



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Tuesday the, 1st day of March 2022)

APPEAL No. 792/2019

Appellant : M/s. Central Travancore Specialists
Hospital Ltd.
Mulakuzha, Chengannur
Alappuzha – 689 505.

By M/s. Menon & Pai

Respondent : The Regional PF Commissioner – 1
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan
Kaloor, Kochi – 682 017.

This case coming up for final hearing on 15.12.2021 and this Tribunal-cum-Labour Court on 01.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KCH/19227/PENAL DAMAGES/2019/9449 dated 28.11.2019 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as ‘the Act’) for belated remittance of contribution from 04.12.2014 – 31.07.2019. The total damages assessed is

Rs. 18,27,841/- (Rupees Eighteen lakh twenty seven thousand eight hundred and forty one only)

2. The appellant is a Specialist Hospital registered under the Companies Act 1956. The hospital started functioning in the year 2000. The appellant was complying with the provisions of the Act from the very date of inception. While the income of the hospital was low, the cost of health care and other expenses increased day by day. Since 2015, the appellant company was running at a cash loss of approximately 9 – 10 crores annually. The hospital was run on loan taken from various financial institutions. The salary of the employee's were paid from the amounts borrowed from the Directors. The accumulated loss of the company as on 31.03.2019 is Rs. 84,38,68,283/-. True copy of the balance sheet of the appellant for the years 2015 – 16, 2016 – 17, 2017 – 18 and audit report with financial statements for the year 2018 – 19 is produced and marked as Annexure A1, A1(a), A1(b), A1(c) respectively. Due to the financial difficulty, there was delay in remittance of contribution. While the borrowing capacity of the appellant was 35 crores, appellant exceeded the limit which came to Rs 39.93 crores. While so a group of

shareholders of the company filed a petition for winding up the appellant company in 2011, before the Hon'ble High Court of Kerala as CP No. 34/2011. A copy of the company petition is produced and marked as Annexure A2. In the meanwhile the appellant received summons dated 19.08.2019 from the respondent directing to show cause why damages cannot be recovered for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing. A representative of the appellant appeared before the respondent authority and explained the reasons for belated remittance of contribution. Without taking into account the financial constraints pleaded by the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A3. The respondent authority failed to exercise its discretion available under Sec 14B of the Act read with Para 32 A of the Scheme. In **R.P.F.C Vs S.D.College Hoshiarpur**, 1997 (2) LLJ 55, the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. The Division Bench of the Hon'ble High Court of Kerala in **Regional Provident Fund Commissioner Vs Harrisons Malayalam Ltd**, 2013 (3) KLT

790, held that the officer has to exercise his discretion while looking at the mitigating circumstances which includes financial difficulty. The Hon'ble High Court also held that existence of mensrea and actus rea to contravene a statutory provision must also been held to be a necessary ingredient for levy of damages or the quantum thereof. The Hon'ble Supreme Court in ***Mcleod Russel India Ltd. Vs RPFC***, AIR 2015 SC 2573, and ***Assistant Provident Fund Commissioner, EPFO And another Vs Management of RSL Textiles India Pvt. Ltd.***, 2017 (3) SSC 110 held that the presence of mensrea would be a relevant factor in imposing damages under Sec 14B. The appellant establishment was prompt in remitting contribution till December 2015. Thereafter there was delay in remittance of contribution. The salaries of the employee's were paid because of infusion of funds by the Director's of the appellant company. Presently 203 staffs are working in the appellant establishment. Any coercive action by the respondent authority will jeopardize the working of the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant is a hospital covered under the

provisions of the Act w.e.f 31.03.2000. The compliance position of the appellant establishment was not satisfactory. There was delay in remittance of provident fund contribution. The respondent therefore initiated action under Sec 14B of the Act for levy of damages for belated remittance of contribution. The respondent issued summons dated 19.08.2019 directing the appellant to show cause why damages shall not be assessed for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing. The representative of the appellant attended the hearing and pleaded financial difficulty as a reason for delayed remittance of contribution and also produced annual reports for the period 2014–15 to 2017–18. There was no dispute regarding the delay statement. The financial difficulty claimed by the appellant is not a defence to delay the remittance of provident fund contribution. The purpose of the Act is to insulate the social security needs of workers from the financial fortunes of the appellant establishment. If the ill health of the establishment is to affect the social security needs of the employees, it would defeat the very legislative purpose. The factual background of the decision of the Hon'ble Supreme Court in ***Regional Provident Fund Commissioner Vs S.D College (Supra)*** is entirely different.

In the said case, the college authority continued to deposit the amount of provident fund contribution with the university inspite of directions of the Hon'ble High Court. The decision of the Division Bench of the Hon'ble High Court of Kerala in ***Regional Provident Fund Commissioner Vs Harrisons Malayalam (Supra)*** is also on an entirely different set of facts. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 held that the reason for introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contributions to the fund, most often with the ulterior motive of misutilising not only their own but also the employee's contribution.

4. The appellant establishment delayed remittance of contribution for the period from 06/2014 to 11/2018, thereby attracting damages under Sec 14B of the Act. The respondent initiated action under Sec 14B read with Para 32A. A detailed delay statement was also issued to the appellant establishment. A representative of the appellant attended the hearing and pleaded financial constraints as the reason for belated remittance of contribution and also produced the financial statements to

substantiate the same. After considering the representation of the appellant, the respondent issued the impugned order.

5. In this appeal also, the learned Counsel for the appellant pleaded financial difficulties as a ground for belated remittance of payment. The appellant also produced the financial statements for the relevant period. According to the learned Counsel for the appellant, the accumulated loss of the appellant company as on 2015–16 was 54.66 crores and as on 2018–19 the accumulated loss increased to 84.38 crores. There was also a corresponding increase in operating loss for the appellant establishment. The learned Counsel for the respondent pointed out that the financial statements now produced by the appellant shall not be taken into account for deciding the quantum of damages. The Hon'ble Supreme Court of India in ***Petlad Turkey Red Dye Workers Company Limited Vs Dyes and Chemical Workers Union and Others***, 1960 KHC 717, held that the current assets and liabilities as reflected in the balance sheet cannot be accepted unless the figures are proved through competent persons before court of law. The Hon'ble Supreme Court of India in management of ***Trichinopoly Mills Ltd Vs National Cotton***

Textile Mills Workers Union, AIR 1960 SC 1003, held that balance sheet does not by itself prove any facts and that the law requires that such important facts are to be proved by employer after giving an opportunity to contest the correctness of such evidence. However it is seen that the appellant was having current assets of Rs. 2.66 crores in the year ending 31.03.2015 and Rs. 2.76 crores for the year ending 31.03.2016 and Rs.2.52 crores for the year ending 31.03.2017. Further it is seen that the revenue from operation for the year ending 31.03.2015 was Rs.12.39 crores and for the year ending 31.03.2016, it was Rs.11.39 crores. For the year ending 31.03.2017, the revenue from operations was Rs.11.11 crores and for the year ending 31.03.2018 it was Rs. 11.54 crores. For the year ending 31.03.2019, the revenue from operation was Rs.10.42 crores. Further it is seen that the employee benefit expenses as on 31.03.2015 was Rs.11.26 crores and for 31.03.2016, it was Rs.10.88 crores. For the year ending 31.03.2017, it was Rs.10.79 crores. And for the year ending 31.03.2018, it was Rs.11.40 crores. For the year ending 31.03.2019, it was Rs. 10.29 crores. Hence if we look at the overall financial position of the appellant establishment, though it was running on loss, there was no reason to delay the remittance

of provident fund contribution. Atleast it was not an exclusive reason for the delayed remittance of contribution.

6. The learned Counsel for the respondent pointed out that the appellant has specifically pleaded that the wages of the employees were paid in time. When the wages are paid, the employees' share of contribution is deducted or adjusted from the salary of the employee. Non-remittance of employee share of contribution deducted from the salary of the employees is an offence of breach of trust under Sec 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no intentional delay in remittance of contribution atleast to the extent of employees' share of contribution deducted from the salary of the employees.

7. The learned Counsel for the appellant pleaded that there was no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions 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 the Hon'ble Supreme Court 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.

8. The learned Counsel for the appellant pleaded that the financial crisis of the appellant establishment may be looked into while deciding the quantum of damages. On a perusal of the

financial statements now produced by the appellant, it is seen that the appellant establishment was running under loss to the tune of Rs. 9 – 10 crores every year. It has a cumulative accumulated loss of 84.38 crores as on 31.03.2019. Taking into account the fact that the appellant establishment is a hospital running in a remote area and also the financial position as disclosed above the appellant establishment deserves some accommodation damages under Sec 14B is concerned.

9. Considering the facts, pleadings and arguments 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 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 70% of the damages.

Sd/-
(V.Vijaya Kumar)
Presiding Officer