



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 03rd day of May, 2021)

**APPEAL No.407/2019**  
(Old No. ATA 1418(7)2015)

Appellant : M/s. P.N. Panicker Souhruda Trust  
Parakalai, Kanhangad  
Kasargod- 671 531

By Adv. Sachin Agarwal

Respondent : The Regional PF Commissioner  
EPFO, Regional Office, Fort Building  
V.K. Complex , Fort Road  
Kannur – 670 001

By Adv. K.C. Santhosh Kumar

This case coming up for final hearing on 17.03.2021  
and this Tribunal-cum-Labour Court on 03.05.2021  
passed the following:

**ORDER**

Present appeal is filed from order No. KR / KNR /  
Enf -2 (4) Damages /18704/2015-16/ 2957 dt. 12/10/2015.  
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 2/2012 to 5/2015. The total damages assessed is Rs. 2,52,148/-.

2. The appellant is a Charitable Trust running an Ayurvedic Medical College. From the very beginning the college of the appellant establishment was running under heavy loss. In view of the financial and other difficulties the appellant could not remit provident fund contribution in time. Further since Ayurvedic Medicine and Ayurvedic Medical Colleges are not received much acceptance among the society, the appellant was finding it extremely difficult to get sufficient number of students. This also resulted in huge loss to the appellant. The appellant establishment was constituted to provide medical help to needy people by providing medicines at discounted rates.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under provisions of the Act with effect from 01/09/2008. There was

delay in remittance of contribution for the period from 02/2012 to 05/2015. The respondent therefore issued a show cause notice directing the appellant to show cause why damages U/s 14B read with Para 32A of EPF Scheme shall not be levied against the appellant establishment. A detailed delay statement showing the details was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing on 11/09/2015. A representative of the appellant attended the hearing and requested some more time to verify the records. Hence the appellant was given another opportunity on 09/10/2015. The representative of the appellant attended the hearing and admitted the delay in remittance of contribution as reported in the delay statement furnished to the appellant establishment. The representative also pleaded financial crisis as a reason for delayed remittance of contribution. However, no documents were produced to substantiate the same. Sec 14B of the Act provides that the Commissioner may recover from the employer by way of penal damages such amount not exceeding the amount of arrears as may be in this scheme. The respondent therefore levied

damages as provided under Para 32 A of EPF Scheme. The impugned order is issued after providing sufficient opportunity to the appellant. The appellant admitted the delay and pleaded for waiver of damages. The claim of the appellant that they were not given adequate opportunity is not correct. The respondent sent the delay statement showing the monthwise details, due date of remittance and actual date of remittance along with the notice itself. A representative of the appellant attended hearing on 11/09/2015 and sought sometime to verify the records. The respondent gave the appellant time upto 09/10/2015 to verify the records. The representative of the appellant attended the hearing and admitted the delay. The appellant failed to produce any documentary evidence before the respondent authority to substantiate the claim of financial difficulties. In ***Hindustan Times Ltd vs Union of India***, 1998 (1) SCC 174 the Hon'ble Supreme Court held that the default on the part of the employer based on the plea of financial problem cannot be a justifiable ground for the employer to escape the liability. In ***Calicut Modern Spinning & Weaving Mills Vs RPFC***, 1982 (1) LLJ 444

(KER) the Division Bench of Hon'ble High Court of Kerala observed that " the Act was created for the support of the working class and is intended to keep the funds available for the purposes for which the fund is created, lest the employer depletes it or divert it to alien purposes. To allow the employer to make contribution only when he pays wages would be to stultify the project. He cannot be permitted to divert remittance to the fund to suit the convenience setting forth sometime reasonable grounds and too often unjustifiable grounds, but failure to pay contribution would always attract section 14B".

4. The appellant has taken 2 grounds for challenging the impugned order. The 1<sup>st</sup> ground of the appellant is that they were not given adequate opportunity to represent their case. The learned Counsel for the respondent on the other side pointed out that the appellant was given adequate opportunity by the respondent authority before issuing the impugned order. The monthwise delay statement was sent across to the appellant along with the notice to facilitate a proper representation before the respondent authority. The

respondent authority also gave an opportunity for personal hearing which was availed by the appellant. A representative of the appellant attended the hearing and sought further time for verification of records. The respondent allowed the same. On the next date of posting the representative of the appellant admitted and sought no further adjournment. Hence the respondent issued the impugned order. I find that the appellant was given adequate opportunity to represent their case before the respondent authority and there was no violation of principles of natural justice .

5. The 2<sup>nd</sup> ground pleaded by the appellant in this appeal is that of financial difficulties for delayed remittance of contribution. It is seen that the appellant made the same plea before the respondent authority also. However the appellant failed to produce any document to substantiate their claim before the respondent authority or in this appeal. 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 **SreeKamakshi 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 RPFC**, 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. Since the appellant failed to substantiate the claim of financial difficulties, it is not possible to accept the request of the appellant to reduce or waive damages U/s 14B of the Act.

6. The learned Counsel for the respondent submitted that the appellant establishment was paying salary to its employees regularly however failed to remit even employees share of contribution in time. It is seen that the appellant has no case that there was delay in payment of wages to its employees. When the wages are paid, the employees' share of

contribution, which amounts to 50% of total contribution will be deducted from the salary of the employees. The appellant failed to remit even the employees share deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution, at least to the extent of the employees share deducted from the salary of the employees.

7. Considering all the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer