



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

सत्यमेव जयते

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

(Thursday the 07<sup>th</sup> day of April, 2022)

**APPEAL No. 8/2020**

Appellant

M/s. Koliekanam Estate,  
Bathel Plantations Pvt. Ltd  
Elappara P.O  
Idukki – 685 501  
By Adv. V.B. Hari Narayanan

Respondent

The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 24/02/2021 and this Tribunal-cum-Labour Court on 07/04/2022 passed the following:

**ORDER**

Present appeal is filed from order No. KR / KTM / 67 / APFC / Penal Damage /14B / 2019-2020 /10382 dt. 11/12/2019 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 02/2018 to 04/2018 (remitted

in between 22/08/2017 and 30/09/2019). The total damages assessed is Rs. 68,965/-.

2. Appellant is a division of Bathel Plantations Pvt Ltd, a company registered under the provisions of Companies Act, 1956 and engaged in plantation business. The appellant was regular in compliance. However due to acute financial difficulties there was delay in remittance contribution for the period 02/2018 to 04/2018. The respondent initiated action vide notice dt. 04/11/2019. The appellant filed written statement stating that the default in respect of remittance of contribution was not willful and due to financial hardship and constraints faced by the appellant. A copy of the written statement filed is produced and marked as Annexure 1. A copy of the certificate dt. 01/01/2013 showing the Profit and Loss account of the appellant is produced and marked as Annexure 2. In view of the decision of Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790, levy of damages is not an automatic process and financial hardship is certainly a matter for consideration of the respondent authority. Without considering the above submission,

the respondent issued the impugned order, a copy of which is produced and marked as Annexure 3.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. M/s Bethel Plantation Pvt. Ltd entered into a lease agreement with M/s. Ram Bahadur Thakur Ltd (RBT) in the year 2011. As per the statutory provisions, the appellant is required to remit the contribution within 15 days of close of every month. The appellant establishment failed to comply with the above statutory requirement. Hence the respondent initiated action for assessing damages vide notice dt. 04/11/2019. A detailed delay statement was also forwarded to the appellant. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay and stated that the delay was due to financial difficulties of the appellant establishment. The decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd** (supra) is not relevant to the present case as the facts of the above case was entirely different as there was a stay granted by the Hon'ble High Court against the new Employees Pension Scheme introduced in 1995. The Annexure 2 certificate

produced by the appellant is to mislead this Tribunal. The certificate pertains to Hope Plantation division, a unit of Poddar Udyog Ltd and thereafter Goldview Vyapar Pvt. Ltd. The appellant even failed to remit the employees share of contribution deducted from the wages of the employees which is a trust money with the employer for deposit in the statutory fund. The non-remittance of employees' share of contribution is an offence under IPC and criminal breach of trust. In **Hindustan Times Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that financial difficulties cannot be a justifiable ground for the employer to escape the statutory liability. The Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 90020 LLT 416 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 points of time.” The appellant is a habitual and chronic defaulter. There are 6 instances where contributions assessed U/s 7A, damages assessed U/s 14B and interest demanded U/s 7Q were challenged before the Hon'ble High Court of Kerala. The Hon'ble

High Court has given installment facility to remit the same. The appellant failed to comply with the directions of the Hon'ble High Court of Kerala in none of those cases. The Hon'ble Supreme Court of India in **Organo Chemical Industries case** (supra) has considered the default of a chronic defaulter and held that

“ There can be no doubt that the petitioners have been habitual defaulter in the matter of making contributions to the Employees' Provident Fund, Family Pension Scheme and payment of administrative charges from the very inception. They have deliberately concealed the facts pertaining to earlier defaults and the attendant levy of damage U/s 14B of the Act. It would thus be manifest that the petitioners instead of making their contributions, deliberately made willful defaults on one pretext or another and have been utilizing the amounts deducts from the wages of their employees, including their own contributions, as well as administrative charges, in running their business. The Regional Provident Fund Commissioner, therefore, rightly observed

that the petitioners having to regard to their past record must be visited with the maximum penalty”.

4. The appellant establishment defaulted in remittance of contribution. The respondent therefore initiated action for assessing damages U/s 14B of the Act read with Para 32A of EPF Scheme. A notice was issued to the appellant along with a detailed delay statement. A representative of the appellant attended the hearing and filed written statement stating that the delay in remittance was due to financial constraints of the appellant establishment. No documents to substantiate the claim was produced. The respondent authority therefore issued the impugned order.

5. In this appeal the learned Counsel for the appellant reiterated its position that the delay in remittance was due to financial constrains of the appellant establishment. The learned Counsel also relied on the decision of the Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd ( supra)**. According to learned Counsel for the respondent no documents were produced before the respondent authority to substantiate the claim of financial difficulties. He further pointed

out that the certificate from the Chartered Accountant produced by the appellant in these proceedings pertains to Hope Plantation a unit of Poddar Udyog Ltd which has got nothing to do with the appellant establishment. The attempt made by the appellant to mislead this Tribunal by producing Annexure 2 certificate requires to be condemned. If the appellant establishment was suffering financial constrains, the appropriate remedy was to produce books of accounts or atleast the balance sheet of the appellant establishment, before the respondent authority at the time of Sec 14B proceedings. 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 the Hon'ble High Court of Kerala 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.

6. The learned Counsel for the appellant also relied on the decision of the Division Bench of the Hon'ble High Court of Kerala in **Harrison Malayalam Ltd (Supra)** to plead that financial constraints is a ground while deciding the quantum of damages. It is pointed out that the respondent organization filed SLP No.21174/2015 from the above judgment before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court vide its order dt.06/05/2016, while dismissing the SLP held that the question of law involved in the above case is kept open to be decided in an appropriate case. According to the learned Counsel for the respondent the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of the employees' share of contribution deducted from the salary of the employees' is an offence of breach of trust U/s 405 & 406 of IPC and therefore, the claim of the appellant that there was no intentional delay in remittance of contribution cannot be accepted. The learned



Counsel for the appellant argued 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. Considering all the facts, circumstances and pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

**(V. Vijaya Kumar)**  
Presiding Officer