



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

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

(Monday the 26th day of April, 2021)

APPEAL No.507/2019

(Old No. ATA 136(7)2007)

Appellant : M/s.Tirur Co-Operative Rural Bank Ltd
PB No. 30, Tirur
Malappuram - 676 101.

By Adv. N Anand

Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on
22.03.2021 and this Tribunal-cum-Labour Court on
26.04.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KK/
1788/Enf/Dam.cell /III (1)/2006/5081 dt.16/10/2006
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 01/2002 to 3/2004. The total damages assessed is Rs.3,07,522/-.

2.The appellant is a Co-operative Society registered under the Kerala Co-operative Societies Act 1969. The appellant started functioning in the year 2002 as a successor of Thrikkandiyur Producers' cum Consumers Co-operative Marketing Society Ltd., which was in existence from 18/08/1946. The predecessor of the appellant was covered under the provision of the Act and they remitted the contribution regularly till 2002. The business of the appellant society was affected by the policy decision of the Government to restrict supply of ration articles to BPL families in 1999. The financial position of the appellant was very bad. The accumulated loss was more than 2 Crores resulting in completely wiping out the capital. Even the payment of salary was delayed in view of the financial difficulties. The appellant remitted contribution in time till January 2002. When the efforts to save the institution would not succeed it had to dispose of

1/3rd of their landed properties. A rehabilitation scheme also approved by the Government. The society was converted into a Co-operative Rural Bank w.e.f 28/06/2002, restricting its area of operation to Tirur Municipal Town. 112 employees out of 139 employees resigned or took voluntary retirement. Even their legitimate benefits could not be settled. In the above circumstances there was some delay in remittance of provident fund contribution for the period from January 2002 to March 2004. There was delay of around eight months to one year in remitting the contribution. A detailed statement is produced and marked as Annexure 1. Now there is no delay in remittance of contribution. The appellant received a summons from the respondent alleging delay in remittance of provident fund contribution. The appellant attended the hearing and submitted the reasons for the delay. The respondent without considering the representation issued the impugned order. The appellant preferred a representation before the Chairman Central Board of Trustees, New Delhi praying for waiver of penal damages. The appellant received a letter dt.30/01/2007

from the Director (Recovery) of the EPF Head Quarters stating that the request for waiver cannot be considered by the CBT since the appellant is neither a sick industrial company nor an establishment under BIFR. The respondent failed to exercise the discretion U/s 14B of the Act and failed to consider the mitigating circumstances leading to the delayed remittance of contribution.

3.The respondent filed counter denying the above allegations. The appellant establishment is a habitual defaulter in payment of provident fund dues. Hence damages were levied for delayed remittance of contribution many times in the past. Hence the claim of the appellant that they were regular in compliance till January 2002 is not correct. The appeal is barred by limitation. Sec 14 B of the Act mandates that any delay in remittance of contribution will attract damages as stipulated under Para 32A of the scheme. Admittedly the appellant failed to remit the contribution as per Para 30 & 32 of EPF Scheme. It may be seen that the delay is upto 417 days. The respondent issued notice to the appellant along with a delay statement. The appellant was also given an

opportunity for personal hearing. In **RPFC Vs SD College, Hoshiarpur**, 1997 (1) LLN 520 the Hon'ble Supreme Court held that the Regional PF Commissioner has no power to waive the penalty altogether. The Hon'ble Supreme Court of India in **Organo Chemical Industries** case, 1979 (2) LLJ 416 SC rejected the plea of financial difficulty for waiving or reducing damages. In **Hindustan Times Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that the default of the employer on the ground of financial difficulties cannot be a justifiable reason for the employer to escape the liability. In **Calicut Modern Spinning & Weaving Mills Vs RPFC**, 1981 (1) LLJ 440 the Division Bench of Hon'ble High Court of Kerala held that even in case of lock out, strike etc. failure to make contribution resulting in default will have to be visited with damages U/s 14B of the Act.

4. According to the learned Counsel for the appellant the delay in remittance of provident fund contribution is due to the financial difficulties of the appellant establishment. Though the Counsel pointed out that the appellant establishment was regular till January 2002, the

same was denied by the learned Counsel for the respondent pointing out that the appellant is a chronic defaulter and damages were levied many times for belated remittance of contribution. The learned Counsel for the respondent also argued that the appellant failed to produce any documents to substantiate their case of financial difficulties before the respondent authority. Having failed to do so the appellant may not be allowed the claim any relief on the ground of financial difficulties in this appeal. The learned Counsel for the appellant also pointed out that their request for waiver of damages is rejected by the headquarters of EPFO, New Delhi stating that their request for waiver of damages cannot be considered as the appellant establishment is not a sick unit under BIFR. According to the learned Counsel for the appellant they were under the bonafide belief that the Central Board of Trustees will consider their request for waiver of damages. The appellant also produced the audit report of the bank for the financial year 2003-04 and 2004-05. According to the learned Counsel for the appellant the loss during 2003-04 is Rs.2.08 Crores and the loss during 2004-05 is

Rs.2.23 Crores. The learned Counsel for the appellant also pointed out that 112 out of 139 employees either resigned or took VRS since the appellant could not pay wages to those employees. From the documents now produced by the appellant it can be seen that the appellant was under real financial constrain during the relevant point of time. But the claim of the appellant that there was delay in payment of wages is not substantiated by the appellant. The learned Counsel for the appellant relied on the decision of the Division Bench of the Hon'ble High Court of Kerala ***in Standard Furnishing Vs EPF Appellate Tribunal***, 2020 (3) KHC 793 to argue that assessment of damages is not automatic in all cases. The respondent while levying damages shall take into account all the circumstances leading to the delayed payment of contribution. In this particular case though the appellant failed to substantiate their claim of financial difficulties before the respondent authority, the appellant to certain extend succeeded in proving the financial difficulties in this appeal. However a look at the audit report now produced by the appellant will clearly show that the delay in

remittance of contribution was not exclusively the financial difficulties of the appellant. Though the appellant claim that there was delay in payment wages of employees the documents produced by the appellant do not support the same. When the salary is paid to the employees, the employees' share of contribution is deducted from the salary of the employees. The failure of the appellant to remit even the employees' share of contribution deducted from the salary of the employees cannot be justified by the appellant. Non-remittance of employees' share of contribution is an offense of breach of trust U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extent of employees' share of contribution deducted from the salary of the employees, even assuming that there was delay in payment of wages for few months during the relevant point of time.

5. Considering the fact and circumstances of this case I am inclined to hold that interest of justice will be

met if the appellant is direct to remit 60% 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 60% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer