



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

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

(Monday the 25th day of July, 2022)

APPEAL No.52/2021

Appellant : M/s. South Indian Constructions
Pvt. Ltd.,
Vavvakavu P.O ,
Karunagappally,
Kollam - 690528

By Adv. B. Mohan Lal

Respondent : The Regional 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
20/07/2022 and this Tribunal-cum-Labour Court on
25/07/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR/KLM/
16656/PD/2020-21/ 1929 dt. 18/04/2021 assessing damages
U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as ‘the

Act) for belated remittance of contribution for the period 04/2015 to 05/2020. The total damages assessed is Rs. 272443/-

2. The appellant is a construction company and covered under the provisions of the Act. The appellant is regular in compliance. The respondent issued a notice dt. 10/02/2021 U/s 14B of the Act alleging that there was delay in remittance of contribution for the period 04/2015 to 05/2020. The respondent issued notices for hearing on 16/02/2021 26/2/2021 and 22/03/2021. A representative of the appellant attended the hearing on all the above dates. The averment in the impugned order that the appellant establishment admitted the liability is not correct. The delay in remittance of contribution was due to acute financial difficulties. The salary and therefore the contributions were delayed due to reasons beyond the control of the appellant. There was no contumacious and dishonest conduct on the side of the appellant. The Hon'ble Supreme Court of India in **Hindustan Steel Ltd Vs State of Orissa**, AIR 1970 SC 253 held that penalty can be imposed only in cases where there is no intentional delay. The appellant failed to appreciate the mitigating circumstances that led to the delayed remittance of contribution. The respondent failed to

show the detailed calculation of damages before issuing the impugned order. The Hon'ble Supreme Court of India in **Hindustan Steel Ltd Vs State of Orissa** (Supra) laid down guidelines in the matter of imposing penalties for failure to carry out a statutory obligation. In **Harrisons Malayalam Ltd Vs RPFC**, 2012 (1) KHC) 243 the Hon'ble High Court Kerala held that merely because there is delay in payment of contribution, liable to pay, damages does not arise automatically.

3. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution for the period 04/2015 to 05/2020. Any belated remittance of statutory dues will attract interest U/s 7Q and damages U/s 14B of the Act. Hence a notice dt.10/02/2021 along with a detailed statement showing the delayed payments were forwarded to the appellant establishment. The appellant was also given opportunity for personal hearing on 16/02/2021. A representative of the appellant attended the virtual hearing. The appellant sent a letter dt.25/02/2021 through e-mail that the delay in depositing the contributions was not intentional but due to acute financial crisis. The appellant however failed to produce any documents to

substantiate the claim though the appellant pleaded financial difficulties. Though the appellant agreed to remit the interest demanded under Sec 7Q, he failed to remit the same. Levy of damages U/s 14B of the Act for belated remittance of contribution is a statutory function. It is an absolute and unqualified liability on the part of the employer to remit the contribution within 15 days of close of every month. Financial difficulties or other reasons cannot stand on the way of statutory dues. The Division Bench of the Hon'ble High Court of Punjab and Haryana in **Elsons Cotton Ltd Vs RPFC**, 2001 (10) SCT 1101 (P&H)(DB) held that financial stringency or poor financial capacity is not a ground for not paying provident fund of the poor employees in time. The Hon'ble High Court of Madhaya Pradesh in **Steel Tubes India Ltd Vs Assistant PF Commissioner**, 2012 (132) FLR 1057 held that there is no provision whereunder the explanation of delay of payment of amount due to financial difficulties, as offered by the establishment, can be a ground to reduce penalty. The appellant vide its letter dt. 25/02/2021 admitted the delay and requested for waiver of damages. A copy of the employers letter dt. 25/02/2021 is produced and marked as Annexure R1(b). Though the appellant was given a reasonable opportunity to remit the interest

demanded U/s 7Q of the Act, they failed to remit the same. Copy of the letter dt.26/05/2021 sent by the appellant to the respondent requesting for installment facility to remit 7Q amount is produced and marked as Annexure R1(a). Sec 14B is introduced as deterrent measure on the employers to prevent them from not carrying out their statutory obligation to make payment of their provident fund. In absence of such a provision the employer could deliberately default in payment of provident fund contribution and utilize the contributions in their business.

4. The appellant filed an IA seeking to produce additional documents in this appeal which was allowed. He produced Exbt P2, a Government notification dt. 17/01/2013 accepting a tender notification for construction of KMI building at Neendakara by the appellant establishment. The appellant also produced a copy of the common judgment of the Hon'ble High Court of Kerala in W.P.(C) No. 23006/2019 and 15489/2020.

5. The appellant establishment delayed remittance of contribution for the period 04/2015 to 05/2020. The respondent therefore initiated action for assessing damages and interest U/s 14 B & 7Q respectively. A notice was issued to the

appellant alongwith a detailed monthwise delay statement showing the calculation of proposed interest and damages. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed Annexure R1(b) written statement admitting the delay and pleading for waiver of damages. The appellant also vide Annexure R1(a) dt. 26/04/2021 requested installment facility for remitting the interest. After considering the pleadings by the appellant, the respondent issued the impugned order.

6. In the present appeal, the learned Counsel for the appellant reiterated its stand before the respondent authority. According to him the delay in remittance was due to financial constraints of the appellant during the relevant time and there was no intentional delay in remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the respondent authority to substantiate its claim of financial difficulties. In this appeal, the appellant produced Exbt.P2 dt. 17/01/2013 sanctioning a contract by Government of Kerala, to the appellant establishment and also the judgment of the Hon'ble High Court of Kerala in W.P.(C) No. 23006/2019 filed

by M/s. Ajith Associates Architectural Construction Pvt. Ltd against government of Kerala and the appellant as the fourth respondent. Writ Petition No.15489/2020 is filed by the appellant against Government of Kerala and M/s. Ajit Associates. It is seen that the appellant has filed Writ Petition No. 15489/2020 against the Government of Kerala seeking a direction to Government of Kerala to release the pending amount. The Hon'ble High Court vide its judgment dt. 26/04/2021 directed the government to release the amounts withheld from and any other amount due to the petitioner within a period of two months. According to the learned Counsel for the appellant the above judgment is produced to substantiate the claim of financial difficulties. It is not clear how the above judgment will establish the financial difficulties of the appellant establishment. It is true that some amount was due to the appellant from the Government and the Hon'ble High Court in the above judgment directed the government to release the said amount within 2 months. It is very difficult to accept the claim for learned Counsel for the appellant that the judgment would disclose the financial constrains of the appellant establishment. If the appellant establishment is actually in a financial crisis, it ought to have produced direct evidence such

as balance sheets and profit and loss account along with the supporting evidence to substantiate the claim. The direction by the Hon'ble High Court to release the withheld amount will not in any way support the claim of the appellant that they have financial difficulties during the relevant point of time.

7. The learned Counsel for the appellant relied on various decisions to argue that there was no mensrea and intentional delay in remittance of contribution and mensrea is a relevant consideration while deciding the quantum of damages.

8. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act. In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **McLeod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are

of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty / damages for breach of civil obligations/liabilities”

9. The learned Counsel for the respondent pointed out that the appellant has no case that the wages of the employees were delayed. Even if there is a claim, it is not supported by any evidence. When the wages of the employees are paid, employees’ share of contribution is deducted in the salary of the employees. Non-remittance of employees’ share of contribution deducted from the salary of the employees is an offense of breach of trust U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no intentional delay in remittance of contribution.

10. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

(V. Vijaya Kumar)
Presiding Officer