



सत्यमेव जयते

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

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

(Wednesday the 1<sup>st</sup> day of December, 2021)

**APPEAL No.229/2019**

(Old No. ATA 242 (7) 2015)

Appellant : M/s. City Co-operative Hospital  
Vattampoyil, West Kallai  
Calicut – 673 003

By Adv.M.P.Radhakrishnan

Respondent : The AssistantPFCommissioner  
EPFO,Sub Regional Office  
Eranhipalam. P.O.  
Kozhikode – 673 006

By Adv.(Dr) Abraham P Meachinkara

This case coming up for final hearing on 21.09.2021 and this Tribunal-cum-Labour Court on 01.12.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KK/23289/ENF 2(2)/14B/2014/10442 dated 05.12.2014 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 01/2006 – 01/2014. Total damages assessed is Rs. 3,17,432/-. (Rupees three lakh seventeen thousand four hundred and thirty two 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 hospital established under cooperative sector. The appellant establishment was running under loss since its starting as evidenced by the balance sheet and Profit & Loss account for the period 2006 – 2007 to 2011-2012. Since there was default in payment, the respondent authority initiated action under Sec 7A of the Act and assessed dues for the period from 01/2006 – 10/2007. Because of the financial difficulty, the appellant could not remit the amount. However the respondent recovered part of the amount through recovery action and the rest of the payments were made in instalments. On completing the payment, the respondent authority initiated action under Sec 14B of the Act, directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant attended the hearing, admitting the delay and pleaded that the delay occurred

due to financial constraints. However ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent authority ought to have considered the circumstances leading to the delayed remittance of contribution. The rate of calculation of damages is wrong and therefore the amount demanded is highly exorbitant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. There was delay in remittance of Provident Fund contribution for the period from 01/2006 – 01/2014. The respondent therefore initiated action under Sec 14B. A detailed delay statement was also send along with the notice. The appellant was also provided an opportunity for personnel hearing. A representative of the appellant attended the hearing and submitted that the delay in remittance was due to the financial difficulty of the appellant establishment. However they fail to produce any documents to substantiate the claim of financial difficulty. The Division Bench of Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Ltd. Vs RPFC**, 1982 KLT 303, held that the employer is

bound to pay contributions under the Act every month voluntarily irrespective of the fact that the wages have been paid or not. Financial constraints are common phenomenon in business. In ***Bharath Plywood and Timber Products Ltd Vs Employees' Provident Fund Commissioner***, 1977(50)FJR 74(KER.HC), the Hon'ble High Court of Kerala held that though there is sufficient reason to make belated payments that is not a ground for granting exemption for paying penalty or damages.

4. It is an admitted fact that there was delay in remittance of Provident Fund contribution. The respondent authority therefore initiated action under Sec 14B of the Act read with Para 32A of EPF Scheme. A detailed delay statement was forwarded to the appellant along with the summons. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and admitted the delay as per the delay statement. However, he pleaded that the delay was due to financial constraints of the appellant establishment. The appellant failed to produce any documents before the respondent authority to substantiate the

claim of financial difficulty. Hence the respondent authority issued the impugned orders.

5. In this appeal, the appellant has taken the plea of financial difficulty and also produced the balance sheet for the relevant period. As per the balance sheet, the appellant establishment was running under loss for the period from 2006-2007 to 2011-2012. The learned Counsel for the respondent pointed out that mere statements in balance sheet as regards current assets and current liability cannot be taken as sacrosanct. The Hon'ble Supreme Court of India in ***Aluminium Corporation Vs Their Workman***, 1964 (4) SCR 429, held that the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. The learned Counsel for the respondent also pointed out that as per the documents now produced, it can be seen that the appellant establishment was paying salary to its employees regularly. When salary is paid, employee's share of contribution is deducted from the salary of the employees. The appellant delayed remittance of even the

employees' share of contribution deducted from the salary of the employees and there by committed an offence of breach of trust under Sec 405/406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that there was no intentional delay in remittance of employee's share of contribution deducted from the salary of the employees.

6. The appellant also pleaded that the calculation of interest and damages as per the impugned order is not correct. The appellant also filed a statement showing the monthly wages, due date of payment, date of payment, delayed amount of contribution, damages and interests applicable. The learned Counsel for the respondent took this Tribunal through the calculation statement, the chalan produced by the appellant establishment and also the delayed statements send by the respondent along with the notice. It is seen that the calculation statement provided by the appellant is not correct in view of the fact that the delay arrived at by the appellant substantially varies with the actual delay in view of the date of remittance available in the chalan produced by the appellant.

7. Though the learned Counsel for the respondent strongly objected to accepting the balance sheet of the appellant establishment in evidence at the appellate stage and also the correctness of figures furnished therein, it is clear that the appellant establishment was running under loss during the relevant point of time. The loss of the appellant establishment during 2006-2007 was 12,37,746/-, 2007-2008 it was 10,14,208/-, during 2008-2009 it was 6,71,798/-, 2009-2010 the loss was 2,94,860/-, 2010-2011 the loss was 8,27,440/- 2011-2012 the loss was 6,05,147/-. Hence it is clear that the appellant establishment, being a small hospital, was incurring loss consistently and continuously during the relevant point of time. Hence the appellant deserves some accommodation as far as the damages under Sec 14B of the Act is concerned.

8. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages.

9. On perusal of Sec 7(I) of the Act, it is seen that there is no provision under Sec 7(I) to challenge an order issued under

Sec 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 under Sec 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 under Sec 7Q of the Act is not appealable.

10. Hence the appeal is partially allowed, the impugned order under Sec 14B is modified and the appellant is directed to remit 80% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

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