



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 28th day of October 2021)

APPEAL No. 315/2018 & 378/2019

Appellant M/s. Trichur District Co-operative
Hospital Ltd.
No. 306, Shornur Road
Thrissur – 680 001

By Adv. K.K.Premlal

Respondent The Regional PF Commissioner
EPFO, Regional Office
Kaloor, Kochi – 682 017

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 16/07/2021
and this Tribunal-cum-Labour Court on 28/10/2021 passed
the following:

ORDER

Appeal No. 315/2018 is filed from order No.KR/KCH/
4515/ Penal Damages/2018/7061 dt. 08.08.2018 assessing
damages under Section 14B of EPF and MP Act(hereinafter

referred to as 'the Act') for belated remittance of contribution for period 01.01.2016– 31.03.2018. Total damages assessed is Rs.2,81,986/- (Two lakh eighty one thousand nine hundred and eighty six only)

Appeal No. 378/2019 is filed from order No. KR/KCH/4515/Penal Damages/2019/4667 dt. 24.07.2019 assessing damages under Section 14B of the Act for belated remittance of contribution for period from 01.04.2018 to 31.03.2019. Total damages assessed is Rs.22,72,702/- (Rupees twenty two lakh seventy two thousand seven hundred and two only)

2. Since common issues are raised, both the appeals are heard and disposed of by a common order. The only distinguishing factor in this appeal is that in Appeal No. 378/2019 the belated remittance of contribution pertains to 334 non-enrolled employees during the period from 07/2011 – 01/2014 and 12/2014.

3. The appellant is a hospital registered under the provisions of Kerala Co-operative Societies Act 1969. The appellant hospital was established with an idea to provide

quality medical care to the public at affordable price. For updating the hospital with modern equipment's and technologies, appellant incurred huge expenses. The accrued loss as per audited balance sheet for the year 2016 – 2017 is Rs.6,12,72,380.48 and the accrued total loss for the year 2018 – 2019 is Rs.7,67,44,870.74. The respondent authority issued separate notices for the delay in remittance of contribution for the period from 01.01.2016 to 31.03.2018 and for the delay in remittance from 01/2011 – 02/2014 and for the remittance made from 01.04.2018 – 31.03.2019. The respondent authority issued the impugned orders without considering the actual state of affairs as explained by the appellant at the time of hearing. There is no wilful default or contumacious conduct on the part of the appellant in not remitting the contribution in time. In appeal No. 378/2019, the amount covered by 14B order was determined as per Sec 7A order dated 04.07.2018. The 7A order is under challenge in appeal No. 246/2018 and is pending.

4. After introduction of Sec 14B, it has become a purely penal provision. Hence the respondent authority is required to follow the directions given by the Hon'ble Supreme Court in ***Employees' State Insurance Corporation Vs HMT Ltd.*** AIR 2018 SC 1322. The requirement of mensrea or actusreus to contravene a statutory provision was also held to be a factor to be considered by the respondent authority in ***Assistant Provident Fund Commissioner, EPFO and Another Vs Management of RSL Textiles India Private Limited,*** 2017 (3) SCC 110. After introduction of sec 7Q it has become imperative on the part of the authorities to prove loss or damages or contumacious breach for levy of damages. Even though there was discussion in the impugned orders, there is no specific finding regarding mensrea. The appellant has not deducted the employees share of contribution as per the Sec 7A order dated 04.07.2018.

5. Respondent filed counter denying the above allegations. Appellant is an establishment covered under the

provisions of the Act. The Appellant delayed remittance of contribution for the period 01/2016 – 03/2018 and also 04/2018 – 03/2019. The respondent initiated two separate proceedings for assessing interest and damages. Notice was issued to the Appellant establishment along with a detail delay statement. The Appellant was also given opportunity for personnel hearing. A representative of the Appellant attended both the proceedings. The Enforcement Officer of the Appellant during his inspection found that the Appellant failed to enrol large number of employees to provident fund membership. Accordingly an enquiry under Sec 7A was initiated which culminated in an order assessing the dues. The levy of damages in Appeal No. 378/2019 is due to belated remittance of dues on various grounds by the Appellant. Mere financial hardship or constraint cannot be taken as a licence to commit default under the Act. The Appellant violated the provisions of the Act,

1. By not enrolling 334 temporary employees during the period from 07/2011 to 01/2014 and 12/2014.

2. Evasion of wages for temporary employees for the period from 09/2014 – 11/2014 as the salary was restricted to Rs. 6500/- month even after enhancement of statutory wage limit to Rs. 15000/- w.e.f. 01/09/2014

3. The Appellant failed to remit provident fund contribution in respect of 17 trainees.

4. Contribution under Employees Deposit Link Insurance Scheme, 1976 was not remitted from 04/2004 to 02/2016.

5. Difference of administrative charges in Account No. 2 and 22 was noticed during the period from 01/2015 – 12/2015.

6. In view of the above violations, the respondent authority initiated an enquiry under Sec 7A and quantified the dues and directed the appellant to remit the same. The appellant remitted the assessed dues in installments from 20.09.2018 to 05.12.2018. Since the appellant has already remitted the amount without any protest and admitting the liability, Appeal No. 246/2018 filed by the appellant before this Tribunal has become

infructuous. Any delay in remittance of provident fund contribution will attract damages under Sec 14B of the Act. The appellant or his representative never raised any dispute regarding the delay statement. The appellant is not entitled for any waiver as provided under the statute. The Hon'ble High Court of Kerala in ***Ernakulam District Co-operative Bank Vs RPFC***, 2000 (1) LLJ 1662 held that there may be sufficient reasons for the appellant to make belated payments; however that is not a ground for granting exemptions from paying penalty or damages. The appellant establishment is a habitual defaulter. The appellant establishment violated the statutory provisions under Para 30, Para 36 and 38(1) of EPF Scheme. Sec 7Q and 14B of the Act have separate and distinct identity and the interest element is not ingrained in the damages under Sec 14B of the Act. Sec 14B is punitive in nature and meant to act as deterrent to the defaulter. The contention of the appellant that the respondent has not sustained any loss is not correct. The respondent organization is under statutory obligation to pay interest to provident fund members at the

rates declared by the Government irrespective of the fact whether the employer has remitted the contribution in time or not. If there is delay in remittance of contribution, the investment of the money also will get delayed and there will be huge loss to the organization. The Hon'ble Supreme Court of India in ***Ms Organo Chemical Industries Vs Union of India***, 1979 AIR (SC) 1803 held that "This social security measure is a human homage the state pays to Articles 39 to 41 of the Constitution. The viability of the projects depends on the employer duly deducting the workers contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function". The dictum laid down by the Hon'ble Supreme Court in ***ESI Corporation Vs HMT Limited*** (Supra) is not applicable to the present case. The judgement of the Hon'ble Supreme Court in ***Assistant PF Commissioner, EPFO Vs Management of RSL Textiles India Private Limited***, 2017 (3) SCC 110 is also not relevant to the facts of this case as there is a clear finding by

the respondent authority that there is mensrea in belated remittance of contribution. The Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Ltd. Vs Regional Provident Fund Commissioner***, 1982 (1) LLJ 440 held that the employer is liable to pay both the contributions payable by himself and on behalf of the member and therefore the appellant cannot escape the statutory obligation by pleading financial constraints. The impugned order has taken into consideration all the facts and circumstances leading to the delayed remittance of contribution. The impugned order also considered the question of mensrea elaborately and found that there was mensrea in delayed remittance of contribution by the appellant. When the statutory provisions are violated the appellant cannot plead that there was no mensrea in belated remittance of contribution.

7. As already pointed out, Appeal No. 315/2018 pertains to belated remittance of contribution of regular dues for the period from 01/01/2016 to 31/03/2018. The only ground pleaded by the appellant in the said appeal is

the financial difficulty and lack of mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the audit certificate and memorandum for the year 2018-19 now produced by the appellant would clearly show that the wages of the employees were paid in time and therefore the employees share of contribution is deducted from the salary of the employees. The appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. Non remittance of employee's share of contribution deducted from the salary of the employee's is an offence of breach of trust under Sec 405/406 of Indian Penal Code. After having committed the offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast in respect of 50% of the total contribution. The Balance Sheet now produced would however show that the appellant establishment was in severe financial difficulty during the relevant point of time.

8. With regard to the pleadings in Appeal No. 378/2019, the learned Counsel for the appellant submitted that the delay in remittance of contribution was due to the delayed assessment of dues under Sec 7A of the Act by the respondent authority. The learned Counsel for the respondent pointed out in detail the violations committed by the appellant such as non-enrolment of 334 employees, not remitting contribution on enhanced wage limit from 01.09.2004, not remitting contribution under EDLI scheme from 04/2004 to 02/2016 and under payment of administrative charges from 01/2015 – 12/2015. All the above violations committed by the appellant were of very serious nature and the appellant cannot plead that there was no mensrea is not enrolling major part of their employees to provident fund membership or not remitting the contribution properly and in time. The learned Counsel also submitted that the audit certificate and audit memorandums now produced by the appellant shall not be relied to reduce the quantum of damages as the documents were not properly proved before the respondent authority by

competent persons. In ***Aluminium Corporation Vs Their Workman, 1964 4 SCR 429***, the Hon'ble Supreme Court held that the mere statements in the balance sheet as regards current assets and current liability cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet has to be established by proper evidence in court by those responsible for preparing the balance sheet or by other competent witness. The learned Counsel for the respondent also relied on a latest decision dated 23.02.2012 of the Division Bench of Madras High Court in ***M/s. Ramanathapuram District Co-operative Printing works Ltd. Vs Employees Provident Fund Appellant Tribunal***, WA(MD)No. 525/2012 to argue that when the respondent authority has considered all the relevant circumstances and the ground of mensrea in the impugned order, this Tribunal may not interfere with the finding by the respondent authority. It is true that the appellant violated the provisions of the Act and Schemes denying social security benefits to a huge number of employees. To that extend the argument of the learned Counsel for the

respondent that there was no mensrea in belated remittance of contribution can be accepted. However it is a settled legal position that financial constraints will be a mitigating circumstance that is required to be considered while levying damages under Sec 14B of the Act. Though the appellant failed to substantiate their claim of financial difficulty before the respondent authority, has now produced the audit certificates of the co-operative department for the year 2016-2017, 2017-2018, 2018-19. These documents clearly establish the financial constraints of the appellant establishment. The appellant cannot claim any relief for the employees share deducted from the salary of the employees and not remitted in time. However the appellant is entitled for some relief in assessment of damages, against employer's share.

9. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 70% of the damages.

10. Hence the appeals are partially allowed, impugned orders are modified and the appellant is directed to remit 70% of the damages assessed under Sec 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer