



सत्यमेव जयते

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

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

(Wednesday the 5<sup>th</sup> day of January, 2022)

**APPEAL No.542/2019**

(Old no.638(7)2010)

Appellant : M/s.Ebenezar English School  
Kadampanad  
Edakkad P.O.  
Kollam - 691552

By Adv.Anil Narayan

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Parameswar Nagar  
Kollam - 691001

By Adv.Pirappancode V. S. Sudheer  
Adv.Megha A.

This case coming up for final hearing on 29.09.2021 and this Industrial Tribunal-cum-Labour Court on 05.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KLM/25044/PD/2010 dt.25.02.2010/1264 dt.18.03.2010 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 04/2002 to 07/2006. The total damages assessed is Rs.2,68,274/-.

2. Appellant is an educational institution covered under the provisions of the Act retrospectively with effect from 2007 under the provisions of the Act. The appellant establishment is situated in a remote area where economically and socially backward students are admitted in the school. The damages proposed to be assessed included the pre-discovery period also. There was delay in remittance of contribution due to financial difficulties and reasons beyond the control of the appellant. The appellant was offered a personal hearing on 25.02.2010. However the appellant could not attend the hearing. The appellant was not given the proceedings of the enquiry and received only a notice of recovery dt.02.06.2010. There was no deliberate act or wilful defiance of law or contumacious conduct on the part of the appellant. The appellant was forced to remit the contributions for the pre-discovery period and now the appellant is directed to remit damages U/s 14B of the Act. Sec 14B as it stands now is purely punitive in nature. The respondent therefore ought to have followed the dictum laid down by the Hon'ble Supreme Court in **M/s.Hindustan Steel Ltd Vs The State of Orissa**, AIR 1970 SC 253. The decisions relied on by the respondent authority are prior to the amendment and introduction of Sec 7Q in the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 04.04.2002. The appellant delayed remittance of contribution for the period from 04/2002 to 07/2006. Any belated remittance of contribution will attract damages U/s 14B of the Act. Hence a notice dt.22.01.2010 was issued to the appellant directing to show cause why damages shall not be assessed for belated remittance of contribution. The notice was issued by registered post. A detailed delay statement was also enclosed along with the notice. The appellant was also given an opportunity for personal hearing on 05.02.2010. The appellant acknowledged the receipt of notice dt.22.01.2010. The copy of the notice and its enclosures and copy of the acknowledgment card are produced and marked as Exbt.R1 and R2 respectively. The appellant vide letter dt.27.01.2010 requested for adjournment. The enquiry was adjourned to 25.02.2010. On 25.02.2010 there was no representation on the side of the appellant and there was no request for adjournment. Hence it is felt that the appellant had no objection regarding the delay statement forwarded to the appellant. The Act is a labour welfare legislation for benefit of the working class. The financial difficulties narrated by the appellant are not particular to the establishment. Similar difficulties were being encountered by most of the establishments. Recurring losses or financial stringencies cannot

be a ground for non payment of statutory dues in time. In **Sky Machinery Ltd Vs RPFC**, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving penal damages for delay in depositing provident fund contribution. In **Hindustan Times Ltd Vs UOI and Others**, 1998 2 SCC 242 the Hon'ble Supreme Court held that the financial difficulties cannot be a relevant explanation to avoid the liability for payment of provident fund dues. In **Elsons Cotton Mills Vs RPFC** 2001 (1) SCT 1104(P&H)(DB) the Division Bench of the Hon'ble High Court of Punjab & Haryana rejected the plea of financial stringencies as a ground for delayed remittance of contribution. Sec 14B of the Act was inserted with an object to act as a deterrent measure on the employers to prevent them from not carrying out their statutory obligations to make payments to provident fund. In the absence of such a provision, the employer could deliberately default in payment of their provident fund contributions and in the meanwhile utilise both their contributions as well as that of employees in their business. The pre-dominant object of damages is to penalise, so that the employers may be thwarted or deterred from making any further defaults.

4. The learned Counsel for the appellant submitted that the appellant establishment is covered with effect from 2002 in 2007. The appellant establishment is forced to remit both the contributions for the

retrospective period. The learned Counsel for the respondent pointed out that the statutory obligation under the Act does not depend on any notification issued by the respondent. The Act, acts on its own force and it is the responsibility of the appellant to ensure compliance the moment the statutory requirements are met by an establishment. Hence the contention of the appellant that the appellant establishment is covered retrospectively and compelled to remit both the contributions for 5 years from 2002-2007 has no basis. The learned Counsel for the appellant pointed out that the respondent authority did not provide adequate opportunity before issuing the impugned order. The learned Counsel for the respondent pointed out that the notice for hearing was issued to the appellant and the same was acknowledged by him and the appellant did not attend the enquiry. However the appellant was given one more opportunity to attend the hearing and explain the delay. When the appellant failed to attend the proceedings and pleaded their case, the appellant cannot come up in appeal and plead that they are not given adequate opportunity. The respondent produced the notice issued to the appellant and the acknowledgment for having received the same by the appellant. I don't think there is any basis in the claim of the appellant that they were not provided adequate opportunity. The Hon'ble High Court of Bombay considered the above issue in **Super**

**Processor Vs UOI and another**, 1994 3 LLJ 564 (Bom). The Hon'ble High Court held that “ Since the petitioners have chosen not to file a reply to the show cause notice and not to lead evidence in support thereon, 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 ”. The Hon'ble High Court of Punjab & Haryana also considered the same issue in **T.C.M. Woollen Mills Vs RPFC and another**, 1980 (57) FJR 222. The Hon'ble High Court held that “ Where no reply was filed by the employer against the notice issued to him U/s 14B of the Act, he cannot complain that the Commissioner did not make a speaking order as required by law. Unless the objections and the factual matters are pressed before the Commissioner, he cannot imagine the same and adjudicate thereon ”. In view of the above legal positions the appellant cannot contend that he was not given adequate opportunity and the impugned order is a non speaking order. The learned Counsel for the appellant further contended that there was no intentional delay in remittance of provident fund contribution and therefore there is no mensrea in belated remittance of contribution. The learned Counsel relied on the following decisions to press home his contentions

1. **Tamil Nadu Agro Engineering and Service Co-operative Federation Ltd Vs The Director (Recovery), EPFO and others**, 2021 LLR 657

2. **Sri Ramalinga Choodambikai Mills Ltd Vs EPF Appellate Tribunal & another**, 2021 LLR 902
3. **Central Board of Trustees, EPFO Vs B2R Technologies Pvt Ltd**, 2021 LLR 875
4. **M/s.Himagiri Automobiles Pvt Ltd Vs RPFC-II**, 2021 LLR 209
5. **EPFO Vs Shree Chithira Thirunal Residential School, Trivandrum and another**, 2021 LLR 350

5. In a recent decision the Hon'ble Supreme Court of India considered whether mensrea is applicable in a proceedings U/s 14B of the Act. The Hon'ble Supreme Court 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. The learned Counsel for the appellant also pleaded that the appellant establishment is running under heavy financial constraints. He produced a copy of balance sheet as on 31.03.2021 to substantiate the financial difficulties of the appellant establishment even during 2021. The learned Counsel for the respondent pointed out that the financial statement has no relevance as the damages pertains to the period 2002-2006 and the present financial position will not help the appellant in proving the financial position during the relevant point of time. Even otherwise such financial statements cannot be accepted unless the same is proved through a competent person before the respondent authority.

7. The appellant is an educational institution. It is not disputed by the respondent that the appellant establishment is retrospectively covered from 2002 in 2007 though he pointed out that the liability under the Act do not depend on any notification issued by the respondent authority as it is the liability of the appellant to start compliance, the moment the statutory requirements are met. The learned Counsel for the appellant also pointed out that the appellant establishment was compelled to remit both the contribution on their own during the period of retrospective coverage.



Taking into account all the facts, it is felt that the appellant is entitled for some relief with regard to damages U/s 14B of the Act.

8. Considering the facts, circumstances and pleadings 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 U/s 14B is modified and the appellant is directed to remit 80% of the damages.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer