



सत्यमेव जयते

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

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

(Wednesday the 17th day of November, 2021)

APPEAL No.617/2019
(Old No. ATA.702(7) 2013)

Appellant

M/s. Sabine Hospital & Research
Centre, Pezhakkappilli ,
Pezhakkappilli Post, Muvattupuzha,
Ernakulam – 686674.

By Adv. Pradeep R. Karunakaran

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 24/08/2021 and this
Tribunal-cum-Labour Court on 17/11/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/ KC/27467 /
Damages Cell / 2013/ 3806 dt. 03/06/2013 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 10/2010 to

02/2011. The total damages assessed is Rs.64,104/-.The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is a hospital constituted under a partnership deed. 80% of the investment for starting the hospital are provided by the bank. The hospital started in the middle of October 2010. The appellant requested the respondent's office for covering the hospital under the provisions of the Act. In spite of several reminders the respondent failed to allot provident fund code number to the appellant establishment. Later an Enforcement Officer of the respondent's office visited the appellant and advised the formalities for complying with the provisions of the Act. The appellant vide letter dt. 08/05/2011 requested for the waiver of employees' share for the period from 10/2010 to 02/2011. There was no deliberate defiance of law or the appellant acted in a conscious disregard of obligation imposed by statute. There was no mensrea on the part of appellant in the delayed remittance of contribution. The defence statement was not considered by the respondent authority before issuing the impugned orders. The fact that there was no intentional delay in remitting the contribution

was not considered by the respondent. The financial stringencies of the appellant establishment was also not considered by the appellant.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act w.e.f 11/10/2010. Belated remittance of contribution as provided U/s 6 of the Act will attract penal damages U/s 14B of the Act read with Para 32A of EPF Scheme. An enquiry U/s 14B was initiated vide summons dt.01/11/2012. A detailed delay statement was also forwarded to the appellant. The appellant was given an opportunity for personal hearing on 21/11/2012. A representative of the appellant attended the hearing and stated that the delay in remittance was due to financial constrains and administrative inexperience. After considering all the submissions the respondent issued the impugned order.

4. An order issued under Sec 7Q of the Act is not appealable.

5. The appellant admitted the delay however he has justified the same by stating the financial difficulties and administrative constrains of the appellant. The Act applies to an establishment on its own force, where the statutory requirements are met. The Hon'ble

High Court of Orissa in **State Vs SK Dilijan**, 1973 LIC 839 held that the EPF Act and the Schemes acts on its own force. The appellant establishment was having 96 employees right from the date of coverage and therefore the respondent refused waiver of employees' share. It is settled legal position that the ups and downs of business cannot be a valid ground for delayed remittance of contributions. The delay in remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. The Hon'ble Supreme Court of India in **Organo Chemical Industries Ltd Vs Union of India**, 1979 (2) LLJ 416 SC held that even if it is assumed that there was loss as claim it will not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of appellant establishment over different points of time. The so-called financial stress faced by the establishment is not proved through evidence. The financial crisis claimed by the appellant is not a defence to delay the contributions beyond the statutory limit. When the appellant delayed remittance of contribution and violated the provisions of the Act, the appellant

cannot plead that there was no mensrea in belated remittance of contribution. Further in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act. The division bench of the Hon'ble High Court of Karnataka in **Star Construction and Transport Company Vs State of Mysore**, 1973 LIC 392 held that the power U/s 14B is punitive of character to deter any establishment from committing further default. In **Ernakulam District Co-operative Bank Vs RPF**, 2000 (1) LLJ 1662 the Hon'ble High Court of Kerala held that even though there is sufficient reason for the appellant to make belated payment that is not a ground for granting exemption for paying penalty or damages U/s 14B of the Act .

6. The appellant is challenging orders issued U/s 14B and Sec 7Q of the Act for belated remittance of contribution. According to the learned Counsel for the appellant, the delay in remittance was due to financial constrains and also some administrative lapses on the part of the appellant. According to him there was no intentional delay in remitting the contribution. The learned Counsel for the appellant also

pointed out that there was no mensrea in belated remittance of contribution. He pointed out that one of the reason for delay was the delay in allotment of code number. The learned Counsel for the respondent denied the claim of the appellant that there was delay in allotment of code number. According to the Counsel for the respondent EPF and MP Act 1952 acts on its own force and it is the responsibility of the appellant to ensure remittance of contribution within the time limits. Allotment of provident fund code number is not mandated by any provisions of the Act and Schemes. It is only for administrative requirement. Therefore it is the responsibility of the appellant to commence remittance of contribution immediately when the statutory requirements are satisfied. The appellant establishment is a hospital and was employing 96 employees as on the date of coverage and therefore the statutory requirements had already been met as on 10/2010 and therefore the appellant cannot claim that the remittance on provident fund contribution was delayed due to delay in allotment of code number. Another ground pleaded by the learned Counsel for the appellant for belated remittance is that of financial constrains. The learned Counsel for the respondent pointed out that the

appellant establishment was making huge profits during the relevant point of time as per the trading and profit and loss account for the year ended 31/03/2011 produced by the appellant. It is seen from the profit and loss account, that the appellant had a profit of Rs.70.60 lakhs for the year ending 31/03/2010 was Rs.2.12.crores for the year ending 31/03/2011. Hence the documents produced by the appellant in this appeal will not substantiate the claim of financial difficulties. The 3rd ground pleaded by the appellant is with regard to mensrea. The Hon'ble Supreme Court of India in a recent decision, considered the impact of mensrea in proceedings U/s 14B of the Act. After considering the earlier decisions of the Hon'ble Supreme Court in **McLeod Russel India Ltd Vs RPF**, 2014 (15) SCC 263 and **The Assistant PF Commissioner and Another Vs The Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 the Hon'ble Supreme Court of India in **Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation**, Civil Appeal No. 2136/2012, held that

“Para 17 : Taking note of 3 Judge Bench Judgement of Court in Union Of India Vs Dharmendra Textile

Processors and others (supra) which is Indeed binding on us, we are of the considered view that, any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”.

In view of the above decision the question of mensrea in 14B proceedings is no more relevant.

5. Considering all the facts, pleadings and arguments in this appeal, I am not inclined to interfere with the impugned order U/s 14B of the Act.

6. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs**

EPFO, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act. In *M/s ISD Engineering School Vs EPFO*, WP(C) No. 5640/2015(D) and also in *St. Mary's Convent School Vs APFC*, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

Hence the appeal against the order issued U/s 14B is dismissed on merit and against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer