



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

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

(Wednesday the 06th day of April, 2022)

Appeal No.20/2020

Appellant : M/s. Alleppey Co-operative Spinning
Mills Ltd.,
Kareelakulangara P.O
Kayamkulam, Alapuzha – 690572.

By M/s. B.S Krishnan Associates

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 06/04/2022 passed the following:

ORDER

Present appeal is filed from order No. KR/ KCH/ 15175 / penal damages/ 2019/9710 dt. 09/12/2019 assessing damages U/s 14B of EPF & MP Act (hereinafter referred as 'the Act') for belated remittance of contribution for the period from 01/1998 to 02/2010, 02/2006 to 02/2011, 04/2006 to

04/2011 & 09/2010 to 02/2019. The total is damages assessed Rs. 3,71,182/-.

2. The appellant is an Industrial Co-operative Society running a Spinning Mill, engaged in the manufacturing of different counts of cotton yarns. It is covered under the provisions of the Act. The appellant mill has been sustaining huge loss from the very inception in 1999. The mill is working only partially. In order to maintain the livelihood of the workers and their family, the government is extending some financial support to the appellant establishment. The respondent issued summons dt. 30/07/2019 proposing to levy damages for delayed remittance of contribution. True copy of the said summon is produced and marked as Annexure 1. Representative of the appellant attended the hearing and explained the reasons and also filed two detailed written representations explaining the delay. True copies of the representation dt. 22/08/2019 and 23/08/2019 are produced and marked as Annexure 2 and Annexure 3 respectively. Along with annexure 3, the balance sheet from 1999-2000 to 2017-2018 was also produced. Without considering the submissions and evidence, the respondent issued the impugned order, a copy of which is

produced and marked as Annexure 4. There is long delay in initiating the process for assessing damages. The appellant is very much prejudiced by the delay. There was no willful omission or mensrea on the part of the appellant with regard to delay in payment of contribution. The delay in remittance of contribution occasioned due to severe financial crisis of the appellant. The funds released by the government were are not sufficient to pay the salary, including the statutory payment. Hence the amounts available were used for paying salary excluding the statutory remittance on behalf of the employees. For the period from 13/05/2013 to 05/08/2013 the Mill was not functioning due to strike of workers. The mill was re-opened on 05/10/2013. In spite of the extenuating circumstances, the respondent imposed Rs.16,655/- as damages for the period from 01/1998 to 02/2010 and 2,80,754/- as damages for the period from 09/2010 to 02/2019. For the period from 04/2006 to 04/2011, there was delay in payment of contribution with regard to Shri. Sainudeen Kunju. He was working on deputation and was later regularized subject to the approval of Registrar Co-operative societies. During the period of deputation, he was given salary as advance. No contribution was deducted from his advance salary. At the intervention of the respondent, the appellant remitted the

contribution. Despite the above mitigating circumstances the respondent imposed a penalty of Rs.1,30,378/- for the period from 02/2006 to 02/2011 to Shri. Chandraprasad was under suspension during the relevant period and he was re-instated in service as per the judgment of the Hon'ble High Court and wages were paid and provident fund contribution was also remitted. For the delayed remittance of contribution an amount of Rs.1,80,486/- was levied as damages. It is settled by a series of decisions by Hon'ble Supreme Court as well as the High Courts that mensrea is an essential condition for invoking the power U/s 14B of the Act .

3. Respondent filed counter denying the above allegations. Appellant is a Government of Kerala undertaking under the department of industries and covered under the provisions of the Act. Since there was delay in remittance of contribution the respondent initiated an enquiry U/s 14B of the Act, vide summons dt. 30/07/2019. A detailed damages statement was also attached along with the summons. A representative of the appellant attended the hearing on 27/08/2019 and filed a letter dt. 22/08/2019 along with copies of some documents and requested for waiver of damages. Certain

objections raised against the delay statement was also examined by the respondent authority. On 26/09/2019 the authorized representative filed the balance sheet for the relevant period. The respondent authority directed the representative to file operational loss, cash loss and profit before depreciation and interest. The representative filed a reply dt. 23/08/2019. The appellant also filed a statement dt.03.10.2019 showing the details of operating profit interest, depreciation amount, net profit/loss as per balance sheet and loss for the period from 1999-2000 to 2017-2018. The balance sheet for the period 1999-2000 to 2017-2018 revealed that the financial position of the appellant was too stable to attribute any financial crisis. The respondent authority also found that the belated remittance for the periods 04/2006 to 04/2011 and 02/2006 to 02/2011 is not due to financial difficulties. The appellant even failed to remit the employee's share of contribution deducted from the salary of the employees within this stipulated time. The Hon'ble High Court of Gujarat in **CP Kotak Bala Mandir Vs RPFC and another**, SCA No. 3749/ 2011 held that financial hardship or constraints cannot be taken as a license to commit defaults. Mere existence of financial hardship is not sufficient explanation, unless it is shown that no salaries were paid to the employees and

consequently no deductions were made during the relevant period. The appellant is a chronic defaulter. There were six previous instances when the respondent authority assessed damages and interest for belated remittance of contribution. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of a civil Act. There is no period of limitation provided under the statute for initiating proceedings under the 14B of the Act. With regard to the delay in remittance of contribution for the period from 04/2006 to 04/2011 relating to Shri.M. Sainudeen Kunju, it is pointed out that the appellant was liable to deduct contribution from the date the employee started earning wages in the appellant establishment and therefore cannot escape the liability U/s 14B for the said delayed remittance.

4. The appellant establishment delayed remittance of contribution during various spells from 01/1998 to 02/2010, 02/2006 to 02/2011, 04/2006 to 04/2011 and 09/2010 to 09/2019. The respondent therefore initiated action for assessing damages U/s 14B of the Act. Issued notice to the appellant along with a detailed delay statement. A representative of the appellant

attended the hearing and filed a written statement along with the balance sheet and profit and loss account for the period 09/2010 to 02/2019. The respondent also called for some additional data regarding the plea of financial difficulties. After hearing the appellant and also perusing the records, the respondent authority came to the conclusion that the appellant is liable to remit damages as stipulated under Para 32A of the Scheme for the relevant period .

5. The learned Counsel for the appellant in this appeal reiterated its earlier position before the respondent authority. According to him the delay in remittance was 1) Due to the delayed enrollment of Shri. M. Sainudeen Kunju. 2) Due to the suspension and subsequent re-statement of Shri.Chandraprasad and 3) Due to the financial constraints of the appellant establishment.

6. The respondent authority in an elaborate and a speaking order found that the delay in enrolling Shri. M.Sainudeen Kunju cannot be pleaded as a ground for reducing or waiving damages as the appellant establishment was liable to enroll him to provident fund membership from his due date of eligibility. The respondent authority also found that the

claim of financial difficulties is not at all supported by the documents produced by the appellant before the respondent authority. It is relevant to pointed out that the respondent authority, in fact, called for all the additional information required before arriving at a conclusion that there was no financial constraint for the appellant establishment during the relevant period warranting delayed remittance of contribution. The respondent authority also found that there is no limitation in initiating proceedings U/s 14B of the Act. On going through the impugned order and also the pleadings of the learned Counsel for the appellant, it is seen that delayed remittance of contribution for the period from 02/2006 to 02/2011 in respect of Shri.Chandra Prasad is to certain extend justified as the employee was under suspension and later reinstated as per the decision of Hon'ble High Court of Kerala. Naturally when his services are regularized and wages were paid retrospectively, the contributions were delayed and to that extent the delay to some extend can be justified. The learned Counsel for the respondent also pointed out that with regard to the regular contribution other than that relating to M. Sainudeen Kunju and Shri Chnadra Prasad, there was delay even in remitting contribution deducted from the salary of the employees. The appellant has no case that

the wages of the employees were not paid in time. In the absence of any evidence it is not possible to accept the claim of the learned Counsel for the appellant that due to financial difficulties only net wages minus statutory deductions were paid to the employees. The non-remittance of employees' share of contribution deducted from the salary of the employee is an offence of breach of trust U/s 405 & 406 of Indian Penal Code. The learned Counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **McLeod Russel India Ltd Vs Regional PF Commissioner**, Civil Appeal No. 5927/204, **Employees State Insurance Corporation Vs HMT Ltd and others**, Civil Appeal No. 340/2008, **Hindustan Steel Vs State of Orissa**, AIR 1970 SC 253 and also the decisions of the Hon'ble High Court of Kerala in **Regional PF Commissioner Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 and **Kuttanad Rubber Company Ltd Vs EPF Appellate Tribunal**, W.P.C No.15725/2010 to argue that mensrea is a relevant consideration while assessing damages U/s 14B of the Act.

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. As already pointed out the appellant failed to justify the financial difficulties of the appellant establishment before the respondent authority. Further the delay in remittance other than the delay in respect of contribution relating to Shri. Chandra Prasad, the former Mill manager also could not be

justified by the appellant. The only issue on which the appellant can be given some accommodation with regard to delay in remittance of contribution is that of Shri. Chandra Prasad.

9. Considering all 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 as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified, and the appellant is direct to remit 80% of the damages U/s 14B of the Act .

Sd/-

(V. Vijaya Kumar)
Presiding Officer