



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 5th day of April , 2021)

Appeal Nos. 95/2018

& 247/2018 (Old No. A/KL-25/2017)

Appellant : M/s. Mathruka Pracharanalayam Ltd.,
(Janmabhoomi Daily)
50/47A, Perandur Road
Elamakkara,
Kochi – 682 026

By Adv. C.B. Sreekumar

Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Kaloor,
Kochi – 682 017.

By Adv. S. Prasanth

This appeal came up for hearing on 05/03/2021
and this Industrial Tribunal cum Labour Court issued the
following order on 05/04/2021.

O R D E R

Appeal No. 95/2018 is filed against Order No. KR /
KCH / 13159/ Damages Cell /14B / 2018 /13476 dt.
02/02/2018 assessing damage U/s 14B of EPF & MP Act
1952 (herein after referred to an Act) for belated remittance

of contribution for the period from 01/07/2014 to 31/03/2017. Total damages assessed is Rs.10,41,873/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. **Appeal No. 247/2018** is filed against order No. KR/ KCH / 13159 / Damages Cell / T (spl) / 2016 / 14976 dt. 18/01/2017 assessing damage U/s 14B of the Act for belated remittance of contribution for the period from 01/2015 to 06/2015. The total damages assessed is Rs. 90,919/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

3. Appellant is an establishment covered under the provisions of the Act w.e.f 1988. The respondent issued a notice alleging delay in remittance of provident fund contribution for the period 01/07/2014 to 31/03/2017. The appellant was given an opportunity to appear before the respondent. A representative of the appellant appeared before the respondent and admitted the delay in remittance of provident fund contribution. The appellant is a company incorporated for the purpose of publishing Janmabhumi, a

Malayalam daily newspaper. The company's shares are held by few thousand individuals. The appellant has no financial support from any source. Consequently the appellant have been publishing newspaper under severe constraints. The daily has no printing press, own building or other fixed assets. The appellant could not muster resources to acquire the assets. Since the newspaper is not commercially oriented, the circulation has been low even to the extent of being uneconomical. Hence the appellant does not get advertisements from private sector. In spite of all the financial constraints the appellant remitted the contributions. However there was delay in remitting the contribution. It was not at all intentional. As per the audited Balance Sheet and Profit and Loss Account for the period 2005-2018 would show that the funds raised to meet losses had always been in the range of 25 to 40 lakhs and from year 2015-16 onwards, the Balance Sheet reflects some profits. The entire share capital is wiped out with losses. In order to meet losses the company has raised funds from some well meaning persons. In spite of all the financial difficulties, the appellant remitted the provident

fund contribution in respect of its employees, though belatedly. If the damages and interest claimed by the respondent is required to be paid, the only way out for the appellant is to close the operations of the appellant company. In that event the employees will also lose their jobs. The company has also suffered losses due to increase in the price of newsprint during the relevant period. The impugned orders are issued in a speculative manner without affording reasonable opportunity to the appellant to present their case in a proper manner.

4. The respondent filed counter denying the above allegations. Admittedly there was delay in remittance of provident fund contribution by the appellant for the period from 01/07/2014 to 31/03/2017. When there is delay in remittance of contribution damages U/s 14B read with Para 32A of EPF Scheme is attracted. Hence the respondent issued notice to explain with documentary evidence as to why penal damages as stipulated under Sec 14B of the Act shall not be levied for belated remittance of contribution. A detailed damages statement showing the

monthwise details of belated remittance with details such as the due date of payment, the amount, the actual date of payment and total delay was also communicated to the appellant along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay in remittance of provident fund dues. U/s 6 of EPF Act the appellant establishment is required to remit the contributions within 15 days of close of every month. Any further delay will attract damages. In ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 688 the Hon'ble Supreme Court held that financial constraints cannot be treated as a defense for delayed remittance of contribution. In ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the very purpose of introduction Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of mis-utilising not only their own contribution but also the employees contribution. According to the Hon'ble court the expression damages occurring in Sec 14B of the Act is in substance

the penalty imposed on the employer for breach of statutory obligation. In **Chairman, SEBI, Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention for provisions of a civil Act and that penalty is attracted as soon as contravention of statutory obligations contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial.

5. According to the learned Counsel for the respondent there was delay in remittance of provident fund contribution and any delay in remittance of contribution will attract damages U/s 14B read with Para 32 A of EPF

Scheme. The respondent initiated action in view of the fact that there was delay in remittance of provident fund contribution by the appellant. A detailed delay statement was also forwarded to the appellant along with the notice, for the appellant to verify and confirm mistake, if any, in calculation of delay. The appellant was also given an opportunity for personal hearing. A representative of the

appellant attended the hearing and admitted the delay. Accordingly the impugned orders were issued. The learned Counsel for the appellant submitted that the delay, though admitted, was due to the financial constraints of the appellant establishment. The appellant failed to produce any documents before the authority under 14B to substantiate their claim of financial difficulties. For that matter the appellant raised the claim of financial difficulties for the first time in this appeal. According to the learned Counsel for the respondent since the appellant admitted the delay and did not raise any further issues including that of financial difficulties before him the respondent issued the impugned order complying with the principles of natural justice. On a perusal of impugned orders, it can be seen that the appellant failed to raise any additional ground at the time of the enquiry U/s 14B. Even in this appeal, though the appellant has raised the issue of financial difficulties as a ground has not provided any document to support his claim. The appellant has only extracted some figures from the Balance Sheet and Profit and Loss account for the period from 2005-06 to

2013-2014 showing that the losses were carried forward all these years and some funds were raised from outside to meet the losses. From the year 2014-15 onwards the appellant establishment is in profit and they cannot plead the ground of financial difficulties for delayed payment of provident fund contribution. When the appellant claims financial constraints as a reason for belated remittance of contribution it is upto the appellant to plead and prove the same before the respondent authority at the time of hearing U/s 14B of the Act.

6. The Hon'ble High Court of Delhi in ***Kee Pharma Ltd Vs APFC***, 2017 LLR 871 held that the appellant shall produce documents before the respondent authority to substantiate their claim of financial difficulties. If the appellant failed to do so his claim for reduction of damages on financial ground cannot be accepted. In ***Assistant PF Commissioner Coimbatore Vs EPF Appellate Tribunal***, New Delhi and ***M/s. Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd***, WPC No 4633/2012 the Hon'ble High Court of Madras held that if the appellant company

failed to produce documents to substantiate their claim any reduction of damages is in violation of Sec.14B. As already stated that the appellant failed to produce any document to substantiate their claim of financial difficulties before the respondent authority as well as in this appeal. In the absence of any such evidence the claim of the appellant for reducing the wages on the ground of financial difficulties cannot be considered. In ***Sreekamakshy Agency Pvt Ltd Vs EPFC Appellate Tribunal***, WPC No. 10181 of 2010, the Hon'ble High Court of Kerala held that while assessing damages mitigating circumstances shall be considered if the employer pleads and proves the same before the authority. In ***Elston Tea Estate Ltd Vs RPFC***, WPC No. 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive a conclusion that it has to be taken as a mitigating factor for lessening the liability. The ***Standard Furnishing (Unit of Sudarshan Trading) Vs EPF Appellate Tribunal***, 2020 (3) KLJ 528 the Hon'ble High Court of Kerala held that levy of damages is not automatic and all the

circumstances which lead to the delay in remitting PF Contribution had to be factored by the authorities concerned before issuing the order. As already pointed out in earlier paras the appellant failed to produce any document to support his claims of financial difficulties or any other related difficulties before the 14B authority and in this appeal. As pointed out by the Hon'ble High Court of Kerala **in *Elston Tea Ltd case (supra)*** it is the responsibility of the appellant to establish the claims before the respondent authority. Having failed to do so, the appellant cannot claim any relief under the provisions of the Act.

8. The learned Counsel for the respondent argued that the appellant cannot plead the ground of mensrea. The appellant has no case that they were not paying wages to the employees in time. When the wages are paid the employees' share of contribution is deducted from salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having

committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution, at least to the extent of the employees share deducted from the salary of the employees. However considering the fact that the appellant was facing financial difficulties for the period upto 2013-14, they are entitled for some relief in terms of remittance of damages. However for the period from 2014-15 to 2016-17 the appellant is running on profit and they cannot claim any relief in assessment of damages.

9. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

10. The learned Counsel for the respondent submitted that no appeal is maintainable against an order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of

India in ***Arcot Textile Mills Vs RPFC***, AIR 2014 SC 295 held that no appeal is maintainable from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in ***District Nirmithi Kendra Vs EPFO***, WP(C) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer