



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 8<sup>th</sup> day of March, 2021)

**APPEAL No.572/2019**  
(Old No. 840 (7) 2012)

Appellant

M/s. Express Publication (Madurai) Ltd.,  
Express House  
East Hill Road,  
West Hill P.O  
Kozhikode- 673 005

By Adv. Benny P Thomas

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  
08/02/2020 and this Tribunal-cum-Labour Court on  
08/03/2021 passed the following:

**O R D E R**

Present appeal is filed from Order No. KR / KK /  
14142 / Enf-3 (2) / 2012-13 / 2432 dt. 14/09/2012 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 04/2004 to 03/2011. The total damages assessed is Rs. 1,19,142/-.

2. The appellant is a company registered under company's Act and is engaged in newspaper industry. The appellant has a unit in different parts of the state and the appellant is printing and publishing the Kozhikode edition from this unit. The appellant was facing financial strains during the years 2003-04 and 2010-11. Due to heavy financial strain and other adverse conditions the appellant was unable to pay the provident fund contribution in time for the period 04/2004 to 03/2011. Though there was some delay, with great difficulty, the appellant paid the PF contributions. After payment of provident fund contribution the respondent issued show cause notice dt.10/07/2012 proposing to impose damages. The appellant filed objection dt. 06/08/2012 before the respondent, a copy of the same is produced and marked as Annexure 2. A representative of the appellant also appeared before the respondent and highlighted the financial difficulties of the appellant establishment. The appellant ought to have seen that there was no intentional delay in payment of contribution. The delay in remittance of provident fund

contribution was only due to the financial constrains of the appellant. The accumulated loss of the appellant company for the year ending 2004, 2005, 2006, 2008, 2009 2010 & 2011 are Rs. 40.75 crores, Rs. 42.93 crores Rs. 67.10 crores, Rs. 94.76 crores, Rs. 93.90 crores, Rs. 89.04 crores, Rs. 78.63 crores and Rs 86.96 crores, respectively. The appellant also produced copies of its Balance Sheet and Profit and Loss Account for the years 2004-05 to 2010-11 along with Annexure B objection filed before the respondent. The appellant had huge financial liabilities during the relevant period. The appellant had an interest liability of Rs.7.71 Crores on 31/03/2005, Rs.5.24 Crores as on 31/03/2006, Rs.9.30 Crores as on 31/03/2007 and Rs.16.45 Crores as on 31/03/2008 and Rs.10.62 Crores on 31/03/2009 Rs.10.46 Crores as on 31/3/2010 and Rs.6.84 Crores on 31/03/2011 to the Banks on cash credit account. The appellant was unable to pay even the salary of the employees because of the financial strain. The respondent has the discretion to reduce or waive the damages U/s 14B. The respondent failed to consider whether there was any intentional or willful delay on remitting the contribution in time. The respondent had the right to claim interest for delayed

remittance of contribution U/s 7Q of the Act w.e.f 01/07/1997.

3. The respondent filed counter denying the above allegations. The appellant is bound to pay statutory contribution as provided U/s 6, 6A & 6C of the Act and the Schemes framed thereunder. The appellant failed to pay the contributions within the due date as prescribed under Para 30 of EPF Scheme for the period 04/2004 to 03/2011. A notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded to the appellant. The appellant was also given an opportunity for personal hearing on 07/08/2012. A representative of the appellant appeared on behalf of the establishment. He requested the authority under 14B that the appellant establishment was under loss for many years. The representative of the appellant did not raise any objection regarding the delay statement send across to them. The financial constraints pleaded by the appellant is not a ground for waiving or reducing the damages U/s 14B of the Act. In **Calicut Modern Spinning and Weaving Mills Ltd Vs. RPFC**, 1982 KLT 303 the Hon'ble High Court of Kerala held that the employer is bound to pay contributions under the Act

every month voluntarily irrespective of the fact that wages have been paid or not. Refusal to pay wages to the employees, is a violation of the fundamental right guaranteed under Article 21 of the Constitution of India and therefore granting any further concession consequential to delayed payment of wages can never be contemplated by the legislature. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund and Another** , in Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of the provision of the civil Act. The penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intentions of parties committing such violation become immaterial.

4. The only issue raised by the learned Counsel for the appellant for belated remittance of contribution is that of financial difficulties. According to the learned Counsel, the appellant establishment was suffering heavy losses for the period from 2004-2011. According to him there was also occasions when the salary was delayed to its employees. According to the learned Counsel for the respondent the appellant failed to produce any documents to support the financial difficulties of the appellant establishment neither

before the respondent authority nor in this appeal. The appellant in the appeal memorandum has pleaded that the Balance Sheet and Profit and Loss Account of the appellant establishment was produced before the respondent along with Annexure A2 representation. However on perusal of Annexure A2 there is no indication regarding production of the Balance Sheet and Profit and Loss Account before the 14B authority. It is also pleaded in this appeal memorandum that the Balance Sheet and Profit and Loss account were being produced along with this appeal. However it is seen that no such documents are produced by the appellant in this appeal. Further the learned Counsel for the appellant also pleaded that there was delay in payment of wages to its employees. However the appellant failed to produce any documents to support the claim of the appellant that there was delay in payment of wages. 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. **In Sreekamakshy Agency (P) Ltd Vs EPF Appellate Tribunal**, WP(C) NO. 10181/2010, the Hon'ble High Court of Kerala held that when the employer pleads financial difficulty as a reason for delayed payment of contribution and produces supporting documents to substantiate the same, the authority U/s 14 B shall consider the same while deciding the quantum of damages. In **Elston tea Estate Vs. RPFC**, WP(C) No. 21504/2010, also the Hon'ble High Court of Kerala held that financial constrains have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as a mitigating factor lessening the liability. As already stated, 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 damages 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 provisions. In ***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. 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