



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Tuesday the 16<sup>th</sup> day of November 2021)

**APPEAL No.682/2019**

Appellant : M/s. Karuna Hospital &  
School of Nursing  
Nedumkandam,  
Udumbanchola,  
Idukki – 685 553

By Adv. Joice George

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 26.08.2021 and this Tribunal-cum-Labour Court on 16.11.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KTM/4065/APFC/Penal Damage/14B/2019-2020/3477 dated 03.09.2019 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 04/2013–10/2018 (remittance made during the period 29.03.2017 – 31.03.2019). Total damages assessed is Rs.12,16,484/-. (Rupees twelve lakh sixteen thousand four hundred and eighty four only).

2. The appellant is a hospital and school of nursing run by Idukki Social Service Society. During the last decade, the hospital was facing financial crisis and the management was trying to maintain the hospital. However by December 2018, the management was forced to close down its activity due to financial constraints. Due to the financial difficulty for the period from April 2013 to October 2018, there was delay in payment of wages and consequently there was delay in provident fund contribution also. The respondent authority issued a show cause notice directing the appellant to show cause why penal damages shall not be levied for belated remittance of contribution. A copy of the said notice dated 02.08.2019 is produced and marked as Annexure A1. A representative of the appellant attended the hearing and submitted that the delay occurred due to reasons beyond the control of the appellant. It

was also pointed out that the appellant establishment was closed due to financial difficulty. A copy of the certificate issued by Assistant Labour Officer certifying that the licence of the appellant hospital was cancelled and the hospital has not been functioning completely is produced and marked as Annexure A2. Ignoring the contentions of the appellant, respondent authority issued the impugned order.

3. The respondent failed to exercise the discretion available to him under Sec 14B of the Act and also Para 32A of EPF Scheme. The respondent authority could have examined whether the non-payment of contribution was wilful and mensrea can be attributed to the appellant. The Hon'ble High Court of Kerala in ***Indian Telephone Industries Ltd. Vs Assistant Provident Fund Commissioner***, W.P.(C)No. 32515/2005 held that the authority exercising power under Sec14B has the discretion to reduce damages. The Hon'ble High Court also held that unless there is a deliberate act of defiance of law or contumacious conduct or dishonest intention or disregard for statutory obligation, the defaulter should not be penalised.

4. The respondent filed counter denying the above allegations. There was delay in remittance of contribution during the period 04/2013 – 10/2018. The respondent therefore issued a notice to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and pleaded financial difficulty. No documents whatsoever were produced to prove the financial difficulty of the appellant establishment. The respondent authority therefore issued the impugned order taking into account the submissions of the representative of the appellant. The Hon'ble Supreme Court of India in ***Hindustan Times Vs Regional Provident Fund Commissioner***, AIR 1998 SC 688 held that financial problems cannot be a justifiable ground for the employer to escape the liability under Sec 14B of the Act. Though the appellant pleaded that the appellant establishment is closed in December 2018, the appellant has not established that the closure of the appellant was due to financial crisis. The appellant failed to raise the issue of financial crisis before the respondent authority. Non production of any evidence in support of financial crisis will result in adverse inference that the pleading is false. The Hon'ble Supreme Court

of India in ***Organo Chemical Industries Vs Union Of India***, 1979 LAB IC 1261 held that, even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time.

5. There is no dispute regarding the fact that there was delay in remittance of provident fund contribution. The appellant however pleaded that there was delay in payment of wages to the employees which caused the delay in remittance of contribution. The appellant failed to produce any documents to substantiate the financial crisis or delay in payment of wages to its employees. 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 under Sec 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 under

Sec 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. The appellant however produced Annexure A2 certificate dated 19.08.2019 issued by the Assistant Labour Officer stating that the appellant establishment is closed as on 19.08.2019. The appellant relied on the decision of the Hon'ble High Court of Kerala in ***Indian Telephone Industries Ltd. Case (supra)***. However it was pointed out by the learned Counsel for the respondent that the above decision of the Single Division Bench of Hon'ble High Court of Kerala is modified by the Division Bench. The learned Counsel for the respondent also pointed out that the appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time. The question of mensrea in 14B

proceedings is considered by the Hon'ble Supreme Court of India in a recent decision. The Hon'ble Supreme Court of India in **Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation**, Civil Appeal No. 2136/2012 after examining its decision 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 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 actusreus 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. However considering the fact that the appellant establishment is closed from 2019, I am of the considered view that appellant establishment deserves some relief as far as damages under 14B of the Act is concerned.

7. 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 80% of the damages.

8. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 80% of the damages.

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