



सत्यमेव जयते

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

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

(Tuesday the 4th day of January, 2022)

APPEAL No.389/2019

(Old no.1420(7)2015)

Appellant : M/s.Kasaragod Co-op Educational Society
Chengala
Kasaragod - 671541

By Adv.Harish Babu P.N.

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Fort Road
Kannur - 670001

By Adv.K. C. Santhosh Kumar

This case coming up for final hearing on 21.09.2021 and this Industrial Tribunal-cum-Labour Court on 04.01.2022 passed the following:

ORDER

Present appeal is filed against order no.KR/KNR/ENF-2(4)/Damages/18455/2015-16/3094 dt.21.10.2015 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 03/2012 to 09/2014. The total damages assessed is Rs.4,20,489/-.

2. The appellant is an establishment covered under the provisions of the Act. The respondent issued notice to the appellant alleging delay in remittance of contribution. The delay in remittance was not intentional. The appellant is running educational institutions by forming a society. Due to the initial hurdles in starting the educational institutions there was delay in payment of provident fund contribution. Further, the courses commenced by the appellant did not receive much acceptance and therefore the number of students were very few. This resulted in huge loss to the appellant establishment. The appellant society is providing medical relief to needy people by providing medical aid at discount rates. The appellant is also providing medical aid free of cost to people who deserve the same.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.08.2007. The appellant delayed remittance of contribution for the period 03/2012 to 09/2014. The respondent issued a show cause notice to the appellant along with a delay statement as to why damages as envisage U/s 14B of the Act should not be imposed on the appellant for delayed remittance of contribution. The appellant was also given an opportunity for personal hearing on 13.08.2015. A representative of the appellant attended the hearing on 20.10.2015. The representative of the appellant admitted the

delay, however pleaded for waiver of damages due to financial crisis. After considering the pleadings of the appellant, respondent issued the impugned order. Sec 14B of the Act provides that the Commissioner may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the Scheme. This means that the rates specified under Para 32A of EPF Scheme has to be adopted while quantifying the dues. This clearly indicates that the respondent authority has no discretion while levying damages U/s 14B of the Act. Having admitted the delay the appellant cannot plead that the impugned order imposing damages is baseless and arbitrary. The impugned order was issued after providing sufficient opportunity to the appellant. The only ground pleaded by the appellant before the respondent authority was of financial difficulties. Financial difficulties cannot be a ground for delayed remittance unless it is shown to the satisfaction of the respondent that the employees could not be paid their salaries on the due date due to financial difficulties. In **Hindustan Times Ltd Vs UOI**, 1998 1 SC 174 the Hon'ble Supreme Court held that financial difficulties cannot be a justifiable ground for the employer to escape provident fund liability. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 1 LLJ 444 (Ker) the Division Bench of the Kerala High Court held that " The Act was created for the support of the working class and is intended to keep

the fund available for the purposes for which the fund is created, lest the employer depletes it or divert it to alien purposes. To allow the employer to make contribution only when he pays wages would be to stultify the project. He cannot be permitted to divert remittance to the fund to suit his convenience setting forth sometimes reasonable grounds and too often unjustifiable grounds, but failure to pay contribution would always attract Sec 14B". The appellant society is running educational institutions and collecting fee from the students. Pleading of the appellant that they are providing medical aid at discounted rate is not a ground for delayed remittance of provident fund contribution. The contributions have to be deposited by the appellant only after the beneficiary have worked and earned the amount in terms of contract of employment and the provisions of the Act. Any effort by the employer to deny employees the legitimate dues, which they have rightfully earned in terms of the provisions of the Act, need to be looked upon with suspicion whatever the reasons given by the appellant. The Act being a social welfare legislation can be run for the benefit of employees only if the contributions are remitted by the appellant in time. Hence delayed remittance if any, will attract damages U/s 14B of the Act.

4. The only ground pleaded by the appellant in this appeal is regarding the financial difficulties of the appellant establishment. The appellant failed

to produce any documents before the respondent authority. The appellant failed to produce any documents in this appeal also to substantiate the financial difficulties of the appellant establishment at the relevant point of time. 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 also 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 RPF**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Though the appellant pleaded that there was delay in payment of wages to its employees, the appellant failed to substantiate the same before the respondent authority or in this appeal. It is to be noted that the employees' share of contribution deducted from the salary of the employees were also not remitted by the appellant in time. Non remittance of employees' share of contribution deducted from the salary of the employees

is an offence of breach of trust U/s 405/406 Indian Penal Code. It is seen from the notice dt.16.07.2015 that the delay in remittance of contribution varies from 8 days to 1004 days. The average delay in remittance of contribution is around two years. It is clear that the appellant establishment was misusing the employees' share of contribution deducted from the salary of the employees for such long period.

5. 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. Considering the facts, circumstances and pleadings, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer