



सत्यमेव जयते

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

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

(Monday the 5<sup>th</sup> day of April, 2021)

**APPEAL No.413/2019**

(Old No. ATA 1323(7) 2015)

Appellant

M/s. Global Detective and Security  
Services, Kara -143,  
Sree, Arappura  
Vattiyoorkavu,  
Trivandrum – 695013.

By Adv. C.M.Stephen

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  
15/02/2021 and this Tribunal-cum-Labour Court on  
05/04/2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/  
16785/TEM/PD/2015/4925 dt. 28/10/2015 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 01/2014 to 10/2014. The total damages assessed is Rs.32,833/-. 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 a proprietary concern supplying manpower to BSNL for their cable work in the city of Trivandurm. The manpower is being used by BSNL for digging channels for the purpose of laying cables. The appellant is a non-profit making institution. The appellant was covered under provisions of the Act w.e.f 01/07/2003. BSNL is the principal employer and BSNL is required to pay remuneration to each and every employee through appellant. The appellant was remitting the contribution in respect of all its employees in time. The appellant is producing copies of electronic Challans-cum>Returns evidencing such payments for the period from 01/2014 to 10/2014 and is marked as Annexure A2 series. The respondent issued notice to the appellant alleging delay in remittance of contribution for the period from 01/2014 to 10/2014. The appellant was also given an opportunity for personal hearing on 20/10/2015. Though the appellant was

present in the office of the respondent there was no hearing on 20/10/2015 as scheduled. The impugned orders were issued without providing an opportunity to the appellant to present their case before the respondent authority. The impugned orders were issued without any further notice to the appellant. The appellant is a manpower supplying agency and the manpower was supplied to BSNL on the basis of a contract. Therefore BSNL was the principal employer at the relevant point of time. Hence the respondent ought to have made the BSNL a party to the proceedings. The enquiry was conducted in violation of the principles of natural justice. The appellant was not provided with any documents to support the delay in remittance of the contribution. The appellant was also not given an opportunity to adduce evidence that there was no delay in remittance of provident fund contribution. The appellant has no operation at present as BSNL has closed down its cable work and there is no work on hand. The respondent failed to notice that there was no intentional delay and therefore there is no mensrea in belated remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant delayed payment of contribution for the period from 1/2014 to 10/2014. Any delay in remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. The respondent therefore initiated action U/s 14B by issuing notice to the appellant. A detailed delay statement disclosing the due date of payment the amount, the actual date of payment and the delay was communicated to the appellant along with the notice. The appellant was also given an opportunity for personal hearing. The averment that BSNL is the principal employer and liable to pay remuneration to the manpower supplied by the appellant is an excuse for delaying the proceedings. The appellant establishment is an independent contractor covered under the provisions of the Act and therefore is responsible for the delay in remittance of contribution. The electronic challans cum returns produced by the appellant to prove remittance of statutory dues from 1/2014 to 10/2014 would clearly show that the contributions were paid beyond the time limit provided under this statute. The appellant was afforded an opportunity of being heard on 20/10/2015. The summons was

acknowledged by the appellant. The appellant did not attend the personal hearing nor did he submit any representation asking for adjournment of hearing. Hence the impugned orders were issued ex-parte. The appellant has not come out with any mitigating circumstances for reducing or waiving damages. The grounds such as non-profit making institution for upliftment of the financial status of Adivasis etc are not valid grounds for delaying the remittance of contributions. The EPF is a funded Scheme. Timely contribution is the basic requirement for smooth implementation of the welfare legislation. Damages are levied to ensure that the appellant establishment is thwarted and deterred from making further default. There is no violation of principles of natural justice as the appellant was informed of the delay in remittance of contribution through a detailed statement and he was also given an opportunity for personal hearing . Since the appellant failed to attend the hearing or atleast submit a written submission at the time of hearing, he cannot turn around and submit that there was violation of principles of natural justice. The notice dt. 23/09/2015 issued to the appellant is produced and marked as Annexure R1. The acknowledgement for having received the summon

by the appellant on 12/10/2015 is produced and marked as Annexure R2. It is for the appellant to represent his case before the respondent authority and the appellant cannot plead that the impugned order is not speaking since it is issued ex parte.

4. The appellant filed IA No.06/2020 requesting to implead M/s. BSNL as a party to the proceedings in this appeal. The request was not considered as the appellant is an independent Contractor and the appellant has no case that the contribution were delayed because of the delay as the part of M/s. BSNL in releasing the payment. Further principal employer cannot be held responsible for the damages when the appellant is liable to pay contribution.

5. The learned Counsel for the appellant challenged the impugned orders alleging that they are composite orders. However on perusal of the impugned orders it is seen that they are two separate orders that are issued by the respondent authority U/s 14B and 7Q of the Act. Hence the contention of the appellant that the impugned order is a composite order cannot be legally accepted. Another ground taken by the appellant is that the contributions for the period from 01/2014 to 10/2014 were paid in time. The appellant

produced the copies of challans to prove his claim. However on perusal of the challans produced by the appellant it is seen that all the payments during the relevant period were made belatedly. Hence the claim of the appellant that the remittances were made in time is not correct.

6. The learned Counsel for the appellant also argued that the appellant establishment was not aware of the method of calculation of the damages and interest. According to the learned Counsel for the respondent, a detailed statement showing the amount, the due date, the date of remittance and delay in remittance of contribution was forwarded to the appellant along with the summons which was acknowledged by him. The delay statement exactly tallies with challans produced by the appellant in this appeal and therefore there is no basis in the claim of the appellant that he was not aware of the method of the calculation of the damages. According to the learned Counsel for the appellant the enquiry was conducted ex parte. According to the learned Counsel for the respondent the summons issued to the appellant for the personal hearing was acknowledged by him and he failed to attend the hearing and also failed to request

for any adjournment. The impugned orders were therefore issued ex-parte.

7. It was also pleaded by the appellant that there was no mensrea in belated payment of contribution. However the learned Counsel for the respondent pointed out that the employees share of contribution was deducted from the salary of the employees since there is no claim by the appellant that there was any delay in payment of wages to the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence breach of trust of the appellant cannot claim that there was no mensrea in belated remittance of contribution.

8. Considering the facts, circumstances pleadings and evidence in this appeal I am not inclined to interfere with the impugned order U/s 14 B of the Act.

9. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On a perusal of Section 7(I) of the Act it is seen that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in ***M/s. Arcot***



***Textile Mills Vs RPFC***, AIR 2014 SC 295 held that no appeal is maintainable against an order issued U/s 7Q of the Act. The Hon'ble High Court Kerala in ***District Nirmithi Kendra Vs EPFO***, WP (C) No. 234/2012 also held that no appeal can be entertained against an order issued U/s 7Q of the Act.

Hence the appeal against Sec 14B order is dismissed as there is no merit in the appeal. The appeal filed against Sec 7Q order is also dismissed as not maintainable.

Sd/-

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