



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

सत्यमेव जयते

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer
(Wednesday, 6th day of October 2021)

APPEAL No. 371/2019

Appellant

M/s. Maryland Public School
East Kaloore.P.O.
Thodupuzha,
Idukki – 685 608

By Adv. C.B. Mukundan

Respondent

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 05/07/2021
and this Tribunal-cum-Labour Court on 06/10/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KTM/20804/
APFC/Penal Damage/14B/2019-20/3017 dated 01/08/2019
under Section 14B of EPF and MP Act (hereinafter referred to as
'the Act') for belated remittance of contribution for the period

07/2013 - 09/2018. Total damages assessed is Rs. 3,01,403 /- (Rupees Three lakh, One thousand four hundred and three 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 an unaided English Medium School. The appellant school is situated in a remote area and is functioning without any profit motive. The school started in year 2003 with 30 students and is now providing classes' upto 9th standard. Though the number of employees were less, the appellant voluntarily got itself covered under the provisions of the Act. The appellant received a summons dated 31/05/2019 alleging delay in remittance of contribution and directing to show cause why damages and interests shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing 22/07/2019. A copy of the summons along with statements of accounts are produced and marked as **Annexure A3**. Appellant appeared before the respondent and explained the circumstance which delayed the remittance of contribution. It was pointed out by the appellant that the delay in remittance was due to financial

constrains of appellant establishment. The appellant establishment is working in a very remote area and it was very difficult to collect fees from very poor students. The delay in getting the approval from the state government for starting new standards also contributed a lot for the financial situation. The Government of Kerala rejected the No objection Certificate for CBSE and the appellant was forced to approach Hon'ble High Court of Kerala in W.P.(C)No. 5851/2013 for getting No Objection Certificate for CBSE affiliation. The balance sheet and Profit & Loss A/c of the appellant for the period from 2013 – 2016 would go to show that there was no profit for those periods. True copies of balance sheet and Profit & Loss A/c for the period 2013 – 2014, 2014 – 2015 & 2015 – 2016 are produced and marked as **Annexure A4-A7**. The respondent issued the impugned orders in a mechanical way. The calculation of damages and interests was not done as per the circular dated 29/05/1990 issued by the headquarters of the respondent organisation. In the above circular it was mentioned that the damages under Sec 14B also includes interest chargeable under Sec 7Q of the Act. A true copy of said

circular is produced and marked as Annexure A8. The above circular was analysed by the Hon'ble High Court of Delhi in **Systems Stamping Vs Employees Provident Fund Tribunal and another**, 2008 LLR 485. The respondent authority failed to exercise its discretion granted under Sec 14B of the Act and Para 32 A of EPF scheme. The respondent also failed to notice that there is no mensrea or intentional delay in remittance of contribution. The respondent did not supply any documents regarding the belated payments as contended by them. Due to the delay in initiating the proceedings the appellant is prejudiced as the records for the whole period were not retained by them. The respondent authority failed to rely on the recent judgement of Hon'ble Supreme Court and as well as High Court stating that mensrea is a relevant consideration while assessing damages under Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. It is a statutory obligation on the part of the appellant to remit the contribution within 15 days of close of the month. Any delay in remittance of contribution will attract damages under Sec 14B of the Act read with Para 32A of EPF

Scheme. The contention of financial difficulty is false. It is evident from the calculation sheet accompanying Annexure A3 summons that the contribution was remitted after delay of more than 5 years for certain months, without any explanation offered for such delay. The representative of the appellant who attended the hearing did not produce any documentary evidence to support his claim of financial difficulties. Annexure A4 to A7 do not prove the contents there off and the appellant has not even chosen to explain the so called financial difficulty based on the records. Mere production of selected pages from the annual report without the statement and recommendations of the auditors amounts to suppression of evidence. Further a comparative analysis of Annexure A4 to A7 would show the growth in income from tuition fees of the schools. For the period from 2012-2013 to 2015-2016 the income has approximately grown by 111% and therefore the plea of financial difficulty cannot be accepted and is contrary to the records produced.

4. The appellant establishment is covered under the provisions of the Act. Admittedly there is delay in remittance of

provident fund contribution for the period from 07/2013 – 09/2018. The respondent therefore initiated action for assessing damages under Sec 14B and issued a notice enclosing therewith a statement showing the delay in remittance of contribution. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and pleaded financial difficulty for delayed remittance of contribution. The appellant did not produce any documents to substantiate their claim of financial difficulty before the respondent authority. The respondent authority therefore issued order assessing damages. A separate order was also issued quantifying the interest payable under Sec 7Q of the Act. In this appeal the appellant has taken basically two grounds. One is with regard to the financial difficulty of the appellant establishment and second is with regard to the Annexure A8 circular issued by the head office of respondent organisation. The appellant produced the selected pages of the balance sheet for the year ending 31/03/2013, 31.03.2014, 31.03.2015 and 31/03/2016. According to the learned Counsel to the appellant, these documents will prove

the financial constraints of appellant establishment during the relevant point of time. The learned Counsel for the respondent on the other hand, denied the claim of the appellant stating that the documents now produced are also selected pages of the balance sheet and in the absence of proper explanation, the contents of the same cannot be accepted. The Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen and others**, Civil Appeal No. 238 & 818 of 1962 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 are to be established in proper evidence by those responsible for preparing balance sheet or by any other competent witnesses. Even if the balance sheets are admitted in evidence, it is seen that the excess of income over expenditure during these years are so meagre that it cannot be considered as a reason for delayed remittance of provident fund contribution. Further these documents clearly establish that the salary of the employees' were paid in time and the employees' share of contribution is deducted from the salary of the employees. The

employees' share of contribution deducted from the salary is shown in balance sheet as an income and therefore it is clear that the employees' share of contribution is deducted from the salary of the employee. As rightly pointed out by the learned Counsel for the respondent, the delay in remittance of contribution in many months is beyond 5 years and the average delay is that of three years in remittance of contribution. Hence it is clear that the appellant was holding the employees' share of contribution deducted from the salary of the employees for more than 3 years and upto a period of 5 years. The non-payment of employees' share of contribution deducted from the salary of employee is an offence under Sec 405/406 of Indian Penal Code. Having committed the offence of breach of trust, appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution. Therefore the documents now produced by the appellant will not support the case of the appellant in anyway.

5. The learned Counsel for the appellant relied on Annexure A8 circular dated 25/09/1980 to argue that the Sec

14B damages also includes Sec 7Q interest and therefore separate assessment of interest for the relevant period is illegal. The learned Counsel of the appellant relied on the decision of Hon'ble High Court of Delhi in **System Stamping and another (supra)** EPF Scheme 1952 and Para 32 A was amended as per GSR 521 dated 16/08/1991 and was made effective with effective from 01/09/1991. After the amendment of Para 32A, the Annexure A8 circular has no relevance and the Hon'ble High Court of Delhi has not taken into account the amendment brought in the Para while passing the judgement in the above cited case.

6. In view of the above discussion the appellant establishment do not deserve any sympathy particularly for the delay of more than 5 years in remitting the employees' share of contribution deducted form the employee salary. However considering the fact that the appellant is an educational institution working in a remote area, some relief can be given in the damages assessed under 14B of the Act.

7. Considering the facts, circumstances and pleadings 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 assessed under Sec 14B.

8. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 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 U/s 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 U/s 7Q of the Act is not appealable.

9. Hence the appeal is partially allowed, the impugned order under Sec 14 B 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