



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 July, 2022)

Appeal No.54 & 55/2021

Appellant : M/s. Parakkattu Hospital
Alayamon,
Anchal – 691 306.

By Adv. G. Anil Kumar &
Adv. Sajeev C Krishnan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kollam – 691 001

By Adv. Pirappancode VS Sudheer
& Adv. Megha. A

This appeal came up for hearing on 20/07/2022 and this Industrial Tribunal cum Labour Court issued the following order on 25/07/2022.

ORDER

Appeal No. 54/2019 is filed from order No. KR/KLM/12837/PD/2019-20/1904 dt. 02/01/2020 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter referred as ‘the Act’.) for belated remittance of contribution for the period

from 24/04/2014 to 16/11/2018. The total damages assessed is Rs.1,98,776/-.

2. **Appeal No. 55/2019** is filed from order No. KR/KLM/12837/PD/2019-20/1902 dt. 02/01/2020 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred as 'the Act'.) for belated remittance of contribution for the period from 17/11/2018 to 31/03/2019 The total damages assessed is Rs. 35,647/-.

3. Since common issues are raised, both these appeals are heard together and disposed off by a common order.

4. Present appeals are filed from orders issued by the respondent authority assessing damages, a copy of which is produced and marked as Annexure A1. Appellant is a private hospital and is covered under the provisions of the Act. On account of acute financial difficulties the appellant was not able to make remittance of contribution within the time limit during 04/2014 to 03/2019. The appellant is involved in many charitable activities and free medical assistance to the serving people. In view of the above the appellant hospital started making losses. While so the respondent issued a summons dt.

16/11/2018 proposing to levy damages U/s 14B and interest U/s 7Q of the Act. The said summons is produced and marked as Annexure A2. A representative of the appellant attended the hearing and explained the delay. He submitted that the appellant establishment is running in heavy financial difficulties for last few years. Ignoring the contentions of the appellant the respondent issued the impugned order. The Balance Sheet for the years 2014-2015 to 2017-2018 is produced and marked as Annexure A3 to Annexure A6. Vide circular dt.29/05/1999 the head office of the respondent organization has issued an instruction that damages U/s 14B also includes interest chargeable U/s 7Q of the Act. The above circular was upheld by the Hon'ble High Court of Delhi in **Systems and Stamping and Another Vs EPF Appellate Tribunal**, 2008 LLR 485. The respondent authority failed to exercise its discretion U/s 14B of the Act while considering the mitigating circumstances in the present case. The Hon'ble Supreme Court of India in **ESIC Vs HMT Ltd**, 2008 (1) LLJ 814 (SC) held that when a discretion is conferred on a statutory authority to levy damages, the provisions could not construed as imperative.

5. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution and the respondent therefore initiated action for assessing damages U/s 14B of the Act. Notice was issued to the appellant along with the delay statement. The appellant was also given an opportunity for personal hearing. On 21/08/2019 the Managing Director of the appellant establishment intimated his inconvenience in attending the enquiry and requested for adjournment. Hence the enquiry was adjourned to 21/08/2019. None attended the hearing. Hence the matter was adjourned to 08/11/2019. On 08/11/2019 also none attended on the side of the appellant. On 12/12/2019 a representative of the appellant attended the hearing and submitted that the establishment is running under heavy loss. However the representative failed to produce any documentary proof to substantiate their claim. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India** 1998 (2) SCC 242 held that the default on the part of the employer due to financial constrains cannot be a justifiable ground to escape the liability. In **Steel Tubes India Ltd Vs APFC**, 2012 (132) FLT 1057 (DB) the Hon'ble High Court held that there is no provision whereunder

the explanation for delay of payment of amount due to financial difficulties offered by the establishment can be a ground to reduce penalty. In **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1104 (P&H) (DB) the Hon'ble High Court of Punjab and Haryana rejected the plea of financial crisis holding that poor financial capacity is not a ground for paying provident fund of employees belatedly. Sec 14B of the Act was inserted with an object to act as a deterring measure on the employers to prevent them from not carrying out their statutory obligation to make payments to the provident fund.

6. The appellant establishment delayed remittance of contribution. There is no dispute regarding the issue. Respondent therefore initiated action for assessing damages U/s 14B of the Act read with Paras 32A of EPF Scheme. Notice was issued to the appellant alongwith a detailed delay statement. Initially there was no representation on the side of the appellant. However a representative of the appellant attended the hearing on the last date of posting and pleaded that the delay of remittance was due to financial constraints of the appellant establishment. The appellant however failed to produce any documentary evidence before the respondent authority to

substantiate their case of financial difficulties. The respondent authority therefore issued the impugned orders.

7. In these appeals the learned Counsel for the appellant pleaded financial difficulties as a ground for delayed remittance of provident fund contribution. He produced the income tax returns filed for the period from 2014-2015 to 2017-2018 to substantiate the claim of financial difficulties. It is not clear as to how the appellant is trying to substantiate the claim of financial difficulties, through the income tax return acknowledgment and the return filed by the appellant before the Income Tax department. However from the Income Tax Return it could be seen that the appellant establishment was running in profit during 2014-2015. However there was loss of Rs.4,30,408/- during 2015-2016 and a loss of Rs.24,59,127/- during 2016-2017 and a loss of Rs.17,98,356/- during 2017-2018.

8. The learned Counsel for the appellant also pleaded that as per the Circular dt. 29/05/1990 issued by the Head Office of the respondent organization, Sec 14B damages include interest U/s 7Q also. The learned Counsel for the respondent pointed out that Sec 14B and 7Q are two independent sections

with distinct applications. Further it is seen that the Act and Schemes are amended in 1990 and thereafter the circular has no validity. Even otherwise, any administrative instructions issued by the executive in violation of the Act will not have any validity.

9. The learned Counsel for the appellant also cited various decisions to argue that mensrea is a relevant consideration while deciding to quantum of damages. In this particular case, he pleaded that there is no mensrea or intentional delay in remittance of contribution and the respondent would not have levied damages considering the mitigating circumstances. The learned Counsel for the respondent pointed out that in view of the decision of the Division Bench of the Hon'ble High Court of Chennai in **Ramanathapuram District Co-operative Printing Works Vs Employees PF Appellate Tribunal and Another**, WA (MD) No. 525/2012 and the **Assistant PF Commissioner Vs Employees PF Appellate Tribunal and Another**, W.P.(C) No.04633/2012, the delayed remittance of contribution is a violation of the statutory obligation and therefore there shall be no interference in the assessment of damages by the respondent authority.

10. 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”

11. It is true that the income tax returns cannot be taken as an evidence for deciding the financial status of the appellant establishment. At the best it can be treated as only a secondary evidence. It is not clear as to why the appellant failed to produce any direct evidence to show the financial constrains of the appellant establishment. However the documents produced by the appellant would show that the appellant establishment was running under loss during part of the assessment period. The appellant is therefore entitled to some relief with regard to damages.

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

Hence the appeals are partially allowed the impugned orders are modified and the appellant is directed to remit 75% of the assessed as per the impugned orders.

Sd/-

(V. Vijaya Kumar)
Presiding Officer