



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

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

(Tuesday the 2nd day of November, 2021)

APPEAL No.461/2019

Appellant

M/s. Dr. Somervell Memorial CSI
Medical College & Hospital
Karakonam,
Thiruvananthapuram– 695 504.

By M/s. Anil Associates

Respondent

The Regional PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Ajoy P.B

This case coming up for final hearing on
02/08/2021 and this Tribunal-cum-Labour Court on
02/11/2021 passed the following:

ORDER

Present appeal is filed from order No. KR / TVM/ 16743 / Damages Cell / 2019-20 / 3317 dt. 13/09/2019 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 01/2015 to 06/2018. The total damages assessed is Rs.73,63,088/-.

2. Appellant is a medical college cum hospital and is covered under the provisions of the Act. The respondent issued a notice dt.06/05/2019 alleging delay in remittance of contribution for the period from 01/2015 to 06/2018. The copy of the said notice is produced and marked as Exbt A1. The appellant was also given an opportunity for personal hearing on 29/05/2019. A representative of the appellant attended the hearing and filed a written statement dt. 29/05/2019. A copy of the said written statement is produced and marked as Exbt A2. It was pointed out to the

respondent that the delay in remittance was not intentional but was due to financial constrains during certain months. The appellant faced multiple economic challenges such as short fall of tuition fees, belated receipt of fee of SC/ST students from government and unexpected breakdown of high end hospital equipments. Further the payment of the salary of the staff for certain months were also delayed. Though the salary was delayed there was no employee unrest in the appellant medical college. The appellant also submitted the auditor's report of the hospital for the year 2016-17 and 2017-18 alongwith Exbt A2 representation. Though the appellant medical college and hospital are covered as a single unit, for accounting purposes, separate statement of accounts are maintained. The appellant suffered net loss to the tune of Rs.2.54 crores in the year 2015-16, Rs. 0.58 crores in the year 2016-17 and Rs. 6.93 crores in the year 2017-18. True copies of the audited balance sheet and income and expenditure statement of the medical college and

hospital, separately for the year 2015-16 are produced and marked as Exbt A3 & A4. The balance sheet and income and expenditure statement of medical college and hospital for the year 2016-17 separately are produced and marked as Exbt A5 & A6. True copy of the audited balance sheet and income and expenditure statement for medical college and hospital separately for the year 2017-18 are produced and marked as Exbt A7 & A8. There was no deliberate attempt on the part of the appellant to delay remittance of contribution. Ignoring the contentions in Exbt A2 written statement, the respondent issued the impugned order. Section 14B as it now stands, is purely punitive in nature. In **Hindustan Steel Ltd Vs The State of Orissa**, AIR 1970 SC 253, the Hon'ble Supreme Court held that when penalty should be imposed for failure to perform a statutory obligation, it is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. The respondent authority failed to consider the dictums laid down by the Hon'ble

Supreme Court as well as the High Court of Kerala in various decisions. The respondent failed to consider that there was delay in payment of wages during various months.

3. Respondent filed counter denying the above allegations.

The appellant failed to pay statutory dues in time which attracted damages U/s 14B of the Act read with Para 32A of EPF Scheme. Accordingly a notice dt. 06/05/2019 was issued to the appellant advising them to appear before the authority for personal hearing on 29/05/2019. A representative of the appellant attended the hearing, and filed a written statement.

The respondent authority considered the representation and came to the conclusion that the appellant was not having any justifiable ground for delaying the remittance of contribution and therefore issued the impugned order. Though the appellant plead financial difficulties on various grounds the same cannot be accepted for delayed remittance of employees' share of contribution deducted from the salary

of the employees. The appellant will have to deposit the contributions by 15th of the month following the month in which the employee has worked in the establishment and the wages or dues payable to him. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 AIR (SC) 1803 held that “ the viability of the project depends on the employer duly deducting the workers’ contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function”. The very fact that the employees’ share of contribution deducted from the salary of the employees is not paid in time would clearly show that there is a intentional or deliberate delay on the part of the appellant. The appellant establishment is not suffering any financial difficulty. It is evident from Annexure 3 & 4 and Annexure 5. It is clear from the above documents that the appellant was making excess income over expenditure

during 2014-2015, 2015-2016 & 2016-2017. Though the income and expenditure statement of 2017-2018, Annexure 7 is showing the excess expenditure, it is only after adjusting huge amount towards depreciation.

4. Admittedly there is delay in remittance of contribution. The respondent authority therefore initiated action for assessing damages for belated remittance of contribution. A detailed delay statement was forwarded to the appellant along with the summons. The appellant was also given an opportunity for personal hearing. The appellant entered appearance and filed a written statement. The respondent authority considered the representation in detail and issued the impugned order assessing damages. According to the learned Counsel for the appellant the delay in remittance of contribution was due to the financial constrains of the appellant establishment during the relevant point of time. To substantiate the contention of financial

difficulty the appellant produced a two page extract of the balance sheets for the year ending 31/3/2016, 31/03/2017 and 31/03/2018. It is seen that the appellant establishment is maintaining separate balance sheet for the medical college and hospital. The balance sheet for the medical college for the year ending 31/03/2016 shows a profit of Rs. 1,77,68,300/- and the hospital shows a loss of Rs.4,31,90,209/- as on 31/03/2016. Similarly for the year ending 31/03/2017 medical college shows a profit of Rs. 2,47,22,515/-, and the hospital shows a loss of Rs. 3,04,54,394/-.For the year ending 31/03/2018 medical college shows a loss of Rs.1,98,53,842/- and hospital is also showing loss of Rs. 4,94,87,207/-. According to the learned Counsel for the respondent the balance sheets cannot be taken as substantive you evidence to prove financial position of an establishment. He relied on the decision of the Hon'ble Supreme Court **in Petlad Turkey Red Die works Company Ltd Vs Dyes and Chemical Workers Union and**

Other, 1960 KHC 717 to argue that the figures reflected in the balance sheet cannot be accepted unless it is proved through competent persons. The Hon'ble Supreme Court of India in **Management of Trichinappally Mills Ltd Vs National Cotton Textile Mills Workers Union**, AIR 1960 SC 1003 held that balance sheet does not by itself prove any such fact and that the law requires that all important facts has to be proved by the employer by evidence given on affidavit or otherwise and after giving an opportunity to the other side to contest the correctness of such evidence through cross examination. It is required to be pointed out in this contest that, the documents produced by the appellant are only two page extracts of the balance sheet and those documents cannot be relied on to prove the financial status of the appellant establishment. Having said that, it is seen that the revenue income of the hospital alone for the year ending 31/03/2018 is above 43 crores and for the medical college the total revenue income is above 43 crores. This will clearly

show that financial constrains cannot be a reason for delayed remittance of contribution. The learned Counsel for the respondent pointed out that the appellant establishment deserves no sympathy as they failed to remit even the employees' share of contribution deducted from the salary of the employees in time. The learned Counsel for the appellant pointed out that there was delay in payment of wages for few months which delayed the remittance of employees' contribution also. Though there is pleadings to that effect in the appeal memorandum, no evidence is produced by the appellant to substantiate their claim that there was delay in payment of wages to its employees. Further it is seen from the documents now produced by the appellant that the appellant establishment paid wages to its employees within the year. On a perusal of Annexure A1 notice it is seen that the delay in remittance of contribution varies from 37 days to 1355 days. The average delay in remittance of contribution is well over 2 years. The appellant cannot justify such a delay

in remittance of contribution by stating that there was delay in payment of wages to the employees which too is not supported by any evidence. Further Para 30 of EPF Scheme, makes it mandatory on the part of the establishments to remit both the contributions, employers as well as employees within 15 days of the close of the month, irrespective of the fact whether wages of the employees are paid or not. It is seen that the appellant establishment was withholding huge amounts of employees' share of contribution deducted from the salary of the employees for more than 2 years. Non remittance of employees' share of contribution deducted from the salary of the employees is a criminal offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea or intentional delay in delayed remittance of contribution atleast to the extent of 50% of the total contribution.

5. The learned Counsel for the appellant argued that the documents produced by him would show that the appellant establishment was in financial constrains during the relevant period of time. Though the balance sheet of medical college shows some profit and the balance sheet of the hospital clearly indicates that there was an overall loss as far as the appellant establishment is concerned. Though the documents produced by the appellant will not support the case of the appellant establishment it would adequately prove that there was some financial constraint for the appellant establishment during the relevant point of time, and therefore deserves some accommodation as far as damages are concerned.

6. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 75 % of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified, and the appellant is directed to remit 75% of the damages assessed U/s 14B of the Act .

Sd/-

(V. Vijaya Kumar)
Presiding Officer