



सत्यमेव जयते

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

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

(Friday the 14<sup>th</sup> day of January, 2022)

**APPEAL No.580/2019**

(Old No.640(7)2012)

Appellant : The Mangalam Publications  
(India) Pvt Ltd  
Mangalam Complex, P.B.No.3  
SH Mount P.O.  
Kottayam – 686006

By Adv.C. N. Sreekumar

Respondent : The Regional PF Commissioner  
EPFO, Regional Office  
Thirunakkara  
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 11.10.2021 and this Industrial Tribunal-cum-Labour Court on 14.01.2022 passed the following:

**ORDER**

Present appeal is filed from a composite order U/s 14B and 7Q of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') against order no.KR/KTM/PD/5975/3918 dt.28.06.2012 assessing damages and interest for

belated remittance of contribution for the period from 03/2008 to 02/2010. The total damages assessed is Rs.14,49,305/- and interest assessed U/s 7Q is Rs.7,00,709/-.

2. Appellant is a news paper establishment covered under the provisions of the Act. The appellant could not remit the contribution in time for the period 03/2008 to 02/2010 due to financial constraints. The delay in remittance was beyond the control of the appellant. There was no intentional or deliberate delay in remittance of contribution. The respondent issued a show cause notice dt.11.01.2011 proposing to levy damages U/s 14B of the Act. A true copy of the said notice dt.11.01.2011 is produced and marked as **Annexure A1**. The appellant filed a written objection dt.18.03.2011. A copy of the objection is produced and marked as **Annexure A2**. A representative of the appellant attended the enquiry and made oral submissions. Some factual errors and discrepancies in the statement was also pointed out by the appellant. Accordingly, the respondent revised the delay statement and supplied a copy of the same on 24.06.2011. True copy of the statement is produced and marked as **Annexure A3**. The appellant also filed an additional written statement on 20.07.2012, a true copy of the additional written statement filed by the appellant is produced and marked as **Annexure A4**. After considering the submissions and written statement, the respondent

issued the impugned order, a copy of which is produced and marked as **Annexure A5**. The respondent failed to exercise his discretion available U/s 14B of the Act. The finding of the respondent that financial crisis is not a relevant consideration while deciding damages U/s 14B of the Act is unsustainable in law. The powers U/s 14B is discretionary as the organisation is collecting interest at the rate of 12% per annum.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant delayed remittance of contribution for the period from 03/2008 to 02/2010. The respondent therefore initiated action U/s 14B of the Act and after providing adequate opportunity issued the impugned order. The appellant pleaded heavy financial strains as a ground but failed to substantiate the same or explained the reasons for the losses or the financial constraints and also the belated remittances. Self inflicted losses cannot be used to escape the natural consequences therefrom, including levy of penalty U/s 14B. No evidence had been adduced in support of the statement of financial constraints. The Hon'ble Supreme Court of India in **Hindustan Times Vs UOI**, AIR 1998 SCC 688 held that the financial problems of an establishment cannot be a justifiable ground for the employer to escape the liability. The appellant is a wilful, chronic and habitual defaulter of provident fund dues over the

years, as well as a habitual litigant, who even violated the judgments of the Hon'ble High Court of Kerala. The 14 previous such instances would clearly establish that the appellant is a chronic defaulter and is trying to evade the process of law by resorting to appeals and delaying the recovery of dues and damages and interest. The appellant has even violated the directions of Hon'ble High Court to remit dues, damages and interest in instalments. In **New Commercial Mills Co Ltd Vs UOI**, the Hon'ble High Court of Gujarat held that where the employer is a habitual defaulter in respect of payments under EPF & MP Act, financial hardship or constraints is not sufficient to mitigate the damages. The respondent issued summons to the appellant on the basis of the written statement filed, the delay statement, calculation of interest and damages were corrected and Annexure A3 revised statement was issued to the appellant. Thereafter the appellant filed an additional statement. After taking into account all the submissions by the appellant, the respondent issued the impugned order. The Hon'ble Supreme Court of India in **Organo Chemicals Vs UOI**, 1979 90020 LLT 0416 SC held that “ Even if it is assumed that there was a 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 point of time ”. As per Para 38 of EPF Scheme, the appellant is liable to remit

contribution within 15 days of the close of the month. In **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 LAB IC 1422 the Division Bench of the Hon'ble High Court of Kerala held that Paragraph 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the member employed by him, in the first instance. The Hon'ble High Court of Punjab and Haryana in **Elsons Cotton Mills Ltd Vs RPFC**, 2001 (1) SCT 1101 (P&H) (DB) held that the proceedings U/s 14B cannot be quashed on the ground of delay. Non payment of employer's contribution being a continuing offence, period of limitation begins to run every moment the offence continues.

4. The appellant establishment is liable to remit contribution within 15 days of the close of the month as per Para 38 of EPF Scheme, 1952. The appellant establishment failed to comply with the above provision for the period from 03/2008 to 02/2010. The respondent, therefore, issued notice U/s 14B read with Para 32A directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The respondent also forwarded a detailed delay statement. The appellant was also given an opportunity for personal hearing. During personal hearing, the representative of the appellant filed a written statement alleging some

discrepancies in the delay statement forwarded along with the notice. The respondent authority after verifying the correctness of the same, revised the delay statement on the basis of the written objection filed by the appellant. The appellant further filed a written statement which was also considered by the respondent authority. After taking into account all the written statements and also submissions made by the appellant, the respondent authority issued the impugned order.

5. In this appeal the appellant raised the issue of financial constraints as a ground for the belated remittance of provident fund contribution. According to the learned Counsel for the respondent, the appellant failed to substantiate their claim of financial difficulties before the respondent authority. The appellant failed to produce any documents in this appeal also to substantiate the financial difficulties pleaded by them. According to the appellant, after introduction of interest U/s 7Q of the Act, Sec 14B has become a penal provision. The respondent authority therefore ought to have exercised his discretion while deciding the quantum of damages. It is also pleaded in the appeal that after demanding interest U/s 7Q, demanding damages U/s 14B will amount to double jeopardy. Sec 7Q and 14B are two independent provisions and the legislature in their wisdom decided that the loss of interest shall be compensated in addition to the damages U/s 14B of

the Act. Further the percentage of damages has also been reduced considerably after 26.09.2008.

6. The learned Counsel for the respondent pointed out that the appellant is a chronic defaulter and misuses the judicial forums to delay the remittance of contribution, damages and interest. He elaborately narrated 14 instances by the appellant establishment wherein even the instalment facility granted by the Hon'ble High Court of Kerala is not complied by the appellant establishment. The liability of the respondent organisation to pay cumulative interest to provident fund members and the pensionary benefits under Employees Pension Scheme mandates that the remittance of contribution is made in time by the establishments and adequate income is generated so that the employees' interests can be protected. It is seen that the establishments like appellant violated the provisions and delayed the remittance which add strain on the Provident Fund as well as Pension fund.

7. It is a case of the appellant that the delay in remittance of contribution was not intentional. According to the learned Counsel for the respondent, the appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. The 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 of Indian Penal

Code. The appellant cannot plead that there was no intentional delay atleast to the extend of 50% of the total contribution being the employees' share of contribution deducted from the salary of employees. 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”.

8. The demand of interest U/s 7Q cannot be challenged in an appeal U/s 7(I) of the Act. However being a composite order, the mistakes, if any, can be pointed out by the appellant. Since there is no serious contest regarding the quantification of interest, the quantification of the same is not considered in this appeal.



9. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer