of the inclusion of the delayed remittance for the period 02/1989 – 03/2014. It is clear from page No. 4 of the impugned order itself that appellant was provided a revised statement after rectification of errors and omissions. The respondent produced the daily order sheet dated 09.03.2015 wherein it is clearly stated that a revised statement is prepared and handed over to the representative. A copy of the daily order sheet dated 09.03.2015 is produced and marked as Annexure R1. The daily order sheet dated 12.03.2015 clearly states that “Sri. A.G Suresh Kumar, Senior Personnel Manager attended the enquiry. He has filed additional written objection. He admitted the delay in remittance of dues for the month 01/89, 02/89, 03/89, 01/2001 - 03/2014 as per the revised demand statement issued. The delay in remittance of dues confirmed. Issue proceedings”. The respondent also produced the daily order sheet of 12.03.2014 and marked as Annexure R2. The true copy of the revised calculation sheet is also produced and marked as Annexure R3. The respondent also pointed out the eight so called errors pointed out by the representative of the appellant and the corrections incorporated in the revised statement. Basically it is seen that the errors occurred in view of the bulk remittances

made by the appellant and consequently also the amount of damages had gone up. The appellant filed an objection to clarification statement stating that the respondent authority imposed damages for the period 02/1989 – 03/2014 behind his back and he was not aware of the revised statement issued by the respondent authority. The claim of the learned Counsel is disproved by the daily order sheets in which the representative of the appellant is a signatory. It is clearly stated therein that the damages for the period 02/1989 – 03/2014 was also included and the delay statement is revised and a copy of the same is provided to the representative of the appellant. It is also proved that the appellant admitted the delay in remittance of contribution for the period 02/1989 – 03/2014. Hence there is no violation of the principles of natural justice by the respondent authority. Further the learned Counsel for the respondent elaborately clarified the changes made in the delay statement consequent on the errors pointed out by the representative of the appellant through his written statement. It is also discussed in the impugned order and therefore there is no basis in the claim of the learned Counsel for the appellant that there is violation of principles of natural justice. It is also relevant to point out that

there is no pleadings in appeal memo regarding the difference in amounts proposed in Annexure A1 notice and the impugned order.

6. Another ground pleaded by the learned Counsel for the appellant for delayed remittance of contribution is that of financial constraints. The financial constraints for the relevant period will have to be substantiated with relevant documents. The appellant failed to do so 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 under Sec 14B of the Act. In ***Sree Kamakshi Agency Pvt. Ltd. Vs EPF Appellate Tribunal***, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages under Sec 14B, if the appellant pleads and produces documents to substantiate the same. In ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as

mitigating factor for lessening the liability. Having failed to substantiate the claim of financial difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

7. Another ground pleaded by the learned Counsel for the appellant is on the ground of lack of mensrea and intentional delay in delayed remittance of contribution. The learned Counsel for the respondent pointed out that the appellant has no case that the wages of employees were not paid by the appellant establishment. Anyway, the appellant have not produced any documents to prove that there was delay in payment of wages to its employees. When wages of employees are paid, the employees' share of contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust under Sec 405/406 of Indian Penal Code. The appellant therefore cannot plead that there is no intentional delay in remittance of at least 50% of the contribution. It is seen from Annexure A1 statement that delay in remittance varied from 69 days to 4454 days. The average delay is more than one year. Hence the appellant was holding the employees share and

utilising it for his business for such a long time. The appellant therefore deserves no sympathy or consideration with regard to the assessment of damages under Sec 14B of the Act.

8. The learned Counsel also pleaded that there was no mensrea in belated remittance of contribution. 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.

9. Considering the facts, circumstances, pleadings, evidences and arguments in this appeal, I am not inclined to interfere with the impugned order

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer