



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

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

(Monday the 25th day of April, 2022)

APPEAL No.11/2021

Appellant

M/s. Kerala State Financial
Enterprises Ltd.,
Bhadraatha , Museum Road,
Trichur – 680 020.

By M/s. Menon & Pai

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Kochi -682017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 20/04/2022
and this Tribunal-cum-Labour Court on 25/04/2022 passed
the following:

ORDER

Present appeal is filed from order No. KR/ KCH/
3265 / Penal Damages/ 2019 / 4053 dt. 21/11/2010
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 09/2014 to 02/2020,

(the remittance period from 22/08/2019 to 15/06/2020).

Total damages assessed is Rs. 17,33,853/-.

2. The appellant is a Miscellaneous Non-Banking Financial Company, fully owned by the Government of Kerala. The appellant does not come under the regulation of The Reserve Bank of India since it is not a Non-Banking Financial Company. The appellant was prompt in remitting contribution of its employees. The appellant was hiring the services of Ex-servicemen in some of their offices through agencies such as KELSO, Housing Co-operative Society etc. They were assigned in clerical and subordinate staff. After recruitment of regular employees the services of the contract employees were terminated from May 2016. The circular dt. 30/05/2016 terminating the service of contract employees is produced and marked as Annexure A1. In the year 2017 an Enforcement Officer of the respondent conducted an inspection. The respondent organization introduced Employees Enrollment Campaign 2017 and enrolled the contract workers under the amnesty Scheme and the contributions were remitted under the Scheme for the period from 09/2014 to 05/2016. The appellant establishment enrolled 1367 contract employees under the amnesty Scheme. The appellant by a

bonafide mistake failed to enroll one Mr. Vimal kumar. M.V who was working as an Assistant in Ernakulam main branch for the period from 18/01/2010 to 11/10/2011 and 09/03/2012 to 18/01/2016 and subsequently at Kacheripady branch from 21/01/2016 to 31/5/2016. Shri. Vimal Kumar M.V vide his letter dt.04/09/2018 intimated the appellant regarding his non-enrollment. A copy of this letter is produced and marked as Annexure A2. The matter was brought to the notice of the respondent and the respondent vide its letter dt. 10/01/2020 directed the appellant to enroll Shri. Vimal Kumar. True copy of the letter of the respondent dt. 10/01/2020 is produced and marked as Annexure A3. To enroll Shri. Vimal Kumar. M.V and appellant remitted an amount of Rs.56,206/- towards contributions. From September 2017 onwards Aadhar Registration was made compulsory for each and every employee before making any remittance. True copy of the Circular dt.27/10/2016 is produced and marked as Annexure A4. There were lot of errors in the Aadhar of many of the employees and due to technical reason the Aadhar registration with provident fund account was delayed. The respondent authority initiated action U/s 14B for delayed remittance of contribution for the period 09/2014 to 02/2020

vide Annexure A5 notice. The appellant appeared before the respondent and explained the reasons for delay and also filed a written statement, a copy of which is produced and marked as Annexure A6. Without considering any of the submissions the respondent issued the impugned order, a copy of which is produced and marked as Annexure A7. The appellant failed to exercise its discretion available U/s 14B of the Act and also Para 32A of EPF Scheme. In **RPFC Vs SD College, Hoshiarpur, 1997 (2) LLJ 55** the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. The Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd, 2013 (3) KLT 790** held that unless there is continuous and intentional delay, the damages shall be compensatory in nature. The Hon'ble Supreme Court of India in **McLeod Russel India Ltd Vs RPFC, AIR 2015 SC 2573** and in **Assistant PF Commissioner and another Vs Management of RSL Textiles India Pvt. Ltd, 2017 (3) SCC 110** held that the presence of mensrea or actus reus should be a determinative factor in imposing damages U/s 14B of the Act .

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. There was considerable delay in remittance of contribution for the year 22/08/2019 to 15/02/2020 (default for 09/2014 to 02/2010) the respondent therefore initiated action U/s 14B vide summons dt. 19/06/2020. The appellant was also given an opportunity for personal hearing on 03/07/2020. A representative of the appellant attended the hearing and filed a written statement dt. 02/07/2020. According to the representative of the appellant, the reason for delay was omission of one employee in Employees Enrolment Campaign 2017 for the period 09/2014 to 05/2016. The contribution was remitted during March 2020. Another reason for delayed remittance was delayed updation of Aadhar details of employees which delayed remittance of provident fund contribution. Lockdown was imposed during Covid-19 pandemic from March to May 2020. Though the appellant was given further opportunities to adduce evidence, no further evidence or submissions were made by the appellant. The respondent therefore found that violation of Para 30, 36,38 (1) of EPF Scheme amounts to mensrea. The Hon'ble High Court of Kerala in **Vallabhdas Kanji Ltd Vs Intelligence**

Officer, 2010 36 VST 521 (Ker) and Apex Court in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 95) SCC 361 held that mensrea is not an essential ingredient. In **Organo Chemical Industries** The Hon'ble Supreme Court held that the damages is not only a warning to employees in general not to commit the statutory requirement but also meant to re-compensate the employees for the loss sustained by them. With regard to non-ernollment of one employee, since the remittance was made beyond the scheme period, the appellant is not entitled for any relief. With regard to delay of updating of Aadhar details, the appellant being a Government of Kerala undertaking cannot claim that the Aadhar details of employees are not available. The remittance for the period from January 2018 to February 2020 is made on 05/05/2020 only. With regard to the Covid-19 pandemic and the connected restrictions, it is pointed out that the last month of default for which the damages is levied is 02/2020 and the due date for remittance was 15/03/2020. This falls before the declaration of lockdown on 25/03/2020. The respondent authority by a speaking order considered all the issues raised by the appellant and concluded that the appellant is liable to pay damages as per the impugned order. The delay in

remittance of contribution for the period from January 2018 to February 2020 is more than 2 years and the appellant cannot give a lame excuse of linking of Aadhar details of employees for such a delay. The appellant ought to have remitted the contribution in respect of employees whose Aadhaar had no problems in linking instead of waiting for a consolidated remittance. In The case of **Regional PF Commissioner Vs SD College Hoshiapur** (supra) the facts are entirely different and these not relevant to the present case. The decision of the Hon'ble High Court of Kerala in **Regional PF Commissioner Vs Harrison's Malayalam Ltd** (supra) is not relevant to the facts of the present case. In that case, the Hon'ble High Court itself has stayed the operation of Employee Pension Scheme 1995 and the Hon'ble High Court interfered when the damages for that period was assessed by the respondent.

4. The appellant establishment delayed remittance of contribution for the period from 09/2014 to 02/2020. The respondent therefore initiated action for assessing damages U/s 14B of the Act. In the 14B proceedings before the respondent authority, the appellant took a stand that the delay in remittance of contribution was due to non-enrollment of one employee in the Employees Enrollment Campaign 2017 and the delay in linking

the KYC details of the employees with the provident fund account. The representative who attended the hearing also took the lockdown imposed due to Covid-19 pandemic as a reason for delayed remittance of contribution . After considering all the issues and after examining the law as laid down by the Hon'ble Supreme Court and High Courts, the respondent authority issued the impugned order.

5. In this appeal also the learned Counsel for the appellant re-iterated the stand taken before the respondent authority as reasons for delayed remittance of contribution. The non-enrollment of an employee for the period from 09/2014 to 05/2016 and belated enrollment in March 2020 cannot be wished away saying that it is a bonafide mistake. With regard to the delay in linking of Adhaar of employees with provident fund account also it is not possible to accept the contention of the appellant. The delay in remittance of contribution due to alleged non-linking of Adhaar details with members account varies from 51 days to 811 days. Such a delay of more than 2 years cannot be explained away stating that there was delay in getting the correct details from the employees. Further, as rightly pointed out the learned Counsel for the respondent, the appellant cannot claim

that the Adhaar linking of all the employees were held up due to technical issues. The appellant ought to have remitted the contribution in respect of those employees whose provident fund account linking with Adhaar had no technical issues and problems. It is also relevant that since the appellant was withholding even the employees' share deducted from the salary of the employees for more than two years. Therefore the appellant cannot escape the liability of damages U/s 14B of the Act. Further it is seen that the respondent organisation has given more than adequate time for linking Aadhar before the Circular instructions were enforced. The next contention taken by the learned Counsel for the appellant is the lockdown restrictions imposed by the government from 25/03/2020 to May 2020. The learned Counsel for the respondent pointed out that the Covid restrictions started only from 25/3/2020 and the last month for which the damages as being assessed as per impugned order is February 2020. The appellant therefore cannot take the excuse pandemic induced lockdown as ground for delayed remittance of contribution.

6. The learned Counsel for the appellant relied on various decisions of the Hon'ble Supreme Court as well as that of the High

Court of Kerala to argue that there was no mensrea in belated remittance of contribution.

7. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act. In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

8. As explained in the earlier paras none of the grounds pleaded by the appellant can be taken as a reason for delayed remittance of contribution. However the appellant is a fully owned Government of Kerala undertaking and the compliance status of the appellant establishment before and after this incident of delayed remittance is reported to be satisfactory. Further there is possibility that when a new system of computerized accounting was introduced by the respondent organization, there were some technical issues remaining unresolved for some time. Taking into account all these factors, the appellant is entitled for some relief with regard to the damages U/s 14B of the Act.

9. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 75 % of damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is direct to remit 75 % of the damages assessed U/s 14 B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer