



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

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

(Thursday the, 26<sup>th</sup> day of May 2022)

**APPEAL No. 22/2020**

Appellant : M/s. Sanjo Charitable and  
Educational Trust  
Sanjo College,  
Mullakkanam, Rajakkad.P.O.,  
Idukki – 685 566.

By Adv. Paulson C Varghese

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 25.05.2022 and this  
Tribunal-cum-Labour Court on 26.05.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KTM/1614170/  
APFC/Penal Damage/14B/2019-2020/10380 dated 01.12.2019  
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 from 09/2014 to 04/2019 (remittance

of EPF dues made during the period 01.08.2013 and 30.09.2019). The total damages assessed is Rs.14,58,139/-(Rupees Fourteen lakhs fifty eight thousand one hundred and thirty nine only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a charitable organisation conducting educational institutions. Due to acute financial constraints and recurring loss, the appellant could not remit contributions in time. The respondent initiated action for assessment of damages. A representative of the appellant attended the hearing and disputed the delay and also the quantification of damages and interests. The delay in payment of contribution was not wilful and there was no contumacious conduct on the part of the appellant. There is no mensrea to inflict the penal action on the appellant under Sec 14B and 7Q. The proceedings under Sec 14B is barred by limitation. The respondent ought to have seen that the delay in remittance was due to the financial constraints. The appellant was not given a proper opportunity before quantifying the damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the

provisions of the Act from 01.08.2013. Since the appellant delayed remittance of contribution, the respondent issued a notice dated 05.11.2019 directing the appellant to show cause why damages shall not be recovered for belated remittance. A detailed month wise delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personnel hearing on 25.11.2019. A representative of the appellant attended the hearing and admitted the delay in remittance of dues and filed their objection along with the balance sheet for the last five years. The contention of the appellant regarding losses is clearly explained in the impugned order. The appellant failed to produce the complete order along with the appeal and deliberately omitted page No. 2 of the order wherein the respondent authority established that there was no financial constraints for the appellant during the relevant point of time. The appellant omitted page No. 2 of the impugned order to mislead this Tribunal. In page No. 2 of the order, the respondent authority has considered all contentions raised by the appellant, verified the income and expenditure statement produced by the appellant and arrived at the finding that the appellant was having excess income over expenditure from the year 2015 onwards. A true copy of the

complete order issued by the respondent authority is produced and marked as Annexure R1. The written statement dated 25.11.2019 filed by the appellant before the respondent authority is produced and marked as Annexure R2. The financial statements produced by the appellant in this appeal clearly established that the appellant had no financial difficulty during the relevant point of time. The Hon'ble Supreme Court of India in ***Hindustan Times Vs Union of India***, AIR 1998 SC 688 held that the default on the part of the employer based on the plea of financial difficulty cannot be a justifiable ground for the employer to escape the statutory liability. The Division Bench of Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Vs Regional Provident Fund Commissioner***, 1982 1 LLJ 440 (Kerala), held that Paragraph 38 of EPF Scheme oblige the employer to make the payment within 15 days of close of every month and Para 30 of the Scheme cast and 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. Thus the delay by the appellant in remittance of contribution was wilful and deliberate warranting the levy of damages under Sec 14B of the Act.

4. The appellant establishment delayed remittance of contribution for the period from 09/2014 to 04/2019. The respondent therefore initiated action for levy in damages vide notice dated 05.11.2019. The appellant was also given an opportunity for personnel hearing. A representative of appellant attended the hearing and pleaded financial difficulty and also produced the financial statements. After verifying the documents produced by the appellant, the respondent authority concluded that there was no financial difficulty for the appellant establishment during the relevant point of time and therefore the delay in remittance of contribution was intentional. The respondent therefore issued the impugned order.

5. In this appeal the learned Counsel for the appellant argued that there was undue delay in initiating the process for assessing damages and interests. The learned Counsel for the respondent pointed out that there is no limitation as far as Sec 14B is concerned. The Hon'ble Supreme Court of India in **Regional Provident Fund Commissioner Vs KT Rolling Mills Private Limited**, 1995 AIR (SC) 943, **Hindustan Times Vs Union of India**, 1998 AIR SC 688, and **M/s. K Streetlite Electric**

***Corporation Vs Regional Provident Fund Commissioner***, 2001

AIR (SC) 1818 (SC 2J), held that there is no limitation for assessing damages under Sec 14B of the Act and legislative intention will be defeated if limitation is brought into the Section. The learned Counsel for the appellant also pleaded that the delay in remittance was due to the financial constraints of the appellant establishment. The learned Counsel for the respondent pointed out that the financial statements now produced in this appeal were also produced before the respondent authority and the respondent authority after examining the profit & loss A/c of the appellant establishment concluded that the appellant establishment was running under profit during the relevant point of time. The learned Counsel for the appellant also made a very serious allegation that the appellant deliberately removed page No.2 of the impugned order wherein the profit & loss A/c of the appellant was considered in detail by the respondent authority. The respondent also produced a copy of the complete order as Exhibit R1 along with the written statement. On comparing these two orders, it is clear that the appellant removed page No.2 of the impugned order filed along with this appeal. On a perusal of the Exhibit R1, complete order, issued by the respondent authority, it

is seen that the respondent authority has examined the Income and Expenditure statement of appellant establishment in detail and came to the conclusion that for the period from 2015 – 2018 the appellant establishment was having excess income over expenditure. Therefore the appellant establishment was running under profit during the relevant point of time. Hence the financial constraints pleaded by the appellant cannot be accepted.

5. The learned Counsel for the appellant further pointed out that the delay in remittance was not intentional and there was no mensrea in belated remittance of contribution. The learned Counsel for the respondent pointed out that from the documents produced by the appellant, it is very clear that the salary of the employees were paid in time. When the salary of the employee's were paid, the employees' share of contribution is deducted from the salary of the employees. Non-remittance of the employee's 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 learned Counsel for the appellant 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 actus reus 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.

6. It is seen that the appellant approached the Hon'ble High Court of Kerala in WP(C) No 6262/2020 challenging the assessment of damages and interest. With regard to the interest under Sec 7Q, demanded by the respondent authority, the Hon'ble High Court vide its judgement dated 02.03.2020 found that the same is not appealable and therefore directed the appellant to remit the amount in instalments. The instalment facility was later modified in IA 1/2020 in WP(C) No. 6262/2020.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order under Sec 14B of the Act.

Hence the appeal is dismissed.

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