



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

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

(Tuesday the 05th day of April, 2022)

Appeal No.19/2020

Appellant : M/s. Malankara Orthodox Syrian Church
Medical Mission Hospital,
Aduppootty Hills,
Kunnamkulam Post,
Thrissur – 680 503.

By Adv. C.B.Mukundan

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 23/02/2022 and this Tribunal-cum-Labour Court on 05/04/2022 passed the following:

ORDER

Present appeal is filed from order No. KR/ KCH / 10886/ Penal Damages/2019/ 8726 dt. 20/11/2019 assessing damages U/s 14B of EPF & MP Act (hereinafter referred as ‘the Act’) for belated remittance of contribution for the period from 03/1998 to 02/2008 and 03/2010 to 04/2019. The total

damages assessed is Rs. 9,66,237/-. The order issued U/s 7Q of the Act demanding interest for the same period is also being challenged in this appeal.

2. The appellant is a hospital run by a Charitable Society. The respondent issued a summons dt. 22/08/2019 proposing to levy damages and interest for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed a written statement dt. 07/11/2019. A copy of the reply is produced and marked as Annexure A3. Because of the delay in initiating the proceedings the appellant could not properly verify the correctness of the delay furnished in the notice. The request of the appellant to provide copies of chellans was not considered by the respondent authority. The appellant never admitted the particulars furnished in the damages statement. The contention of the respondent that the provident fund contribution deducted from the wages of the employees is not remitted in time is not correct. In the initial stages the appellant used to remit both shares of contribution. The respondent authority ignored the well settled legal position that damages can be levied only if there is intentional delay. The

respondent authority failed to exercise the discretion available to him U/s 14B of the Act. The Hon'ble Supreme Court of India in **Employees State Insurance Corporation Vs HMT Ltd** , 2008 (1) LLJ 814 (SC) held that when a discretion was conferred on a statutory authority to levy penal damages, the provisions could not be construed as imperative. In this case there is no mensrea in belated remittance of contribution. Existence of mensrea to contravene a statutory provision is a necessary ingredient for levy of damages. The appellant establishment was undergoing heavy financial crisis during the relevant period. The balance sheet produced would show that there was a loss of Rs.13,57,278/- during 2012 and an amount of Rs.25,07,139/- during 2013 and an amount of Rs.45,97,774/- during 2019. The respondent failed to exclude interest U/s 7Q from the quantum of damages levied U/s 14B as per Circular No. PG Cell/ 3 (3) P6/ Dam dt. 29/05/1990.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act . The interest demanded U/s 7Q cannot be challenged in the appeal U/s 7 (I) of the Act.

4. The appellant establishment delayed remittance of contribution as required under Para 30 & 38 of EPF Scheme. Any delay in remittance of contribution will attract damages U/s 14B of the Act. The respondent therefore issued a notice U/s 14B dt. 22/08/2019 to the appellant. Shri. M.P. Mathew Advocate attended the hearing. The appellant filed a written statement stating that the delay in initiating the proceedings under 14B has caused prejudice to the appellant and also that the appellant establishment was running under heavy loss during the relevant point of time. No dispute was raised regarding the details of delayed remittance. The records of the respondent organization revealed that the appellant is a chronic defaulter in remittance of contribution. Proceedings U/s 14B was initiated for delay in payment of contribution during 2005 to 2006, 03/2006 to 02/2007 and 03/2008 to 02/2010. The appellant complied with the orders issued in the above proceedings. There is no limitation with regard to levy of damages and therefore there is no basis in the claim of the appellant that the present proceedings is barred by limitation. As regards damages statement, the details of belated remittance viz., amount of dues defaulted, date of remittance, amount

remitted, period of delay etc. are system generated based on the statutory returns and challans furnished by appellant from time to time. The details are also verified with bank credit statement. The details are further manually cross checked and therefore there is no possibility of any errors in the statement. The appellant is only trying to shift the blame of default to the respondent. The impugned order is a speaking order covering all the contentions raised by the appellant and the legal and factual positions regarding the issues involved. The only ground pleaded by the appellant is with regard to financial difficulties. The Hon'ble Supreme Court of India in **Hindustan Times Vs Union of India**, AIR 1998 SC 688 held that bad financial condition is not a ground for delayed remittance of contribution. The philosophy behind the Act and Schemes is elaborated by the Hon'ble Supreme Court in **Organo Chemical Industries Ltd Vs Union of India**, 1979 AIR (SC) 1803 the Hon'ble Supreme Court held that the “ The viability of the project 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”. The respondent in the impugned order explained why there is mensrea in delayed remittance of contribution. In **CP Kotak Balamandir Vs Regional PF Commissioner and another**, SCA No. 3749/2011 the Hon'ble High Court of Gujarat held that the mere financial difficulties is not a ground for default under the Act, unless it is also shown that no salaries were paid to the employees and consequently no deduction were made during the relevant period. The circular referred to by the appellant is no more relevant after the amendment of the Scheme with effect from 01/09/1991.

6. The appellant delayed remittance of contribution for the period 03/1998 to 02/2008 and 03/2010 to 04/2019. The respondent therefore initiated action U/s 14B of the Act to levy damages. Notice was issued to the appellant along with a detailed delay statement. An Advocate representing the appellant attending the hearing and filed a written statement. After considering the submissions of the appellant the respondent issued the impugned order.

7. In this appeal the appellant raised three issues. The first issue raised by the appellant is with regard to the delay in initiating the proceedings U/s 14B of the Act by the respondent.

According to the learned Counsel for the appellant the appellant was not retaining the records for the very old period and therefore he is not in a position to verify the correctness of delay statement. According to the learned Counsel for the respondent the delay statement is prepared on the basis of the returns and challans filed by the appellant establishment which is later verified with the bank statement before entering into the system. Hence the appellant cannot plead that the delay in initiating the proceedings U/s 14B caused prejudice to them. He also pointed out that the appellant could not point out any error in the statement for the period from 03/2010 to 04/2019 also. The Hon'ble Supreme Court of India considered the question whether the delay in initiating the proceedings under Sec 14B vitiate the proceedings. In **RPFC Vs KT Rolling Mills Pvt. Ltd.**, 1995 AIR (SC) 943 the Hon'ble Supreme Court held that “ We do not, therefore, think if the order merits to be struck down on the ground of the delay, when it is also kept in mind that the delay in default related to even to the contribution of the employees, which money the respondent (after deducting the same from wages of employer) must have used for its own purpose that too without paying any interest, at the cost of those

for whose benefit it was meant. Any different stand would encourage the employers to thwart the object of the Act, which cannot be permitted. ”. A similar stand was taken by the Hon'ble Supreme Court in **Hindustan Times Ltd Vs Union of India**, 1998 AIR (SC) 688 wherein the Supreme Court held that “ In spite of all the amendments , over a period of more than 30 years, the legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering arrears. A similar stand was taken by the Hon'ble Supreme Court in **M/s K. Street Lite Electric Corporation Vs Regional PF Commissioner**, 2001 AIR (SC) 1818. In view of the above judgments the claim of the learned Counsel for the appellant regarding limitation cannot be sustained.

8. The learned Counsel for the appellant also pleaded financial difficulties as a ground for delayed remittance of contribution. The learned Counsel also produced the balance sheets to substantiate his claim. The balance sheet for the year ending 31/03/2006 shows a meagre loss of Rs.3,62,074/- and for the year ending 31/03/2007 the loss reported is

Rs.8,46,943/-. For the year ending 31/03/2009 the loss reported is Rs.1,66,691/-. For the year ending 31/03/2010 the loss reported is Rs. 8,32,303/-and for the year ending 31/03/2012 the loss reported is Rs.6,21,575/- for the year ending 31/03/2013 the loss reported is Rs. 25,07,139/-. It may be relevant to point out that the appellant is an establishment paying more than one crore as salary to its employees and doing a business running into crores during the relevant point of time. Hence it is clear from the documents produced, that though there is some loss during the relevant point of time, financial constraint is not an exclusive reason for delayed remittance of contribution.

9. The learned Counsel for the appellant also argued that there is no mensrea in belated remittance of contribution. According to the learned Counsel for the respondent the documents now produced by the appellant would clearly establish the fact that the salary of the employees were paid in time. When the salary of the employees are paid, the employees' share of the contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution

deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code.

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 actusreus is not an essential ingredient for

imposing penalty / damages for breach of civil obligations/liabilities”

11. As already pointed out the financial statements produced by the appellant will not substantiate their claim of financial difficulties as a reason for delayed remittance provident fund contribution. However it is a fact that the appellant establishment was under loss during the relevant point of time. Therefore the appellant, being a hospital run by a charitable institution, is entitled for some relief with regard to the levy of damages.

12. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(D) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon’ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon’ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in

St. Mary's Convent School Vs APFC, WP (C) No. 28924/2016

(M) held that the order issued U/s 7Q of the Act is not appealable.

13. 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 80% of the damages assessed U/s 14 B of the Act .

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 80% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer