



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

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

(Monday, the 21st day of March 2022)

APPEAL No. 701/2019

Appellant : Cherpulassery Municipality
Municipal Office,
P.O.Cherpulassery
Palakkad – 679 503

By Adv. Shameena Salahudheen

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Bhavishyanidhi Bhavan, Eranhipalam
Kozhikode – 673 006

By Adv.(Dr)Abraham P Meachinkara

This case coming up for final hearing on 30.12.2021 and this Tribunal-cum-Labour Court on 21.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KKD/1690135/ ENF-4(2)/14B/2019-20/3286 dated 19.09.2019 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 11/2015 to 05/2019. The total damages assessed is Rs. 71,428/-(Rupees Seventy one thousand four hundred and twenty eight only).

2. The appellant is a Municipality found on 01.11.2015. Before the said date, Cherpulassery Grama Panchayath was performing the functions of a Panchayath under the Kerala Panchayath Raj Act, 1994. Though the appellant municipality was formed on 01.11.2015, the employees' of the erstwhile panchayath was working under the appellant Municipality on temporary basis. The number of said employees never exceeded 19. In November 2017, the Enforcement Officer of the respondent organisation conducted an inspection and instructed the appellant to enrol all the employees under the provisions of the Act. The appellant thereafter submitted an application for online registration and a code number was provided on 06.02.2018. Though the appellant establishment is not coverable under the provisions of the Act, it was decided to enrol the eligible employees to the benefit of the Act. The appellant therefore started deducting the contribution from the employees' w.e.f. 01.01.2018. For the period from 01.11.2015 to 31.12.2017 the appellant did not deduct any contribution from the

employees. On 19.05.2018, the Municipal Council took a decision to remit the employers share with the respondent organisation. A true copy of the decision taken by the Municipal Council is produced and marked as Annexure A1. Due to lack of knowledge in handling electronic payment, there was delay in remittance of contribution till November 2018. Till May 2019, the appellant could not remit the contribution in time due to difficulties in making electronic payments. From November 2018 till May 2019, the appellant remitted all the contributions. The respondent authority issued a notice dated 11.07.2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing on 06.09.2019. A true copy of the notice under Sec 14B of the Act is produced and marked as Annexure A2. A representative of the appellant attended the hearing and submitted a written statement elaborating the reasons for delay. A copy of the written statement is produced and marked as Annexure A3. It was specifically pleaded that the delay in remittance was not intentional. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is

produced and marked as Annexure A4. The appellant failed to use its discretion provided under Sec 14B while issuing the impugned order. There is no mensrea on the part of any of the officers of the appellant municipality. The Hon'ble Supreme Court in ***Mcleod Russel India Ltd. Vs Regional Provident Fund Commissioner and Others***, 2014, 15 SCC 263, and in ***Assistant Provident Fund Commissioner Vs the Management of RSL Textiles India Pvt. Ltd.*** Civil Appeal No. 96-97 of 2017 held that presence or absence of mensrea is a determinative factor while imposing damages under Sec 14B of the Act. The impugned order has been issued against Cherpulassery Grama Panchayath which is a non-existent entity.

3. The respondent filed counter denying the above allegations. The appellant establishment is liable to remit contribution within 15 days of close of every month. The appellant delayed remittance of contribution for the period from 11/2015 – 05/2019. When there is delay in remittance of contribution, the appellant is liable to remit damages under Sec 14B of the Act read with Para 32A of EPF Scheme. The respondent therefore initiated action under Sec 14B and a notice along with a detailed delay statement was forwarded to the

appellant. A representative of the appellant attended the personnel hearing on 06.09.2019. He admitted the delay. Therefore the respondent authority issued the impugned order. The appellant municipality was brought under the provisions of the Act from 11/2015. The averment in the appeal that there was delay in remittance of contribution due to the inexperience of employees of appellant in handling electronic remittance cannot be accepted as a ground to escape the provident fund liability. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, held that mensrea is not an essential ingredient for contravention of the provisions of a Civil Act. The delay in taking a decision to implement the provision by the municipal council cannot be pleaded as a ground for delayed remittance of contribution. The appellant establishment was registered in the name of M/s. Cherpulassery Grama Panchayath under the ownership of Smt.Prakkatte Vijayalakshmi, Municipal Secretary, Cherpulassery, Palakkad with PF Code number KR/KKD/1690135 and the contribution of the employees had been remitted under the code number. The code number is allotted on the basis of the online application filed by the appellant and

therefore the respondent cannot be found fault with for issuing the impugned order in the name of the establishment which is registered with the respondent organisation.

4. The appellant establishment delayed remittance of contribution for the period from 11/2015 – 05/2019. The respondent therefore initiated action for assessing damages. The respondent authority issued notice to the appellant along with a detailed statement of month wise delay. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and admitted the delay and filed a written statement requesting for the waiver of damages. The respondent authority issued the impugned order after considering the request.

5. In this appeal, the learned Counsel for the appellant pleaded that the appellant establishment is allotted a code number for remitting contribution only on 06.02.2018. The Municipal Council took a decision on 19.05.2018 to implement the provision and started remitting contribution from 11/2018. According to the Council for the appellant, they started collecting the employees' share of contribution only from January 2018. There was further delay in remittance of contribution in view of

the fact that the employees of the appellant were not well versed with the electronic mode of payment. According to the learned Counsel for the respondent, the appellant establishment was liable to start compliance from 01.11.2015 after the formation of the Municipal Council. The fact regarding the statutory requirement was also communicated to the appellant by the Enforcement Officer in November 2017. The appellant establishment started deducting contribution from employees from January 2018 and the contribution was remitted by the appellant only during November 2018 – May 2019. According to the learned Counsel for the respondent, the appellant cannot escape the liability under Sec 14B in view of the delay committed by them during the relevant point of time.

6. As rightly pointed out by the learned Counsel for the respondent, the liability under the Act started w.e.f. 01.11.2015 from the date of formation of Municipality. However the municipality started independently working only from 2017. In 2017 itself the Enforcement Officer of the respondent organisation informed the appellant regarding the liability to remit contribution for its temporary employees. The appellant started recovering contribution from the employees from

01/2007 but remitted the same only from 01/2018 – 05/2019. The reason for the delay is stated to be the inability of the employees of the appellant to handle electronic payment. Though the reason given by the appellant for delay in remittance from 01/2018 – 05/2019 cannot be accepted, the delay in remittance prior to this can be attributed to genuine reason when a new municipality is formed. There was also delay in allotting code number to the appellant by the respondent.

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 60% of the damages assessed under Sec 14B of the Act.

Hence the appeal is partially allowed, the impugned order under Section 14B of the Act is modified and the appellant is directed to remit 60% of the damages.

Sd/-
(V.Vijaya Kumar)
Presiding Officer