



सत्यमेव जयते

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

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

(Wednesday the 6<sup>th</sup> day of January, 2021)

**APPEAL No.379/2019**

Appellant

M/s. Bharath Sanchar Nigam Ltd.,  
BSNL Bhavan, PMG Junction  
Trivandrum 695 033.

By Adv. Saji Varghese

Respondent

The Regional PF Commissioner  
Pattom, Trivandrum – 695 004.

By Adv. Ajoy P.B

This case coming up for final hearing on  
15.12.2020 and this Tribunal-cum-Labour Court on  
06.01.2021 passed the following:

**ORDER**

Present appeal is filed from order No. KR/  
TVM/16720/Damages Cell/2019-20/2319 dt. 30/7/2019  
assessing damages U/s 14B of EPF & MP Act, 1952  
(hereinafter referred to as 'the Act'.) for belated remittance  
of contribution for the months 5/2001 to 9/2001  
11/2001, 1/2002 to 12/2007, 12/2017 to 4/2018 and

06/2018 to 01/2019. The total damages assessed is Rs. 7,22,030/-.

2. Appellant is a Company incorporated under Company's Act and fully owned by Government of India. It is involved in telecommunication business. The erstwhile employees of telecom department who continued under the appellant are not covered under the provision of the Act. However those who are recruited fresh after the formation of the company are covered under the provision of the Act. The telecom department is engaging in casual labours throughout the country. There was a scheme for regularizing such employees after conferring them the status of temporary status mazdoor (TSM). Such regularised employees are covered under GPF. Engagement of casual employees were banned in the appellant company. There were 11 casual employees who are working under the telecom department and were eligible for conferment of temporary status mazdoor. They were subsequently conferred TSM status. There was a confusion whether these employees had to be covered under the Act. The corporate office of the appellant issued

a clarification in the year 2015 that these employees will have to be covered under the provision of the Act. In compliance with the above directions the appellant remitted the entire PF contributions after collecting the employees' contribution from them. If deduction were made lumpsum for entire period it would have caused much difficulties to these employees and therefore the contribution were collected in instalments and paid to the respondent organization. Similarly there were also some employees who were on deputation and there was in delay getting their contribution. A true copy of the order dt.18/5/2015 issued by the office of the appellant is produced and marked as Annexure A. While so the appellant received a summons from the respondent regarding the delay in remittance of PF contribution. The accounts officer of the appellant attended the hearing and narrated the reason for the delay and filed a detailed written statement which is produced and marked as Annexure C. Without considering any of the above submission the respondent issued the impugned order. The respondent ought to have found that there was no

deliberate act or contumacious conduct on the part of the appellant for the alleged delay in remittance of contribution. The appellant being a Central Government Company has no intention to evade payment of contribution. The appellant paid the contribution in respect of the 11 employees and also honoured the order of the respondent to pay the interest. The delay in remittance was not at all deliberate and intentional. A final decision to cover the casual employees under the Act was taken only 2015 by the corporate office. The respondent ought to have noticed that there was confusion regarding the extension of benefits under the Act in respect of the 11 employees and that delayed the remittance of contribution.

3. Respondent filed counter denying the above allegations. Admittedly there was delay in remittance of PF contribution. When there is delay in remittance of PF contribution, which is a statutory obligation, the appellant is liable to pay damages U/s 14B of the Act read with Para 32A of the Scheme. Accordingly a notice dt. 27/5/2019 along with a delay statement was send to

the appellant. Appellant was also given an opportunity for personal hearing on 11/6/2019. A representative of the appellant attended the hearing and sought a months' time for verification of the statement annexed to the notice. Accordingly the hearing was adjourned 16/1/2019 and the representative of the appellant confirmed belated payments made by the appellant. On the basis of admission by the appellant the impugned order is issued. The statutory contribution under the Act have to be deposited by the employer by 15<sup>th</sup> of the month following the month in which the employee has worked in the establishment and dues are payable to him. When there is delay on remittance of PF contribution, there will be action for levy of damages U/s 14B of the Act. The appellant was given enough opportunity of being heard. The appellant attended the hearing and admitted the delay in payment of the statutory dues. The plea of the appellant that the delay in remittance of statutory dues was due to arrear payment of temporary mazdoors for the period from 1/10/2000 to 10/1/2011 and arrears payment made in respect of the officials deputed to other

organization cannot be accepted for reducing the penal damages. Both the reasons cited are purely administrative in nature and cannot be a reason for delayed payment of contribution. EPF Act is made applicable to the appellant w.e.f 15/9/2000 and the Act is applicable to an establishment on its own vigour and it is not depended on the decision taken by the administrative authority in the appellant establishment. If the appellant establishment failed to enroll employees or class of employees it is a failure on their part and delay in taking the administrative decision will not in any way save the appellant from the element of penal damages. Even if the argument is accepted that a decision was taken in 2015 there was still delay in remittance as the payment is made only during 2018. 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 a civil Act.

4. According to the learned Counsel for the appellant the telecom department was corporatized in the year 2000. The telecom department was engaging

casual employees and there was a scheme of regularization that was prevailing in the telecom department. When the appellant was incorporated under Company's Act, there were 11 employees who were eligible to be regularized. Since the employees who were appointed prior to incorporation continued to be contributing to GPF, there was a confusion whether the temporary status mazdoors were required to be covered under GPF or whether they are required to be made members of employees PF organization. The corporate office of the appellant took a final decision on 11/1/2011 and the BSNL board has accorded approval for the extension of social security benefits under EPF Act only in May 2015. Hence there was delay in remittance of contribution in respect of these 11 employees who were regularized after the appellant company is incorporated under the company's Act. According to the learned Counsel for the respondent the delay in taking an administrative decision by the appellant will not in any way save the appellant of the liability U/s 14B of the Act. Similarly there is another category of employees who were

on deputation and whose contributions are received belatedly. There was also delay in remittance of contribution to the respondent in such cases. The learned Counsel for the respondent relied on the decision of the Hon'ble High Court of Madhya Pradesh in **Grama Seva Samithy Raipur Vs RPFC**, 1997 (2) LLJ 1202 to argue that the delay in taking an administrative decision cannot be claimed as a reason for reducing or waving the liability U/s 14B. The Hon'ble High Court in the above case held that "therefore merely because the petitioner even bonafidely believed that the provision of the Act are not applicable, would not absolve the petitioner of its liability from depositing the amount of contribution under the Act and scheme created for the welfare of the employees, that is the view taken by the DB of this Court in MP 915/83 (*M/s. Pratap Talkies, Birlaspur*) and *another Vs RPFC*, decided on Nov 20<sup>th</sup> 1985". This is a case where the employer was disputing the coverage under the act itself before various judicial forums. In the present case the situation is somewhat different because of the feud situation prevailing in the corporate office of



the appellant after conversion as a company. However the position remains that the appellant is liable to pay contribution from the due date when the appellant is covered under the provision of the Act. The issue regarding the delay in remittance of contribution for the employees on deputation, I accept the pleading of the learned Counsel for the respondent. That it is a pure administrative delay which could have been avoided by the appellant. As rightly pointed out by the learned Counsel for the respondent, even assuming that the decision was taken in 2015 with regard to the casual employees there was a further delay of about 3 years in remitting the contribution. It is not possible to accept the pleading of the learned Counsel for the appellant that there was in delay in assessing dues. According to the appellant, there were only 11 employees whose contribution was required to be assessed. Hence it is difficult to accept the pleading of the learned Counsel for the appellant that it took 3 years to calculate and remit the contribution in respect of 11 employees. The learned Counsel for the appellant argued that the delay was not

intentional and there is no mensrea in delayed remittance of contribution. Being a public sector undertaking under Government of India, it is possible to accept some delay in taking such administrative decisions. Here in this case, it is seen that the delay in remittance of contribution varies from 3842 days to 6227 days which cannot be easily explained away as delay in taking administrative decisions. The respondent is also liable to pay interest to the employees which cannot be compensated by the interest recovered U/s 7Q of the Act. However the claim of the learned Counsel for the appellant that the delay was not intentional is acceptable to certain extent and no element of mensrea can be attributed for delayed remittance of contribution.

5. Considering the facts, circumstances and pleading in this case, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 70% of damages U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified, and the appellant is directed to remit 70 % assessed U/s 14B of the Act.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer