



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday, the 4th day of October 2021)

APPEAL No.544/2019
(Old ATA No. 758 (7) 2010)

Appellant

M/s. Kerala Land Development
Corporation Ltd.
Museum Bails Compound
TC 11/570, Kowdiar P O
Trivandrum – 695 003

By Adv. B.V.Deepak

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Pattom, Trivandrum – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 28/04/2021
and this Tribunal-cum-Labour Court on 04/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/12536/
RO/TVM/PD/NS/2010/8992 dated 12/10/2010 assessing

damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 10/1980 to 02/2005. Total damages assessed is Rs.54,28,505/- (Rupees Fifty Four Lakhs twenty eight thousand five hundred and five only).

2. Appellant is a Corporation fully owned by Government of Kerala engaged in the development of agricultural infrastructure within the state of Kerala. A true copy of the Memorandum of Association of the appellant is produced as **Annexure A-2** and a copy of the Articles of Association of the appellant is produced as **Annexure A-3** to show purpose and objective of formation of appellant Corporation. From the very inception of the appellant Corporation, the entitlements to terminal benefits including Provident Fund was decided in consultation with trade unions. Since the employees were interested in maintaining the Provident Fund Account of the employees with the appellant establishment, a trust was constituted for the purpose by Government of Kerala. The Government of Kerala vide

GO(Ms.)No.256/79/AD dated 23/06/1979 approved the Scheme called "Employees Contributory Provident Fund Scheme 1976". The Scheme provides for contribution, the management of the assets, investments etc. of the provident fund collected from the employees along with the management contribution. As per the audited balance sheet of the trust as on 02/2004, an amount of Rs. 2,35,55,284.59 paisa was outstanding in the account. The money was deposited in Union bank of India in Flexi Bonds of Industrial Development Bank of India, Indira Vikas Pathra etc. The respondent organisation vide letter No.12536/Ext.1(1)/91 dated 20/09/1991 informed that the appellant establishment is covered under the provisions of the Act under the schedule head, "Building and Construction Industry" and it was also informed that the appellant establishment stands covered w.e.f. 31/10/1980. The communication received from the office of the respondent is produced and marked as **Annexure A-4**. The employees of the appellant wanted to continue with the provident fund trust created exclusively for the appellant establishment and therefore the Board of Directors passed a resolution to that

effect. A copy of the resolution No. 2077 dated 22/01/2001 is produced and marked as **Annexure A-5**. In the meanwhile the respondent started action for securing compliance under the provisions of the Act and issued a letter dated 19/02/2004 requesting to furnish monthwise salary details of all the employees from November 1980. A copy of the letter is produced and marked as **Annexure A-6**. The appellant furnished all the required information's wide its letter dated 25/03/2004. Copy of the reply is produced and marked as **Annexure A-7**. The respondent initiated an enquiry under Sec 7A of the Act and directed vide its notice dated 29/11/2004 to appear before the Asst. Commissioner on 09/12/2004. A true copy of the said notice is produced and marked as **Annexure A-8**. The contributions from October 2004 was being remitted with the office of the respondent organisation and all the transactions from the employees contributory provident fund discontinued w.e.f. 01/01/2004. Since there was pressure from the employees of the appellant, the appellant establishment requested the respondent authority to communicate the final decision quantifying the dues to be paid

by the appellant toward provident fund contribution. The respondent authority vide its order dated 06/12/2004 informed that an amount of Rs. 2,22,64,644.75 is required to be paid towards provident fund contribution. A copy of the said order is produced and marked as **Annexure A-9**. The Board of Directors decided to seek 45 days' time to transfer the funds from the existing trust to PF organisation. The respondent authority issued an order of attachment of the bank account of the appellant and directing them to transfer an amount of Rs. 2,22,64,644.75. A true copy of the said order dated 28/02/2008 is produced as **Annexure A-10**. The appellant filed WPC No. 7274/2005 before the Hon'ble High Court of Kerala seeking a declaration that the employees Provident Fund and Miscellaneous Provisions Act 1952 would not apply to the appellant. By order dated 03/03/2005, the Honourable High Court stayed the Annexure A10 order dated 28/02/2005. The copy of the Interim Order of Hon'ble High Court of Kerala is produced and marked as **Annexure A-11**. The Board of Directors of appellant establishment in its 207th meeting held on 11/03/2005 decided to transfer the funds from the existing

trust to the respondent organisation and continue compliance with the respondent. The matter was discussed with the respondent authority and accordingly the Board of Directors by its resolution number 2295 dated 12/01/2007 resolved to implement the provisions of the Act and schemes and also seek exemptions under Sec 17(1)(a) of the Act. The Government was also informed vide **Annexure A-12** that the Kerala Land Development Corporation Employees Contributory Provident Fund Rules were reconstituted and copy of the same is provided and marked as **Annexure A-13**. The appellant also submitted an application seeking exemption under Sec 17(I)(a) of Act before the respondent authority. The respondent authority directed the appellant to continue compliance with the respondent organisations till a final decision is taken on the exemption application given by the appellant. A copy of the said letter dated 28/05/2008 is produced and marked as **Annexure A-14**. The respondent authority issued a corrigendum order dated 11/05/2010 clarifying that the order dated 28/05/2008 would be effective from 31/10/1980. A copy

of the said order dated 11/05/2010 is produced and marked as **Annexure A-15**.

3. The respondent authority issued a notice dated 15/02/2010 directing the appellant to show cause as to why interest under Sec 7Q and damages under Sec 14B of the Act shall not be recovered from the appellant for belated remittance of contribution. A true copy of the said notice is produced and marked as **Annexure 18**. The hearing was held on various dates. The respondent authority vide order dated 12/10/2010 ordered that an amount of Rs. 54,28,505/- (Fifty four lakhs twenty eight thousand five hundred and five only) shall be recovered as damages from the appellant for belated remittance of contribution for a period from 10/1980 – 02/2005. The Appellant – Corporation is a Government of Kerala undertaking running at a huge loss as evidenced by the balance sheet for the last three financial years. True copy of the balance sheet and Profit & Loss A/c for the year ending 2008 is produced and marked as **Annexure A-19**. True copy of balance sheet of Profit and Loss A/c for year ending 31/03/2019 is produced and

marked as **Annexure A-20**. True copy of balance sheet and Profit & Loss for the year ending 2010 is produced and marked as **Annexure A-21**. In the event the appellant is constrained to pay the amount ordered to be recovered from it, it will force the appellant to close down its operation to the detriment of the agricultural sector in the State of Kerala. The decision of Hon'ble Supreme Court of India in the case of **Employee's State Insurance Corporation Vs HMT Ltd.**, 2008 03 SC Cases 35 is applicable to the facts of the present case. The respondent failed to exercise its discretion provided under Sec 14B and also Para 32A of EPF scheme.

4. The respondent filed counter denying the above allegations. The appellant establishment was covered under provisions of the Act w.e.f. 31/10/1980 though the coverage intimation was issued only on 20/09/1991. The appellant establishment did not start compliance. The appellant failed to comply with the provisions of the Act w.e.f. 11/1980 – 02/2005. The appellant remitted the contribution belatedly. There was huge delay in remittance of contribution. Hence a notice dated

15/02/2010 was issued to the appellant under Sec 14B of the Act to show cause why damages as stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme shall not be recovered from the appellant. The appellant was also given an opportunity for personnel hearing on 05/03/2010. The Chairman and MD of the appellant attended the hearing and submitted that they started compliance w.e.f. 01/11/1991. It was also pointed out that the appellant establishment has requested for exemption under Sec 17(1) of the Act. The respondent authority pointed out that the delay in remittance of contribution will attract damages and there cannot be any settlement regarding the same. The appellant establishment will come within the activity of “building and construction” industry and is rightly covered w.e.f. 31/10/1980. The appellant ought to have transferred the Provident Fund contribution maintained with the trust immediately on coverage under the provisions of the Act. The respondent organisation is liable to pay interest to the members of the fund from the due date on cumulative balance at the rate fixed by the Central Government irrespective of the fact whether the contribution is

remitted by the appellant within the time or not. It is to take care of such contingency that Sec 14B is incorporated in the Act and also to ensure that the employers are restrained from committing such defaults in future. Para 30 & 32 of EPF Scheme cast a statutory obligation upon the appellant to pay the dues within stipulated time. The appellant cannot escape the liability to pay contribution in time due to reasons of scarcity of funds.

5. The facts of the case elaborated by the learned Counsel for the appellant would clearly show the reasons for belated remittance of contribution. The appellant is a Government Corporation. The appellant decided to have its own trust for maintaining PF fund of its employees and therefore constituted a trust with the approval of the Government wherein the contribution by the appellant and its employees were deposited. When the respondent organisation came to the picture, they directed the appellant establishment to start compliance from November 1980 as an unexempted establishment till the exemption application is finalised. Since

there was no compliance, the respondent authority initiated action under Sec 7A of the Act to quantify the dues and recover the same from the appellant. The respondent authority issued an order under Sec 7A of the Act and initiated action for the recovery of assessed amount by attaching bank account of the appellant establishment under Sec 8F of the Act. The appellant challenged the said order before Honourable High Court of Kerala and Honourable High Court of Kerala stayed the operation of Sec 8F order issued by the respondent authority. In the meanwhile the appellant Corporation decided to comply with the provisions of Act and Schemes and to seek exemption from Provident Fund Scheme under Sec 17(I)(a) of the Act. Since the respondent insisted that the appellant will have to comply with them till a final decision is taken on the exemption application, the appellant remitted the contribution as assessed by the respondent authority under Sec 7A of the Act. Once the remittances are received and accounted, the respondent issued notice under Sec 14B of the Act. The appellant entered appearance and explained the circumstances for the belated remittance of contribution. After considering the circumstances

of the case, the respondent authority issued the impugned order assessing the maximum damages. The question to be decided in this appeal is whether the appellant is fully responsible for the delay in remittance of contribution. If so, what can be the appellant's liability under Sec 14B of the Act? As already stated in previous paras the appellant establishment has taken all bonofide action to ensure that social security benefits are extended to its employees. Therefore they started a provident fund trust of their own, without probably understanding the legal formalities to be followed while remitting the contribution in a private trust formed by the establishment. It is pointed out by learned Counsel of the appellant that they raised the issue of applicability before the Honourable High Court. However after filing the Writ petition before the Honourable High Court, the appellant establishment decided to start compliance under the provisions of the Act. The right course open to the appellant was to approach the respondent authority seeking exemption under Sec 17 of the Act. The appellant did approach the respondent authority requesting exemption under Section 17(1) of the Act. The

respondent authority insisted that the appellant shall comply as an unexempted establishment pending grant of exemption. They ought to have started compliance with the respondent organisations immediately. Instead of this, the appellant retained the provident fund money in their provident fund trust even after receipt of the notice from the respondent organisation. By the time they took a decision to transfer the fund, there was considerable delay. Going by the facts of the case, it may not be right to say that there was intentional delay on the part of the appellant. However the delay was so huge that they cannot escape the liability to pay damages. As rightly pointed out by the learned Counsel, the respondent organisation, is liable to pay interest to the employees on a cumulative basis from 1980 and therefore the appellant will have to share a part of the same for being the loss of interest sustained to the organisation. It is also seen that the appellant establishment was investing money in bonds and securities and earned interest for the same. Therefore it is not correct on the part of the appellant to say that the functioning of the appellant will be effected adversely if they are forced to remit the damages

as claimed by the respondent. The learned Counsel for the appellant argued that the respondent authority ought to have considered the financial constrains of the appellant establishment. According to the learned Counsel for the respondent, the appellant produced the balance sheet for 2008 – 2010 to substantiate the financial difficulties. However the period of default for which the impugned order is issued is for the period from 11/1980 – 02/2005. According to him there is no document available to substantiate the claim of financial difficulty during the relevant point of time.

6. 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 U/s 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 U/s 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. Considering all 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 70% of the damages assessed under Sec 14B of the Act.

Hence appeal is partially allowed and the impugned order under Sec 14B is modified and appellant is directed to remit 70% of the damages.

Sd/-

(V. Vijaya Kumar)
Presiding Officer