



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

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

(Tuesday the 28th day of September, 2021

APPEAL No. 48/2020

Appellant

M/s. C.H. Muhammed Koya
Memorial State Institute for the
Mentally Challenged,
Pangappara P.O,
Thiruvananthapuram– 695 581.

By Adv. Bejoy Chandran

Respondent

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

By Adv. Ajoy.P.B

This case coming up for final hearing on
26/04/2021 and this Tribunal-cum-Labour Court on
28/09/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/TVM/1438772 /
Penal Damages /2019-20/ 5280 DT. 23/12/2019 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

03/2009 to 02/2019. The total damages assessed is Rs. 38,41,781/-. Demand notice for interest U/s 7Q of the Act for the same period is also being challenged in this appeal

2. The appellant is a grant in aid Institution of the State of Kerala. It is registered under Travancore Cochin Literacy Scientific and Charitable Societies Act, 1955. The Minister- in-Charge of School Education is the Chairman

of the Society and Chair person of the general council. The Vice Chairman is the secretary to the state in charge of general education. The other members of the general council are eminent persons involved in the education and social welfare department and health care department of the state of Kerala. The institute is mainly meant for mentally challenged persons and is not a profit making organization. On 10/10/2013 the general council of the appellant establishment decided to implement the provisions of the Act to 46 contract and daily wage employees. It was discussed in the executive committee meeting held on 28/07/2015 and a proposal was sent to government for introducing EPF for these employees. The Government of Kerala as per GO(RT) No. 299/2016 dt. 22/01/2016 granted permission for the same. The appellant therefore initiated action for extending the provisions of the Act to the contract employees of the appellant establishment. The respondent organization directed coverage of the appellant establishment w.e.f March 2009. The government of Kerala as per GO(RT) No. 3131/16/ GEN.EDN dt.29/09/2016 permitted for payment of Rs.54,46,000/- being the EPF dues from 03/2009 to

01/2016, on the condition that the employees contribution shall be recovered from the employees in twelve equal installments. Accordingly the contribution as a whole was remitted by the appellant establishment. Thereafter the appellant is regular in compliance. Even though the appellant took action for recovery of the employee's share of contribution in installments, the respondent authority prohibited the same by a written order and the recovery is stopped. The respondent authority issued notice for alleged delay in remittance of contribution U/s 14 B of the Act. The appellant objected to the same stating that there was no intentional delay on the part of the appellant. It was also pointed out that such levy of damages and interest would affect the very existence of the institution, and would have an adverse impact on the institution. Ignoring the contentions of the appellant, the respondent issued orders U/s 14B levying damages and U/s 7Q demanding interest. The respondent authority failed to exercise its discretion available U/s 14B of the Act and Para 32A of EPF Scheme. The delay in remittance was not intentional and there was no mensrea on the part of the appellant. The financial difficulties of the appellant establishment was also not considered by the respondent authority. The number of defaults, extent of intentional delay, frequency of default and amounts involved, ought to have been considered by the respondent authority while levying damages U/s 14B. The impugned order is barred by limitation as there is delay on the part of the respondent even in taking initial steps U/s 14 B.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/03/2009. The appellant defaulted in remittance of contribution for the period from 03/2009 to 01/2016 and 12/2016, 06/2017, 12/2017, 01/2018 and 03/2018 to 02/2019. These belated remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. Hence a notice dt. 05/07/2019 was issued to the appellant along with a delay statement and also offering an opportunity for personal hearing on 06/08/2019. A representative of the appellant attended the hearing and submitted a letter dt.05/08/2019. It was pointed out that the remittance made on 25/11/2016 was accounted as dues for 03/2009 but pertains to dues for different months from 03/2009 to 01/2016. Accordingly a revised statement was prepared and notice was issued to the appellant for hearing on 17/09/2009. The hearing was thereafter adjourned to 30/10/2019 and 21/11/2019. The respondent authority considered all the objections pointed out by the appellant and issued the impugned orders. It is admitted by the appellant that the general counsel meeting held on 10/10/2013 decided to implement the EPF Scheme to its employees. However the request for releasing funds was send to government only on 22/01/2016. The appellant was aware that the appellant establishment was coverable under the provisions of the Act w.e.f March 2009 but deliberately delayed the process for extending the benefits to its employees. The appellant admitted the delay in remittance of contribution. The respondent organization is under obligation to pay interest to the subscribers at the rates declared by the

government from time to time irrespective of the fact whether the employees has remitted the contribution U/s 6 of the Act within time or not. The Hon'ble Supreme Court of India in **M/s. Organo Chemical Industries Vs Union of India**, 1979 AIR (SC) 1803 held that “ this social security measure is a human homage, the state pays to Article 32 of constitution. The viability of the project depends on the employer duly deducting the workers contribution from their wages, adding his own little and prompt deposit of the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform this function”. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, Civil Appeal No 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provisions of civil Act. It was further clarified that penalty is attracted as soon as the contravention of statutory obligation as contemplated by the Act and regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant. Employees Provident Fund and Miscellaneous Provisions Act 1952 being a social welfare legislation the successful implementation of Social Security Scheme framed thereunder depends on the prompt compliance made by the employer.

4. The appellant establishment delayed remittance of contribution under the Act and Schemes thereunder. The respondent authority initiated action for recovery of damages and interest for the belated remittance of contribution. The respondent authority

issued a notice to the appellant to showcause why damages and interest shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. The appellant appeared before the respondent authority and filed a written statement objecting to the levy of damages and interest. The basic contention in the representation was that the appellant is a charitable organization under government of Kerala and there was no intentional delay in remitting the contribution. It was also contended that the respondent authority covered the appellant establishment in the year 2016 from 2009 and therefore the appellant cannot be held liable for the delay. In an elaborate speaking order the respondent authority considered all the points raised by the appellant and held that the appellant is liable to remit damages and interest for belated remittance of contribution.

5. Coming to the facts of this case the appellant is an organization under government of Kerala for promoting the welfare of mentally retard persons. In the year 2013 the General Council of the appellant establishment decided to implement the provisions of EPF and MP Act to the contract and casual employees of the appellant establishment. The said decision was placed before the Executive Council in 2015 and referred to government for approval only in 2016. The government approved the implementation of the Act and Scheme provisions but directed that the employees' share of contribution shall be deducted from the employees in 12 equal installments. However the government sanctioned the lumpsum amount for payment towards contribution. The respondent authority

found that the appellant establishment is coverable from the year 2009 and therefore they are liable to pay contribution from March 2009. According to the learned Counsel for the appellant there was no intentional delay in remittance of contribution. Being a government organization there was some administrative delay in implementing the Act and Scheme provisions. Hence, according to him, no mensrea can be attributed to the appellant in delayed remittance of contributions. According to the learned Counsel for the respondent, the appellant was aware that the provisions of Act and Schemes were applicable to the appellant establishment. The General Council took a decision to implement the provision in 2013 and the Executive Council took a decision only in 2015 and reference was made to the government only in 2016. Hence there is no merit in the contention of the appellant that there was no mensrea in belated remittance of contribution. The contribution for the period from 03/2009 to 01/2016 was paid only on 10/11/2016. It was also argued by the learned Counsel for the respondent that EPF Act, acts on its own force and therefore the visit of Enforcement Officer or directing to comply under the provisions of the Act has no relevance to the compliance under the Act. Though the General Council of the appellant took a decision in 2013 and the Executive Council took a decision in 2015, it is not fair on the part of the appellant to wish away the delay stating that it was only administrative delay. Had the decision been implemented in 10/10/2013 the liability U/s 14B and 7Q would have been much lesser. It is also seen from the impugned order that the appellant establishment delayed remittance of contribution subsequent to

January 2016 also. There was delay in remittance of contribution for 12/2016, 06/2017, 12/2017, 01/2018 & 03/2018 to 02/2019. There was no explanation on the part of the appellant for the delay in remittance of contribution subsequent to 01/2016. The learned Counsel for the respondent pointed out that the appellant cannot plead that there was no intentional delay or mensrea for this part of delay in remittance of contribution. The appellant has no case that the salary of the employees were not paid in time. When the salary of the employees' are paid, the employees' share of contribution is deducted from the salary of the employees. 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. Hence for the delay in remittance of contribution from 01/2016 onwards, the appellant cannot plead that there was no mensrea after having committed an offence of breach of trust.

6. However the appellant is a government organization for the welfare of mentally retarded persons. It is quite possible that the appellant was not aware of implication of the delayed remittance, as the regular employees are excluded employees. It is not possible to accept the pleadings of the learned Counsel for the respondent that the delay for the period from 03/2009 to 01/2016 was also intentional. The learned Counsel for the appellant pointed out that the appellant remitted the employees' share of the contribution also for the period from 03/2009 to 01/2016. Though there was direction from the government to recover employees' share of contribution from the employees' in 12 equal instalments,

the same was prohibited by the respondent, being in violation of the provisions of the Scheme. Ultimately the appellant ended up paying both the contributions for the provident fund from 03/2009 to 01/2016. Though financial difficulties were pleaded no documents were produced to substantiate the same. It is also pointed out by the Counsel for the appellant that the appellant establishment was covered retrospectively from March 2009, in the year 2016 only.

7. Considering all 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 60 % of the damages levied under Sec 14B of the Act.

8. Though appeal is filed against the demand notice issued U/s 7Q of the Act, the learned Counsel for the appellant submitted that the demand has already been remitted by the appellant. Even otherwise an appeal against 7Q order is not maintainable as there is no provision U/s 7(I) to prefer an appeal against an order demanding interest U/s 7Q of the Act.

Hence the appeal is partially allowed the impugned order under Sec 14B is modified and the appellant is directed to remit 60% of damages. The appeal against U/s 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer