



सत्यमेव जयते

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

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

(Friday the 12th day of March, 2021)

APPEAL No.256/2019

(Old No. ATA.306(7)2015)

Appellant : M/s. SNDP Yogam Training College
Adimali
Idukki – 685 561

By Adv. A.N. Rajan Babu

Respondent : The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on
09.02.2021 and this Tribunal-cum-Labour Court on
12.03.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KTM/20145/APFC/PD-1(4)/2014/16232 dt.15/01/2015
assessing damages U/s 14B of EPF & MP Act, 1952
(hereinafter referred to as 'the Act'.) for belated
remittance of contribution for the months

10/2003, 11/2008, 9/2009, 03/2013 & 08/2013. The total damages assessed is Rs. 5,69,272/-

2. The appellant is a Training College under SNDP Yogam and is a public charitable organization. The college started in the year 2000. From 06/2000 onwards there were only 19 employees who are eligible to be considered to be enrolled under the provisions of the Act. Till 2003 the employment strength was below 20 and the appellant was not coverable under the Act. The respondent initiated an enquiry U/s 7A of the Act, to assess dues for the period from 06/2000 to 10/2003 and issued order assessing contribution for the said period. The appellant filed a review application U/s 7B of the Act which came to be rejected. The appellant challenged both Sec 7A & 7B orders before the EPF Appellate Tribunal and the EPF Appellate Tribunal vide order dt. 12/09/2005 dismissed the appeal. The appellant challenged the order before the Hon'ble High Court of Kerala in WP(C) No. 1643/2006. The Hon'ble High Court of Kerala vide its order dt. 08/02/2013 directed the appellant to appear before the 7A authority.

The respondent passed an order stating that the appellant is coverable w.e.f 06/2000 as the employment strength was beyond 20 during the relevant point of time. The respondent authority did not accept the contentions of the appellant that two of the employees were excluded employees and therefore the employment strength of the appellant establishment was only 19. The respondent clarified that the total employment strength will be taken for the purpose of coverage where as the contribution is required to be paid only with regard to 19 employees who are eligible to be covered under the provisions of the Scheme. Therefore the respondent assessed the dues for 19 employees and part of the amount was recovered by them U/s 8(F) of the Act. The balance amount was paid by the appellant. The respondent thereafter initiated action U/s 14B of the Act for assessing damages for belated remittance of contribution. The appellant took a plea that the appellant was under a bonafide impression that the appellant establishment is not coverable under the provision of the Act from 06/2000. The respondent issued the impugned orders without considering the plea

of the appellant. It is a consistent view of the Hon'ble High Court of Kerala that the levy of damages is not automatic and the respondent shall take into account the circumstances of each case while levying damages U/s 14B of the Act. The learned Counsel for the appellant relied on the decision on the Hon'ble High Court of Kerala in ***M/s Sree Nararyana Trust Medical Mission Vs Union of India***, W.P.(C) No. 3491/2012.

3. The respondent filed counter denying the above allegations. The appellant was liable to remit contribution within 15 days of the close of every month. Since the appellant failed to remit the contributions in time, notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contributions. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pointed out that the delay statement is correct except for the month of 03/2008, which does not pertain to the appellant establishment. Hence the damages proposed for the

month of 03/2008 is excluded and the impugned orders were issued. The appellant establishment was covered w.e.f 12/06/2000 since the employment strength of the appellant establishment reached 20 as on that date. The appellant challenged the proceedings before various legal forums and ultimately started compliance as per the direction of the respondent by remitting contribution. Since there was delay in remittance of contribution the respondent issued notice to show cause why damages U/s 14B of the Act read with Para 32A of the EPF scheme shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and pointed out that the appellant was under a bonafide belief that they will not come under the provision of the Act till 2013. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 LIC 1261 held that the very object of Sec 14B is to penalize the defaulting employer to avoid further delay in remittance of contribution in future.

4. The appellant establishment was covered under the provisions of the Act w.e.f 12/06/2000. The

appellant took a view that they were employing less than 20 employees and therefore they were not liable to covered under the provisions of the Act. The respondent took view that the appellant was employing 21 employees as on 12/06/2000 and therefore they will come up within the provision of the Act. The dispute regarding coverage took a full circle when the matter was taken up U/s 7A of the Act and thereafter U/s 7B and before the EPF Appellate Tribunal and before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala remanded the matter back to the respondent to conduct a further enquiry and decide the applicability. The respondent again held that the appellant establishment is coverable w.e.f 06/2000. The respondent also quantified and recovered the assessed dues from 06/2000 onwards. The learned Counsel for the appellant pointed out that the appellant was under the bonafide belief that the appellant establishment was not coverable under the provisions of the Act. Therefore the appellant shall not be held liable for damages for belated remittance of contribution. The learned Counsel for the respondent on the other hand pointed out that there is

no mitigating circumstances warranting interference by this Tribunal in the assessment of damages. The facts and circumstances explained above will indicate that the delay in remittance of contribution cannot be attributed to any deliberate inaction by the appellant. However it is seen that the appellant was fighting a legal battle under the belief that they are not coverable under the provision of the Act till 2003. Now the issue is settled by the final order issued by the respondent authority as directed by the Hon'ble High Court of Kerala and recovered the dues from the appellant establishment. Hence it is not possible to allege any mensrea in belated remittance of contribution. However, admittedly there is delay in contribution and the appellant is liable to compensate atleast to certain extend for the loss sustained by the organization. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in ***Sree Narayana Trust Medical Mission*** (supra). In the above decision while remanding the case to 14B authority, the Hon'ble High Court pointed out that the matter shall be heard afresh bearing in mind principles laid down by the court in ***Indian Telephone***

Industries Ltd Vs APFC and Others, 2006 (3) KLJ 698.

The learned Counsel for the respondent pointed out that the decision of the single judge in the above case is modified by the division bench in WA No. 2182 /2006 and the division bench of the Hon'ble high Court of Kerala directed the Central Board of Trustees to consider the application filed by the establishment on its merits and in accordance with law, ***untrammelled by any one of the observations made by the learned single judge while disposing of the writ petitions.***

5. Considering all the facts, circumstances and pleadings I am inclined to hold that interest of justice will be met if the appellant is direct to remit 60% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed the impugned order U/s 14B is modified and the appellant is direct to remit 60% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer