



सत्यमेव जयते

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

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

(Thursday the 31<sup>st</sup> day of March, 2022)

**APPEAL No.773/2019**

Appellant : M/s.Dr.Menon's Nursing Home  
Olavakkode  
Palakkad - 678002

By Adv.Viju K. Raphel

Respondents : 1. The Central Board of Trustees  
EPFO, Bhavishyanidhi Bhavan  
14, Bhikaji Cama Place  
New Delhi – 110066  
2. The Regional PF Commissioner  
EPFO, Regional Office  
Eranjipalam P.O.  
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 16.03.2022 and this Industrial Tribunal-cum-Labour Court on 31.03.2022 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KKD/4904/ENF-4(1)/14B/2019/2492 dt.24.07.2019 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 10/2017 to 03/2018. The total damages assessed is Rs.62,222/-.

2. Appellant is a nursing home. The nursing home was started by Dr.Menon and after his death the appellant establishment is managed by the present Proprietrix who is also a doctor by profession. In spite of her best efforts, the appellant establishment started making huge loss from 2014 onwards. The hospital was also facing a lot of other problems inherited from the previous management. In view of the above, there was delay in payment of wages to the employees and consequently there was delay in remittance of contribution. There are labour disputes pending in view of the delay in payment of wages to the employees. In spite of the fact that the appellant was facing serious financial constraints, the appellant remitted the contribution. There is no contumacious conduct on the part of the appellant in not paying the contribution on time. There was no mensrea or actus reus on the part of the appellant. There is no wilful latches or negligence on the part of the appellant in delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 10/2017 to 03/2018. The delay in remittance of contribution attracts damages U/s 14B

read with Para 32A of EPF Scheme. A notice was issued to the appellant to show cause why damages shall not be recovered for belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 03.07.2019. A detailed delay statement furnishing the details of delay and proposed damages was also forwarded to the appellant along with the notice. None attended the hearing. There was no representation from the appellant regarding the delay statement or any request for adjournment. Hence it was presumed that the appellant had no objection regarding the delay statement and proposed damages. The respondent authority therefore issued the impugned order.

4. There is no dispute regarding the delay. According to the learned Counsel for the appellant, the appellant hospital was in partial shut down and the salary of the employees was also delayed. The appellant failed to produce any documents to substantiate the claim of financial difficulties. 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 RPFC**, 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. The learned Counsel for the appellant also produced some additional documents in this appeal. One document is a bank statement dt.24.12.2021 in respect of Perinthalmanna Alshifa Hospital maintained in Canara Bank. The name of the customer is shown as Mrs.Nayanthara. The learned Counsel for the respondent pointed out that the bank statement is in respect of an entirely different establishment and it will not help the appellant in any way. The learned Counsel for the appellant also produced certain notices issued by Palakkad Municipality to Smt.Dr.Nayanthara, Proprietrix of the appellant establishment regarding certain pending property tax. It is not clear as to how these documents will prove the financial difficulties of the appellant establishment.

5. The learned Counsel for the appellant also argued that there was no intentional delay and therefore there is no mensrea in belated 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. 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