



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

सत्यमेव जयते

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

(Thursday the 10<sup>th</sup> day of December, 2020)

**APPEAL No.123/2018**

Appellant : M/s. Mulamoottil Charitable Trust  
Melukara , Kozhencherry,  
Pathanamthitta -689641

By Adv. Menon & Pai

Respondent The Regional PF Commissioner  
EPFO, Regional Office, Pattom,  
Trivandrum -695 004

By Adv. Nitha . N.S

This case coming up for final hearing on  
10/11/2020 and this Tribunal-cum-Labour Court on  
10/12/2020 passed the following:

**ORDER**

Present appeal is filed from order No.KR/  
TVM/1047288/Damages Cell/2017-18/9855 dt. 06/03/2018  
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 04/2014 to 03/2016 and 05/2016. The total damages assessed is Rs. 4,24,982/-.

2. The appellant is a Trust registered under Indian Trust Act 1882. The appellant Trust is presently running a School and covered under the provision of the Act. Government of Kerala vide its notification dt. 07/10/2011 made it compulsory for all schools applying for NOC to run ICSC schools to ensure provident fund coverage to all its employees. The above said GO mandates that all the employees irrespective of the salary limit shall be enrolled to provident fund. The GO dt. 07/10/2011 is produced and marked as Annexure A2. The application for NOC was rejected by government as this school was not covered under the Act. The school was not having any teacher drawing less than Rs.15000/- and therefore all were excluded employees. However in view of the above situation the appellant covered the school under the provisions of the Act with effect from 04/2014. The appellant was under a bonafide belief that no contribution is required to be made for excluded employees. Hence the those excluded employees were not made members of provident fund. However the excluded employees were later enrolled to provident fund as per the direction of the

Government. Hence there was delay in remittance of the contribution. Further the school has been suffering losses and its expenditure is more than the income. The audited balance sheet for the year ending 31/03/2014 is produced and marked as Annexure A3. A true copy of the Income and Expenditure for the year ending 31/03/2015 is produced and marked as Annexure A3(a). A true copy of the audited Balance Sheet and Income and Expenditure Statement for the year ending 31/03/2016 is produced and marked as Annexure A3(b). The respondent issued notice dt. 19/05/2017 directing the appellant to show cause why damages shall not be levied for belated remittance of provident fund contribution. The reply dt. 03/06/2017 filed by the appellant is produced and marked as Annexure A5. The appellant also submitted various documents including salary register for the years 2013 to 2016 along with the copy of challans. Ignoring all the above contentions the appellant issued the impugned order.

3. The respondent filed counter denying the above allegations. Appellant delayed payment of provident fund contribution for the period from 04/2014 to 03/2016 and 05/2016. The delay in remittance of contribution will attract

damages U/s 14B of the Act. The respondent therefore issued notice dt.19/05/2017 along with the copy of the delay statement directing the appellant to appear in person on 07/06/2017. An authorized representative of the appellant attended the hearing. The contentions and documents produced by the appellant were examined and the respondent issued the impugned order. In the instant case the appellant themselves got provident fund registration, online, on 10/12/2014 with effect from 1/4/2014. The Annexure A2 order dt. 7/10/2011 was within the knowledge of appellant at the time of obtaining provident fund registration. Hence nothing prevented him from enrolling all the employees with effect from 01/04/2014. The respondent enquiry authority also found that there were forty one instances of belated remittance and only twenty two relates to belated enrolment of employees. The appellant did not raise any contention regarding financial difficulties before the respondent authority. Hence the appellant cannot be allowed to raise the contention of financial difficulties in this appeal. Further it can also be seen that as per Annexure A3 there is an excess of expenditure over income only to the tune of Rs.3.31 lakhs after accounting

depreciation of Rs.5.17 lakhs. Similarly there is excess income over expenditure for the year 2014-15 as per Annexure A3(a). Hence the contention of financial difficulties cannot be a ground for belated remittance of contribution. The appellant approached the Hon'ble High Court of Kerala in W.P.C No. 11375/2018 against the assessment of damages and as per the judgment dt. 4/7/2018 the appellant was permitted to remit the arrears in twelve equal instalments commencing from 01/08/2018. The appellant did not remit the amount as permitted by the Hon'ble High Court. They filed review petition No 808/2018 stating that the appeal has already been filed. In **RPFC Vs SD College Hosiarpur**, 1997 (1) LLN 520 the Hon'ble Supreme Court held that the commissioner has no power to waive penalty altogether. In **Organo Chemical Industries Vs Union of India**, AIR 1979 SC 1803, the Hon'ble Supreme Court of India held that the viability of the project depends on the employer duly deducting the workers contribution on their wages adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system

will suffer paralysis if the employer fails to perform this function.

4. The issue in this appeal is with regard to the delay in remitting provident fund contribution. According to the learned Counsel for the appellant the delay basically occurred because of the appellant's bonafide belief that the excluded employees drawing more than Rs.15000/-, salary need not be enrolled to provident fund. Later when the government of Kerala insisted that all the employees shall be covered under the benefits of EPF Act, the appellant remitted the contribution belatedly. The learned Counsel for the appellant also pleaded that Annexure A3, Annexure A3 (a), Annexure A3 (b) the Balance Sheet and Income and Expenditure Statement for the year ending 31/03/2014 to 31/03/2016 will show the financial difficulty of the appellant establishment. According to the appellant the respondent authority has the discretion to levy damages depending on the fact and circumstance of each case. Damages U/s 14B is imposed as a penalty as a punity measure and therefore the defaulter should possess a culpable intent or mensrea. In **RPFC Vs SD College Hoshiarpur**, (Supra) 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 Hon'ble High Court of Madras in **Shanti Garments Vs RPFC**, 2003(1) CLR 228 (Mad) held that where there is no wilful violation the quantum of damages should be more or less compensatory. The Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Ltd**, 2013(3) KLT 790 held that an establishment crippled with financial difficulties cannot be burdened with penal consequences by way of damages so as to sound death knell of the establishment itself. In **Sreekamakshy Agency (P) Limited Vs EPF Appellate Tribunal**, WPC No. 10181 / 2010 the Hon'ble High Court of Kerala held that the authorities under Act has to assess whether the contribution is delayed due to any deliberate action on the part of the employer's concern. In **Standard Furnishing ( Unit of Sudarsan Trading Company) Vs Registrar 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 circumstance which lead to delay in remittance of contribution has to be factored by the authorities concerned before issuing the order.

5. According to the learned Counsel for the respondent the claim of the appellant that the delay was caused only because of the remittance of provident fund contribution in respect of few employees is not fully correct. The appellant establishment were statutorily coverable with effect from 01/04/2014. However, the appellant took the online registration only on 10/12/2014. This is a clear violation of the provisions of the Act. Further it was also pointed out that the Exbt A2 order dt. 7/10/2011 was already known to the appellant and therefore they cannot content that they bonafidely believed that excluded employees need not be enrolled to provident fund. It is also clear from the impugned order that there were forty one instances of belated remittance during the relevant point of time. Out of this, only twenty two instances relates to the belated enrolment of employees and the delay in remittance of provident fund contribution in nineteen instances can only be attributed to deliberate and intentional delay. On a perusal of the delay statement produced as Annexure A4. It is seen that the delay in remittance of contribution varies from 147 days to 1048 days. On an average the delay in remittance of contribution is more



than 2 years which cannot be explained away stating that the delay occurred because of some misunderstanding. Though the learned Counsel for the respondent argued that the Hon'ble High Court of Kerala vide its order dt. 04/07/2018 in W.P.C No. 11375/ 2018 allowed the appellant to remit the damages as per the impugned order in twelve equal instalments commencing from 01/08/2018, same was denied by the learned Counsel for the appellant. The respondent also did not produce the copy of the judgment to substantiate their case. The learned Counsel for the appellant also argued that there was acute financial crisis for the appellant during the relevant point of time. However the learned Counsel for the respondent confronted the above argument relying on the documents and submitted that there was no financial difficulties warranting delayed remittance of provident fund contribution. On perusal of the Balance sheet and Profit and Loss account produced by the appellant, it is quite clear that financial difficulties cannot be a reason that can be attributed for delayed remittance of contribution. It is seen that there was some confusion regarding enrolment in the initial stages after coverage of the establishment under the Act. To that extend, it is not possible

to hold that the delay was intentional. However the further delay in remittance of contribution cannot related to the financial difficulties of the appellant establishment as claimed by the learned counsel for the appellant.

6. Considering the facts, circumstances, evidence and arguments, 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.

Hence the appeal is partially allowed the impugned order U/s 14B is modified and the appellant is directed to remit 70% of the damages.

Sd/-

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