



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 11th day of January, 2021)

APPEAL No.423/2019

Appellant

M/s. IRE Civil Contract Workers
Welfare Forum
Reg. No. Q-70/90
Chavara - 691583

By Adv. Menon & Pai

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam - 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on
21/12/2020 and this Tribunal-cum-Labour Court on
11/01/2021 passed the following:

ORDER

Present appeal is filed from Order No.
KR/KLM/274B/PD/2018-19/818 dt. 27/8/2019 assessing
damages U/s 14 B of EPF & MP Act,1952 (hereinafter referred
to as 'the Act') for belated remittance of contribution for the

period 03/2014 to 03/2019. The total damages assessed is Rs. 2,75,267/-.

2. The appellant IRE Civil Contract Workers Welfare Forum was formed in the year 1990. The Forum is registered under Charitable Registration Act 1955. The appellant Forum is constituted for the purpose of overseeing the civil work done by the members, through contractors. The primary objective of the Forum is overall development and welfare of the Forum members engaged in various civil work in the Chavara plant area of IRE Ltd. Before formation of the Forum the civil workers were directly employed by the contractors of IRE Ltd. The Forum received the proceeds from the contractors of M/s. IRE Ltd which are distributed through its members by way of their wages and other perquisites. During the period from 03/2014 to 02/2019 there were various issues like demand of employment by local people and also demanded for higher compensations raised by land owners whose land has been taken by IRE Ltd., The wages and other allowances of the appellant Forum were substantially increased on the basis of long term settlement every five years. Since the wages and allowance are very high the Forum is unable to meet financial

burden as the rates collected from the contractors could not be increased since it would affect the operation of the company. Because of this the appellant Forum is suffering lack of funds and therefore not able to pay even the basic wages. There were also technical problems of accessing EPFO portal for filing online monthly e-return and there was also difficulties of remittances through net banking from offline system. Because of the above problems there was delay in remittance of PF contribution. The appellant appeared before the respondent in response to the notice and explained the circumstances for the delay in remittance of contribution. The delay in remittance was not due to any willful lapses or negligence on the part of the appellant but due to reasons beyond the control of the appellant. Without considering any of the above submissions the respondent issued the impugned order. The respondent failed to exercise his discretion to consider the mitigating circumstance of the appellant establishment. ***In RPFC Vs SD College, Hoshirpur***, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that the commissioner has no power to waive penalty altogether, however he has the discretion to reduce the percentage of damages. In ***RPFC Vs Harrisons Malayalam***

Ltd 2013 (3) KLT 790 the Division Bench of Hon'ble High Court of Kerala held that the Officer has to exercise the discretion by looking at mitigating circumstances which includes financial difficulties projected by the appellant and quantum to be imposed has to be decided on overall consideration of the facts and circumstances. The Hon'ble High Court also held that the existence of mensrea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages. In **Mcleod Russel Vs RPFC**, AIR 2015 SC 2573 the Hon'ble Supreme Court of India held that the presence of mensrea or actus rea would be a determinative factor while imposing damages U/s 14B. The above dictum was again restated by the Hon'ble Supreme Court of India in **APFC Vs Management of RSL Textile India Pvt.Ltd**, 2017 (3) SSC 110.

3. The respondent filed counter denying the above allegations. It is admitted by the respondent that they delayed the remittance of contribution for the period 3/2014 to 3/2019. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF

Scheme. Hence a notice dt. 9/5/2019 was issued to the appellant. A delay statement specifying the amount of dues the due date of payment, actual date of payment, and period of delay committed by the appellant was also forwarded to the appellant. The appellant was also given a personal hearing on 20/5/2019. The representative of the appellant attended the hearing and requested for time to produce documents. No documents were produced by the appellant. However the appellant requested for waiver of damages. In ***Elton Cotton Mill Vs RPFC***, 2001 (1) SCT 1104 (P&H) (DB) the Division Bench of Hon'ble High Court of Punjab and Haryana held that financial stringency or poor financial condition are not grounds for not paying provident fund contribution in time. Further the Division Bench of Hon'ble High Court of Madhya Pradesh in ***Steel Tubes India Ltd Vs EPFC***, 2012 357 (MP) (DB) held that there is no provision there under the explanation for delay of payment of amount due to financial difficulties as offered by the establishment can be a ground to reduce penalty. In ***Sky Machinery Ltd Vs RPFC***, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving penal damages for delay in depositing the PF

contribution. The Hon'ble Supreme Court in ***Hindustan Times Vs Union of India***, 1998 (2) SCC 242 held that financial problems relating to indebtedness is not a relevant explanation to avoid the payment of PF dues.

4. The learned Counsel for the appellant pleaded that due to various reasons such as agitation by the land owners, higher pay package for the employees due to long term settlement etc, the appellant forum is facing lot of financial difficulties . They are also facing difficulty in paying the basic wages. The learned Counsel also argued that there was difficulty to access the EPFO portal for making the payment. According to him the delay in payment was due to reasons beyond the control of the appellant. Penalty is imposed as punitive measure and therefore the defaulter should possess a culpable intend or mensrea to violate the provision of the Act. Though the appellant was offered an opportunity for hearing, it was only an empty formality. The appellant failed to exercise the discretion vested on him in considering the mitigating factor placed before him. In ***Bojraj Textile Mill Ltd Vs EPF Appellate Tribunal***, 2020 LLR 194 the Hon'ble High Court of Madras held that levy of damages by the authorities U/s 14B

of the Act without proving mensrea is not sustainable. The Hon'ble High Court also held that if the financial crisis on the part of the employer is proved by the employer, levy of damages is not justified without giving reasons through a speaking order. It is seen from proceedings that the appellant was given adequate opportunity to substantiate the financial difficulty before the respondent authority. But no documents, what so ever, was produced before the authority to substantiate their claim. The appellant also failed to produce any document in this appeal also to substantiate their claim of financial difficulties. The Hon'ble High Court of Delhi in ***Kee Pharma Ltd Vs APFC***, 2017 LLR 871 held that the appellant shall produce documents before the respondent authority to substantiate their claim of financial difficulties. If the appellant failed to do so his claim for reduction of damages on financial ground cannot be accepted. **In Assistant PF Commissioner Coimbatore Vs EPF Appellate Tribunal**, New Delhi and **M/s. Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd**, WPC No 4633/2012 the Hon'ble High Court of Madras held that if the appellant company failed to produce documents to substantiate their claim any reduction of damages is in

violation of Sec.14B. As already stated that the appellant failed to produce any document to substantiate their claim of financial difficulties before the respondent authority as well as in this appeal. In the absence of any such evidence the claim of the appellant for reducing the wages on the ground of financial difficulties cannot be considered.

5. Another ground pleaded by the learned Counsel for the appellant is that of mensrea. According to the learned Counsel contribution could not be paid due to financial difficulties and for reasons beyond the control of the appellant. In ***Sreekamakshy Agency Pvt Ltd Vs EPFC Appellate Tribunal***, WPC No. 10181 of 2010, the Hon'ble High Court of Kerala held that while assessing damages mitigating circumstances shall be considered. In ***Elston Tea Estate Ltd Vs RPFC***, WPC No. 21504/2010 the Hon'ble High Court of Kerala held that quasi judicial function though may be a part of organizational hierarchy, nevertheless, warrants independent impartial decision on a dispute in terms of statutory provision. The Hon'ble High Court also held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive a

conclusion that it has to be taken as a mitigating factor for lessening the liability. The ***Standard Furnishing (Unit of Sudarshan Trading) Vs EPF Appellate Tribunal*** , 2020 (3) KLJ 528 the Hon'ble High Court of Kerala held that levy of damages is not automatic and all the circumstances which lead to the delay in remitting PF Contribution had to be factored by the authorities concerned before issuing the order. As already pointed out in earlier paras the appellant failed to produce any document to support his claims of financial difficulties or any other related difficulties before the 14B authority and in this appeal. As pointed out by the Hon'ble High Court of Kerala ***in Elston Tea Ltd case (supra)*** it is the responsibility of the appellant to establish the claims before the respondent authority. Having failed to do so, the appellant cannot claim any relief under the provisions of the Act. The learned Counsel for the appellant also argued that there was no intentional delay in remitting the PF contribution. The learned Counsel for the respondent pointed out that the even the employee share of contribution deducted from the salary of the employees were not deposited in time by the appellant. The appellant has no case that there was delay in

payment of wages and even if it is so the appellant failed to produce any records to prove the same. Non remittance of employee 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 of breach of trust the appellant cannot claim that there was no mensrea in belated payment of contribution at least to the extent of employees share deducted from the salary of the employees, which is approximately 50% of the total contribution. The learned Counsel for the respondent also pointed out that the appellant violated the Paras 30 & 38 of EPF Scheme and thereby has committed an offence for which the appellant is liable to be prosecuted.

6. 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