



सत्यमेव जयते

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

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

(Wednesday the 23rd day of March, 2022)

APPEAL No.24/2020

Appellant

Malabar Medical College Hospital
and Research Centre,
P.O. Modakallur,
Kozhikode – 673 323.

By Adv. K.K. Premalal
Adv.Vishnu Jyothis Lal

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on
16/03/2022 and this Tribunal-cum-Labour Court on
23/03/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR/ KK/ 23652/
Enf-1(4) /14B / 2019-20 / 5124 dt. 14/01/2020 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 01/2015 to 06/2019 (Remittances made during the

period from 26/10/2016 to 31/08/2019). The total damages assessed is Rs. 93,19,505/-.

2. The appellant is a Medical College covered under the provisions of the Act. The Appellant received a notice dt. 16/09/2019 for levying damages for belated remittance of contribution. Majority of the payments referred to in the notice are covered by a order U/s 7A dt. 31/08/2018. Appeal No 333/2018 from the order dt. 31/08/2018 is pending before this Tribunal. The appellant filed a reply dt. 20/12/2019 explaining the reasons for the delay. A copy of the reply is produced and marked as Annexure 1. The late payments were due to the acute financial problems of the appellant establishment. Being a charitable trust, the appellant could mobilize funds only during admission time, during the month of August. After September the inflow of cash is very limited. The annual fee fixed by the Government of Kerala is not enough to meet the salary commitments of the appellant. The appellant is mainly depended on borrowed funds. Without considering the submissions made orally as well as through written statement, the respondent authority issued the impugned order, a copy of which is produced and marked as Annexure 2. There is no willful default or contumacious conduct on the part of the appellant in delayed

remittance of contribution. There is no mensrea or acuts reus in delayed remittance of contribution to attract damages. In **Quilon District Automobile Workers co-Operative Society Ltd Vs ESIC**, 2017 (2) KLT 21. The Hon'ble High Court of Kerala held that the respondent authority shall exercise its discretion while deciding the quantum of damages. After introduction of Sec 7Q, Sec 14 B of the Act has undergone lot of changes as pointed out by the Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd**, 2013 (3) KLT 790. In **ESIC Vs HMT Ltd**, AIR 2008 SC 1322 and in **Assistant PF Commissioner EPFO and Another, Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 the Hon'ble Supreme Court held that the existence of mensrea or actus reus to contravene a statutory provisions is also a necessary ingredient while levying damages U/s 14B of the Act .

3. The respondent filed counter denying the above allegations. The appellant Medical College hospital is covered under the provisions of the Act. The appellant failed to remit the contribution for the period from 01/2015 to 06/2019 in time. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The

respondent therefore issued a notice to the appellant to show cause why damages as envisaged U/s 14B of the Act should not be levied. A detailed monthwise delay statement was also enclosed alongwith the notice. The appellant was also given an opportunity for personal hearing on 01/10/2019. A representative of the appellant attended the hearing, admitted the delay and submitted that the delay in remittance was due to the financial difficulties of the appellant establishment. Since the respondent authority found that there was delay in remittance of contribution, issued the impugned order after taking into account the submissions made by the appellant. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Ltd., Vs RPFC**, 1982 KLT 303 held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that the wages have been paid or not. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual fund and Another**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contraventions of provisions of a Civil Act.

4. The appellant establishment delayed remittance of contribution during the period 01/2015 to 06/2019

(remittance made during the period from 26/10/2016 to 31/08/2019). As per the provisions of EPF Scheme the appellant is liable to remit provident fund contribution within 15 days of close of the month. Since there was delay in remittance the respondent authority initiated action U/s 14B to assess damages. The respondent issued notice along with a detailed delay statement to the appellant. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing, admitted the delay and filed a written statement stating that the delay in remittance was due to the financial constrains of the appellant establishment. The respondent authority issued the impugned order after taking into account the submissions made by the appellant.

5. In the present appeal, the learned Counsel for the appellant reiterated its position before the respondent authority that the delay in remittance was due to financial constrains of the appellant establishment. However the appellant failed to produce any documents before the respondent authority as well as in this appeal to substantiate its claim of financial difficulties.

6. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have

to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same.** In **Elstone Tea Estates Ltd Vs RPF**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

7. The learned Counsel for the appellant also submitted that the delayed remittance of contribution related to an order issued by the respondent authority U/s 7A of the Act. According to him Appeal No.333/2018 is pending before this Tribunal. On verification, it is seen that Appeal No. 333/2018 filed by the appellant is dismissed by this Tribunal vide order dt. 23/10/2020. It is further seen that the appellant challenged the order of this Tribunal in OP (LC) No 02/2020 before the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala vide

judgment dt. 04/02/2021 dismissed the OP. Hence the claim of the learned Counsel for the appellant in this regard is not correct. The learned Counsel for the respondent pointed out that the damages U/s 14B is assessed on belated payment of contribution and therefore it is clear that the amount involved in the above dispute had already been remitted by the appellant establishment.

8. The learned Counsel for the appellant pointed out that there was no intentional delay in remittance of contribution and the delay was only due to the financial constrains of the appellant establishment. The learned Counsel for the respondent submitted that the appellant failed to remit even the employees share of the contribution deducted from the salary of the employees which is an offense U/s 405 & 406 of Indian Penal Code. The learned Counsel for the appellant also pointed out that there is no mensrea in belated remittance of contribution.

9. 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”

10. Considering the facts, circumstances and pleading in this appeal, I am not inclined to interfere with the impugned order

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer