



सत्यमेव जयते

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

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

(Tuesday the 18<sup>th</sup> day of January, 2022)

**APPEAL No.357/2018**

Appellant : M/s.Lords Hospital  
Anayara  
Trivandrum - 695029

By Adv.Pallichal S. K. Pramod

Respondent : The Regional PF Commissioner  
EPFO, Regional Office, Pattom  
Trivandrum – 695004

By Adv.Ajoy P. B.

This case coming up for final hearing on 07.10.2021 and this Industrial Tribunal-cum-Labour Court on 18.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/TVM/16625/DAMAGES CELL/2018-19/3557 dt.06.08.2018 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for delayed remittance of contribution for the period from 10/2016 to 12/2017. The total damages assessed is Rs.3,62,850/-.

2. The appellant is a hospital and covered under the provisions of the Act. The appellant received a summons dt.04.05.2018 issued U/s 14B of the Act. The copy of the summons is produced as Exbt.A1. Along with Exbt.A1, a calculation statement showing the amounts payable U/s 7Q and 14B were also attached. A copy of the said statement is produced and marked as Exbt.A2. It was stated that on scrutiny of the records maintained by the respondent for the period from 01.04.2017 to 31.03.2018 there are certain payments which are made after the respective due dates which will attract damages U/s 14B and interest U/s 7Q. The appellant was also given an opportunity for personal hearing on 06.06.2018. A representative of the appellant attended the hearing on 06.06.2018 and sought time for filing objection. Without giving a further opportunity, the respondent issued the impugned order on 06.08.2018. The appellant did not receive any communication regarding adjournment on 06.06.2018. The appellant is having serious disputes in respect of statement of accounts attached along with Exbt.A1. Calculation of damages and interest simultaneously is illegal and irregular. There was delay in payment of salary to the employees which was not considered by the respondent authority. There is no deliberate withholding of contribution by the appellant establishment. The appellant is penalised twice in view of the damages U/s 14B and interest U/s 7Q. The respondent failed to follow the dictum laid down by Hon'ble High

Court of Kerala in **Harrisons Malayalam Ltd Vs RPFC**, 2012 (2) KLT Sn 74. The finding of the respondent authority that the appellant is a chronic defaulter is not correct.

3. The respondent filed counter denying the above allegations. The appellant defaulted in remitting the contribution. The respondent therefore issued a notice dt.21.05.2018 along with a detailed delay statement. The appellant also was given an opportunity for personal hearing on 06.06.2018. None appeared before the respondent authority on 06.06.2018. However in view of natural justice, the enquiry was adjourned to 06.07.2018 and to 26.07.2018. There was no representation from the appellant. The acknowledgment cards for having served the notice of hearing on 06.06.2018, 06.07.2018 and 26.07.2018 are produced and marked as Exbt.R1, R2 and R3 respectively. The appellant neither appeared nor filed any objection despite having acknowledged the summons. Sec 7Q and 14B are separate sections with distinct identity and there is no question of penalising the appellant twice in view of the above statutory provisions. The claim of the appellant regarding the financial difficulties is not supported by any evidence. Even otherwise, financial difficulties cannot be a ground for waiving or reducing damages U/s 14B of the Act. The Hon'ble Supreme Court of India in **Organo Chemicals Vs UOI**, 1979 (2) LLJ 416 SC 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'. The Division Bench of the Hon'ble High Court of Punjab and Haryana in **Elsons Cotton Mills Vs RPFC** 2001 (1) SCT 1104 (P&H) (DB) held that the poor financial capacity is not a ground for not paying provident fund contributions of the employees. In **Hindustan Times Vs UOI**, 1998 (2) SCC 242 the Hon'ble Supreme Court held that financial problems are not relevant explanation to avoid liability for provident fund default.

4. The appellant establishment delayed remittance of contribution for the period from 10/2016 to 12/2017. The respondent issued a notice U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent also enclosed a detailed delay statement showing the due date of payment, the actual date of payment, delay in remittance and proposed damages and interest. The appellant was also given an opportunity for personal hearing. The appellant failed to attend the hearing or filed any written representation before the respondent authority. Though the learned Counsel for the appellant submitted that no summons is received from the respondent authority, the respondent produced Exbt.R1 to R3 acknowledgments to substantiate the claim that the notices of adjournments were served on the appellant establishment. The

Hon'ble High Court of Bombay in **Super Processor Vs UOI**, 1994 3 LLJ 564 (Bom) held that “ Since the petitioners have chosen not to file a reply to the show cause notice and not to lead evidence in support thereof, there was nothing which was required to be adjudicated upon. Hence the impugned order cannot be assailed on the ground that it is not a speaking order “. A similar stand was also taken by Hon'ble High Court of Punjab and Haryana in **T.C.M. Woollen Mills Vs RPFC and another**, 1980 (57) FJR 222 wherein the Hon'ble High Court observed that “ Where no reply was filed by the employer against notice issued to him U/s 14B of the Act, he cannot complain that Commissioner did not make a speaking order as required by law. Unless the objections and factual matters are pressed before the Commissioner, he cannot imagine the same and adjudicate thereon”. Hence the preliminary objection raised by the appellant that the respondent issued a non speaking order in violation of the principles of natural justice cannot be sustained.

5. The learned Counsel for the appellant pointed out that the delay in remittance of contribution was due to the financial constraints of the appellant establishment. The learned Counsel for the respondent pleaded that the appellant failed to produce any documents before the respondent authority to substantiate the claim of financial difficulties. He relied on the decisions of the Hon'ble High Court of Kerala in **Sree Kamakshi Agency Pvt Ltd Vs EPF**

**Appellate Tribunal and another**, 2013 1 KHC 457, **Steel Industrials Kerala Ltd Vs APFC**, W.P.(C) no.29645/2014, **Elstone Tea Estates Ltd Vs RPFC and another**, W.P.(C) 21504/2010 to argued that non production of records to substantiate the financial difficulties is a ground for rejecting the same by the respondent authority. The appellant produced the balance sheet of M/s.Maharaja Medical Centre Pvt Ltd for the year 2015-16 and 2016-17 to substantiate their claim of financial difficulties in this appeal. The learned Counsel for the respondent relying on the decision of the Hon'ble Supreme Court in **Petlad Turkey Red Dye Works Co Ltd Vs Dyes and Chemical Workers Union and others**, 1960 KHC 717 argued that the balance sheet cannot be relied on to prove the financial status of the appellant establishment as the figures reflected in the balance sheet are not proved by the appellant through a competent witness. However on a perusal of the balance sheets produced, it is seen that the revenue income of the appellant for the year ending 31.03.2016 was Rs.20.28 Crores and for the year ending 31.03.2017 the revenue income was again Rs.20.28 Crores. It is further seen that the appellant has spent Rs.4.61 Crores being employee benefit expenses during 2016 and Rs.4.15 Crores for the year ending 31.03.2017. For an establishment having such a financial status, the financial difficulties cannot be pleaded as a ground for waiving or reducing the damages. The learned Counsel for the respondent also pointed

out that the documents now produced will clearly established that wages of the employees are paid by the appellant establishment in time. When wages are paid, the employees' share of contribution are deducted from the salary of the employees. Non payment of the employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405/406 of Indian Penal Code. The learned Counsel for the appellant also pleaded that there was no mensrea or intentional delay in remittance of contribution. The Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 after referring to its earlier decisions in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **EPFO Vs The Management of RSL Textiles India (P) Ltd**, (2017) 3 SCC 110 held that

“ Para 17. Taking note of three-Judge Bench of this Court in **UOI 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 the payment of EPF contribution by the employer under the Act is a *sine qua non* for the imposing of levy of damages U/s 14B of the Act, 1952 and *mensrea or actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations and liabilities”.

6. It is seen that for the year ending 31.03.2016, the appellant establishment was running under loss. However for the year ending 31.03.2017 the appellant has compensated for the loss during the previous year and has made a profit. However considering the pleadings of the learned Counsel for the appellant regarding the financial constraints, the appellant can be given some accommodation with regard to the damages U/s 14B of the Act.

7. Considering the facts, circumstances and pleading 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.

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

Sd/-

(V. Vijaya Kumar)  
Presiding Officer