



सत्यमेव जयते

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

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

(Friday the 19th day of February, 2021)

APPEAL No.206/2019

(Old No. ATA 772(7) 2014)

Appellant

M/s. Kerala State Centre for
Advanced Printing & Training ,
(Formerly known as Kerala State
Audio Visual & Reprographic Centre ,
Vattiyoorkavu, Trivandrum – 695013.

By M/s. B.S. Krishnan Associates

Respondent

The Regional PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on
20/1/2021 and this Tribunal-cum-Labour Court on
19/2/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/16122/
Penal Damages / 2014 / 3946 dt. 02/07/2014 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 3/1997 to 2/2004. The total damages assessed is Rs. 1,30,57,285/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is an autonomous institution established by the Government of Kerala. The main objective of the appellant is to impart training in the field of office automation, computer, electronics, audio-visual field and printing and reprographics. The appellant establishment is brought under the coverage of the Act w.e.f 18/05/1995. During the relevant time the appellant establishment was facing huge financial crunch and was also planning to close down many of the training centres. In the year 2000-2001 it was decided to terminate the services 419 employees of this centre as per the orders of the Government dt. 30/5/2002. The appellant had to spent huge amounts for paying compensation to these retrenched employees. The Balance Sheet and Income and Expenditure Account for the years 03/1998 to 03/2004 are produced and marked as Annexure-1 series. These documents will clearly show that the appellant was running under heavy loss during the relevant

point of time. Due to financial crisis the government appointed an agency, RIAB to examine restructuring of the appellant establishment. A copy of the report submitted by RIAB is produced and marked as Annexure 2. While so the respondent issued notice dt. 15/9/2009 to show cause why damages shall not be recovered for belated remittance of contribution. The Managing Director who appeared before the respondent pointed out that the provident fund contribution itself is paid from the funds given by the Government of Kerala and if any damages is to be paid they will have to approach the government only for the same. There was no willful negligence or deliberate delay in payment of contribution. However without considering the submissions made by the appellant the respondent issued the orders. Aggrieved by the said order the appellant approached the EPF Appellate Tribunal. The appeal was admitted by the Tribunal on the condition of deposit of 20% of the assessed amount. The appellant approached the Hon'ble High Court of Kerala in WPC No. 16882 of 2010. The Hon'ble High Court disposed off above Writ Petition directing the Tribunal to consider the said petition afresh. The EPF Appellate Tribunal after hearing both the parties set aside

the order and remitted the case back to the respondent for the consideration. The order of the Tribunal is produced and marked as Annexure 3. The appellant appeared before the respondent authority and pleaded that the appellant establishment was running under loss from 2005 and the salary of the employees during the period in question was outstanding and the establishment is mainly dependent on government grants and also pointed out that M/s.RIAB appointed to examine restructuring of the appellant establishment had also reported the pathetic financial situation of the appellant establishment. It was also pointed out that some of the centres were closed to reduce loss. Without considering any of plea by the appellant the respondent issued the impugned order. As required under the law provident fund contribution is to be calculated on the salary actually paid by the appellant. But in this case salary in respect of many of the employees working in different centres during the relevant period are yet to be paid. In spite of the above situation the appellant remitted the contribution. The respondent did not consider any of the above issues while issuing the impugned orders. No case is made out by the respondent to prove that there was

wilful and deliberate delay and the provident fund money is misused by the appellant. The respondent failed to consider the mitigating circumstances which lead to the delay in remitting provident fund contribution. The respondent also failed to notice there was no mensrea in belated remittance of contribution.

3. According to the respondent, the appellant has taken a stand that the appellant establishment was covered w.e.f 18/5/1995 whereas the coverage notice was issued on 10/1/21997. However, the present assessment of damages is only for the period from 03/1997 to 02/2004 and therefore the claim of the appellant that the belated communication of coverage affected the implementation of the provisions will not in any way affect the damages U/s 14B. Once the appellant establishment satisfied the requirement for covering under the Act the employer is bound to comply with the provisions of the Act. According to the learned Counsel for the respondent EPF is a funded Scheme and prompt compliance by the employers are required for the smooth implementation of the welfare legislation. Hence any default or delay in payment of contribution would invite imposition of damages U/s 14B of the Act. The predominant object is to

penalise, so that the employers may be thwarted or deterred from making any further defaults. As per Para 38 of EPF Scheme, the contribution shall be paid by 15th of the following month and any further delay in remittance will attract damages. In ***Atal Tea Company & Others Vs RPFC***, 1997 LIC 1207 the Hon'ble High Court of Calcutta held that even if there is financial difficulties as submitted by the employer, damages are to be levied at this scheme rates as applicable. In ***Hindustan Times Ltd., Vs Union of India***, AIR 1998 SC 682 the Hon'ble Supreme Court held that financial difficulties cannot be a reason for waiving penal damages. In ***Aravind Mills Ltd Vs RM Gandhi***, 1982 LIC 344 the Hon'ble High Court of Gujarat held that merely because the company was experiencing financial hardship, it was not justified in refusing to pay its dues under the Act and Schemes including the deductions made from the wages of workers. In ***New Commercial Mills Company Ltd Vs Union of India***, 1998 111 LLJ 334 the Hon'ble High Court of Gujarat held that financial stringency is not a mitigating circumstance in the case of a habitual defaulter and when the employees contribution deducted from the salary of the employees was not deposited into the fund. The financial

difficulty or the profitability of the business of the petitioner is not a condition precedent for complying with the provisions of the Act. The petitioner was a habitual defaulter. The claim of the appellant that he failed to pay wages to its employees is a violation of a Article 21 of the Constitution as held by Hon'ble High Court of Mumbai in **Ralli Wolf** case, WPC No.1688/2000. Hence giving any leniency on quantum of damages on the ground that wages were not paid to the employees will be against the spirit of Article 21 of the constitution. In **Chairman SEBI Vs Sri Ram Mutual Fund**, Civil Appeal No 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a Civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant.

4. The learned Counsel for the respondent submitted that he would be filing a detailed argument note. However no such argument note is seen filed by the learned Counsel for the respondent.

5. According to the learned Counsel for the appellant the appellant establishment was running under heavy loss during the relevant point of time. It is seen from the records that the appellant establishment is covered under the provisions of the Act w.e.f May 1995. The appellant started default in payment of contribution for the period from 3/1997 which continued up to February 2004. The respondent therefore initiated action for assessing damages for belated remittance of contribution U/s 14B of the Act and also issued orders assessing the damages. The appellant challenged the said order in appeal and EPF Appellate Tribunal vide its order dt.4/4/2013 set-aside the order of the respondent and remitted the case back to the respondent to examine whether there was any wilful or intentional default on the part of the appellant in remittance of provident fund contribution. The respondent again took up the matter and issued the impugned orders. The appellant filed a written statement before the Sec.14B authority that the appellant was covered under the provisions of the Act w.e.f 18/05/1995 vide coverage memo dt. 10/12/1997. There was delay in taking a final decision regarding the implementation of the provisions of the Act by the appellant establishment

and there was delay in making the first payment of provident fund contribution which was made on 29/04/1999. According to the appellant from 2001-2002 onwards the appellant establishment was facing acute financial crisis and it was decided to terminate the services of 419 employees. The appellant was forced to spend huge amounts towards retrenchment compensation to the terminated employees. For the year 2002-2003, 2003-2004 & 2004-2005 the government reduced the grant substantially which affected the working of the appellant establishment. The appellant also pointed out that M/s. RIAB, an agency of the government of Kerala was requested to suggest restructuring of the appellant establishment. On their recommendation, many of the loss making branches were closed even without paying salary to the employees. The respondent considered the above submissions and rejected all the above pleadings and held that financial difficulties cannot be taken as a ground for belated remittance of provident fund contribution.

6. It is seen that the appellant establishment itself is retrospectively covered from 18/5/1995 vide coverage memo dt. 10/12/1997. This will not have any impact on the assessment as damages is quantified for belated remittance

of contribution for the period from 03/1997 as per the impugned order. Further there is a delay of 2 years before the appellant started the first compliance vide payment dt. 29/4/1999. It is not possible to accept the pleadings of the appellant that delay in taking administrative decisions in government shall be condoned while levying damages under Sec 14B of the Act. The respondent organization is extending benefits such as pension, provident fund and insurance on the basis of timely receipt of contribution into the fund. If the claim of the appellant that the delay in taking administrative decisions shall be condoned is accepted, there is every possibility that the very purpose of the social security legislation will be frustrated.

7. The learned Counsel for the appellant pointed out that the Annexure A1 series of documents will clearly indicate the financial status of the appellant establishment. The Annexure 1 series of the documents are Balance Sheets of the appellant establishment for the period 1998-2004. These documents will not in any way give a clear picture regarding the financial status of the appellant establishment. However, these documents will clearly prove that the appellant establishment was running under heavy loss

during the relevant point of time. The appellant also produced a report of RIAB on restructuring of the appellant establishment as Annexure 2. This document to certain extent will prove the financial condition of the appellant establishment. Para 3(2) of the Annexure 2 report reads as follows “ The results of diagnostics carried out on KSAVRC is given in flag B. Flag C give the performance of sub-centres. KSABRC has made a loss of Rs. 266.33 lakhs during 2002-03 against the turnover of Rs. 731.12 lakhs. The loss made during 2003-04 is Rs. 162.52 lakhs against the turnover of Rs. 814.29 lakhs. The net worth as on 31/3/2003 is Rs. 20.59 crores indicating a very dismal position. The only positive aspect is the turnover of above Rs. 800 lakhs. ”. It can be seen from the above analysis that though the appellant was running under loss the turn over position of the appellant was comfortable at Rs. 800 lakhs per year. Hence it is very clear that the delay in remittance of contribution is not only because of the financial difficulties but due to the indifference of the appellant towards the statutory obligations.

8. The learned Counsel for the appellant also argued that there was no element of mensrea in belated remittance

of provident fund contribution. He pointed out that the Hon'ble supreme court of India in ***Employees State Insurance Corporation Vs. HMT Ltd***, held that existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages or the quantum thereof. The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Kerala in ***Harrison Malayalam Ltd Vs EPF Appellate Tribunal***, WPC No. 26545/2010 wherein the Hon'ble High Court held that the financial difficulties ought to be considered while imposing damages and also found that the officer imposing damages has the discretion to either waive or reduce the damages as prescribed under this scheme. On the question of mensrea the learned Counsel for the appellant also relied on the decision of the Hon'ble Supreme Court in ***Mcleod Russel India Ltd Vs RPFC***, 2014 AIR (SC) 2573 and also the subsequent decision in ***Assistant PF Commissioner Vs the Management of RSL Textiles India Pvt. Ltd***, Civil Appeal No. 9697/2017. As already pointed out the appellant could establish through evidence that the appellant was running under financial strain during the relevant point of time. But the explanation for the delay

in remittance, for the period 1997 to 1999, that it was due to the delay in taking administrative decisions, cannot be accepted under any circumstances. Though the appellant submitted that there was delay in payment of wages, the same was not supported by any evidence except that there was passing reference in Annexure 2 that salary arrears, if any, to employees to be brought under VRS may be settled through negotiations limiting to 50% of the claims. The learned Counsel for the respondent pointed out that the appellant failed to substantiate their claim that there was delay in paying wages to its employees. When wages are paid, the employees share of contribution is deducted from the salary of the employees. Non-remittance of the provident Fund contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of the employees' share of contribution deducted from the salary of the employees.

9. The appeal was admitted vide order dt. 13/11/2019. As per the order dt.13/11/2019, the appeal against 7Q order was rejected. Sec 7(I) of the EPF and MP Act

does not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable from a Sec. 7Q order . In **District Nirmithi Kendra Vs EPFO**, WPC No. 234/2012 the Hon'ble High Court of Kerala also pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act.

10. 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 60% of the damages levied 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 60% of the damages. The appeal against Sec 7Q is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer