



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

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

(Thursday the 3<sup>rd</sup> day of December, 2020)

**APPEAL No.157/2019**

(Old No. ATA 1494(7)2015)

Appellant : M/s. Kerala Electrical & Allied  
Engineering Ltd.,  
Mamala P.O  
Kochi - 682305

By Adv. 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  
28.10.2020 and this Tribunal-cum-Labour Court on  
03.12.2020 passed the following:

**ORDER**

Present appeal is filed from order No. KR / KCH  
2700/Damages Cell /SPL/2015/1142 dt.17/11/2015  
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 09/2013 to 03/2014. The total damages assessed is Rs. 98,455/-.

2. The appellant is Government of Kerala undertaking engaged in the manufacture and marketing of switch gears. The appellant was regular in compliance from the date of coverage. Due to financial constraints, because of competition in the market, there was delay in payment of wages and consequently there was delay in payment of provident fund contribution. The delay occurred on account of various factors beyond the control of the appellant. From 2000 onwards the appellant was facing cash flow constraints. This lead to financial strain in the business of the appellant. Because of the declining profitability and increasing financial cost, the appellant was not in a position to make adequate investments in technology and business operations. The loss for the year ending 31/03/2014 was more than Rs.5 crores and the accumulated loss till the

end of 2014 is Rs. 113 crores. Copies of the Profit and Loss account for the appellant company for the Financial Year ended 2012-13 & 2014-2015 are produced marked as Annexure A1 to A3. Because of the financial constraints there was delay in remittance of provident fund contribution since April 2010. The appellant received a notice from the respondent alleging delay in remittance of provident fund contribution for the period from 09/2013 to 03/2014. The appellant appeared for a personal hearing and explained the facts leading to delayed remittance of provident fund contribution. It was also pleaded that there was no wilful or deliberate delay and the delay was beyond the control of the appellant. The true copy of the statement filed before the respondent is produced and marked as Annexure A5. Without considering any of the submissions, the respondent issued the impugned order. The respondent authority U/s 14B of the Act has adequate discretion to decide the quantum of damages taking into account the facts and circumstances of each case. In **RPFC Vs SD College Hosiarpur**, 1997 (2) LLJ 55 the Hon'ble

Supreme Court held that though the commissioner has no power to waive penalty all together he has the discretion to reduce percentage of damages. In **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 the Hon'ble High Court of Kerala held that the respondent shall take into account the circumstances of each case before deciding the quantum of damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provision of the Act w.e.f 09/12/1967. The appellant defaulted in payment of contribution from 09/2013 to 03/2014. Belated remittance of statutory dues as provided U/s 6 of the Act will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt.10/10/2014 was issued to the appellant to show cause with documentary evidence as to why penal damages shall not be levied as per provision of the Act. The appellant was also give a personal hearing on 23/10/2014. In **Hindustan Times Vs Union of India**, 1992 SCC 242 the Hon'ble Supreme Court of India held that financial difficulties cannot be

a ground for the employers to escape the liability of damages U/s 14B. The mere existence of the financial hardship cannot be taken as a license to the appellant to commit delayed payments under the Act. The Hon'ble High Court of Gujarat in **CP Kotak Mandir Vs RPFC**, SCA 3747 2011 held that mere existence of financial difficulties is not sufficient explanation for delaying payment under the Act, unless it is shown that no salary was paid to the employees and consequently no reduction was made during the relevant period. The appellant is a habitual defaulter and damages had already been assessed for delay in remittance of provident fund contribution for the period from 12/1998 to 09/2009, 2/2009 to 11/2013, 9/2014 to 10/2014. The decision in **RPFC Vs SD College** (Supra) is distinguishable since the factual background in these cases are not same. In this case the college authority continued to deposit the amount of provident fund contribution with the university in spite of directions by the Hon'ble Court to deposit the same to the provident fund authorities. Similarly the decision of the Hon'ble

High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, (Supra) is also clearly distinguishable in facts. The background of this case was the delay in respect of pension contribution which was stayed by the Hon'ble High Court. The Hon'ble Supreme court of India in **Organo Chemical Industries Vs Union of India**, 1979 AIR SC 1803 held that the "social security measure is a human homage the state pays to Articles 39 & 41 of the Constitution. The viability of the projects depends on the employer duly deducting the workers contribution from 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 his function".

4. The only ground pleaded by the appellant for delayed remittance of contribution is that of financial difficulties of the appellant establishment. According to the learned Counsel for the appellant the Profit and Loss Account produced and marked as Annexure A1 to Annexure A3 clearly shows that the appellant company which is a Government of Kerala undertaking was under

severe financial strain. Though the Profit and Loss Account is not a confirmation of current assets and current liabilities of an establishment, the documents produced by the appellant will substantially prove that there was financial difficulties for the appellant during the relevant point of time. According to the learned Counsel for the appellant, the respondent is having discretion to decide the quantum of damages depending on the circumstances of each case. The damages U/s 14B is penalty levied for delayed remittance of contribution. Penalty is imposed as a punitive measure and therefore the defaulter should possess a culpable intend or mensrea. However in a case of civil liability it is difficult to establish the elements of mensrea. Financial difficulty can be taken as a guiding factor in deciding whether the delay was deliberate and intentional. The learned Counsel for the respondent pointed out that the appellant is chronic defaulter and there were many occasions when the damages were levied for belated remittance of provident fund contribution. The learned Counsel for the appellant pointed out that the

respondent has come up with a new case that the appellant is a chronic defaulter. Relying on the decision on the Hon'ble Supreme Court of India in **Mohinder Sing Gill and Another Vs Chief Election Commissioner**, AIR 1978 SC 851 the learned Counsel for the appellant argued that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit. The learned Counsel for the appellant relied on the following decisions to argue that the respondent has discretion in levying damages U/s 14B of the Act taking into account the circumstances of each case.

- 1 RPFC Vs SD College Hoshiarpur,(Supra )**
- 2 Shanti Garments VS RPFC , 2003 (1) CLR 228 (Mad)**
- 3 Regional PF Commissioner Vs Harrisons Malayalam Ltd (Supra)**

5. According to the learned Counsel for the appellant the financial constraints of the appellant is a relevant consideration for the respondent to decide the



quantum of damages. In **Sreekamakshy Agency (P) Ltd Vs Employees Provident Fund Tribunal**, WP (C) No. 10181 of 2010 the Hon'ble High Court of Kerala held that damages are levied for the deliberate non payment of contribution in time. In **Elston Tea Estate Ltd Vs RPFC**, WP (C) 21504/2010 the Hon'ble High Court of Kerala held that financial constrains have to be demonstrated before the authority with all cogent evidence to arrive at a conclusion that it has to be taken as a mitigating factor for lessening the liability. In **Standard Furnishing Vs Registrar Appellate Tribunal**, 2020 (3) KLJ 528 the Hon'ble High Court of Kerala held that levy of damages is not automatic and all circumstances which lead to the delay in remitting provident fund contribution have to be factored in by the authority before issuing the order. The Hon'ble High Court of Kerala in **Harrisons Malayalam Ltd** case (Supra) also held that financial constrains is to be considered as a valid ground while deciding the quantum of damages.

6. As already pointed out the documents produced by the appellant will not conclusively prove the financial constrains of the appellant. However it will clearly prove that the appellant was under financial strain during the relevant point of time. However the appellant failed to prove that there was delay in payment of wages because of the financial difficulty. According to learned Counsel for the respondent the salary of the employees were paid in time and employee share of contribution was also deducted from the salary of the employees. The appellant however failed to remit even the employees share of contribution deducted from salary of employees in time. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated payment of contribution.

7. Considering the fact, circumstances and pleading in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of damages.

Hence the appeal is partially allowed the impugned order is modified, the appellant is direct to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-

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