



सत्यमेव जयते

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

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

(Monday the 27th day of December, 2021)

APPEAL No.70/2019

Appellant

District Nirmithi Kendra,
Pathanamthitta, 1st Floor,
Revenue Division Office,
Adoor - 691 523.

By M/s. Jayasankar & Manu

Respondent

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

By Adv. Nitha. N.S.

This case coming up for final hearing on 27/09/2021
and this Tribunal-cum-Labour Court on 27/12/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/ TVM/ 22250/
PD/ 2018-19 dt. 09/11/2018 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 01/1996 to

02/2004 and 03/2006 to 09/2006. The total damages assessed is Rs.7,81,679/-.

2. The appellant is an institution formed under the provisions of Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955. The main objectives of the appellant is to generate and propagate innovative ideas on housing, to serve as a clearing house of information and data bank on housing. The appellant was brought under coverage of the Act retrospectively from 01/01/1996 by order dt. 25/10/2006. The appellant quantified Rs.11,82,705/- as the dues for the period from 01/1996 to 06/2006. The remittance of that amount was delayed in view of the financial difficulties of the appellant establishment. In view of the recovery action initiated by the respondent authority, the amount was remitted in instalments. Due to acute financial crisis even the salary of the employees could not be paid in time. The appellant received a notice dt. 11/03/2010 from the respondent demanding damages and interest in view of the delay in remittance of contribution. The said order issued by the respondent U/s 14B and 7Q were challenged before the EPF Tribunal and the same was disposed by order dt. 20/09/2011. Appellant therefore filed W.P.(C) No. 234 of 2012 and W.P.(C) No. 26660 of 2014, before the Hon'ble High Court of

Kerala challenging the damages U/s 14B and interest U/s 7Q of the Act. Both the Writ Petitions were dismissed by the Single Bench of Hon'ble High Court of Kerala by a common judgment on 29/10/2014. The appellant took up the judgment in Writ Appeal No.696/2015 and Writ Appeal No.702/2015. The Division Bench of the Hon'ble High Court of Kerala dismissed Writ Appeal No. 702/2015. Writ appeal No. 696/2015 was allowed there by quashing the assessment of damages U/s 14B of the Act. The Division Bench also remanded the matter back to the respondent authority to re-assess the dues and pass fresh orders. A true copy of the judgment dt. 03/03/2017 in Writ Appeal No. 696 of 2015 is produced and marked as Annexure P1. The appellant remitted the interest demanded U/s 7Q of the Act. The respondent authority initiated fresh proceedings U/s 14B of the Act, through summons dt. 11/06/2018 and true copy of the summons is produced and marked as Annexure P2. The appellant appeared before the respondent and filed written submissions. A true copy of letter dt. 12/10/2018 is produced and marked as Annexure P3. Ignoring the contentions of the appellant the respondent issued the impugned order.

3. The appellant was brought under the coverage of the Act in the year 2006. The appellant remitted the dues in installments

due to its financial difficulties. The delay in remittance of contribution was neither wilful nor deliberate. The appellant establishment is covered retrospectively from 01/1996 and the coverage was brought to the notice of appellant only in the year 2006. The impugned order is non-speaking order in so far as it does not show any break up on the basis on which the amount has been arrived. The respondent was at error in holding that the contention of the employer without supporting documents cannot be accepted. Where it is clear that there was no dishonest or contumacious conduct or that the appellant acted in conscious disregard of its obligation or acted either deliberately or in defiance of law, the levy of damages is unwarranted. The respondent authority has not considered the law laid down by the Hon'ble High Court and Supreme Court in this regard. It is settled law that for the respondent to impose damages it has to first of all decide whether the facts of a case warrant the imposition of damages. The respondent overlooked the law laid down by the Hon'ble High Court of Kerala in **Indian Telephone Industries Limited Vs APFC**, and others where in it was held that merely because there is belated payment of contribution liability to pay damages does not automatically raise.

4. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/01/1996. The appellant delayed remittance of contribution for the period from 01/1996 to 02/2004 and 03/2006 to 09/2006. These belated payment attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent authority therefore issued orders dt.11/03/2010 levying damages. The appellant challenged the above said order before EPF Appellate Tribunal, New Delhi in ATA No. 293(7)/2010 which was dismissed. The appellant filed Writ Petition No. 234/2012 challenging the order U/s 14B and confirmed in the appeal. The single bench of the Kerala High Court dismissed Writ Petition. The appellant moved the Division Bench of the Hon'ble High Court on appeal and the Division Bench vide its judgment dt. 03/03/2017 directed the respondent to pass fresh orders U/s 14B in accordance with law. A show cause notice dt.11/06/2018 was issued to the appellant directing him to appear and produce records on 04/12/2018. A detailed damages statement showing the month wise dues, the due date of payment, the actual date of payment and the delay in remittance was also communicated to the appellant along with the notice. A representative of the

appellant attended the hearing and filed Annexure P3 written statement. After considering the representation the respondent authority issued the impugned order. The statutory dues include the contribution collected from the salary of the employees. The delay in remitting contribution was admitted by the appellant at the time of hearing. The respondent authority considered the submissions made by the appellant and issued a detailed order which is being challenged in this appeal. The appellant was provided with a detailed statement as already pointed out along with the summons. The appellant was also provided adequate opportunity to represent the case and produced the records. The appellant failed to produce any records to substantiate their claims. The only ground pleaded by the appellant was that of financial difficulties. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC held that “ Even if it is assumed that there was loss sustained, it does 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 the establishment over different points of time. Besides 50% of contribution deposited represent the employees' share which had been deducted from the employees' wages and was a trust

money with the employees for deposit in the statutory fund. The delay in deposit of this part of contribution amounted to breach of trust and does not entitle the employer for any consideration for relief.” The Hon'ble Supreme Court of India In **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant.

5. The appellant establishment is covered w.e.f 01/01/1996 vide order dt. 25/10/2006. The appellant establishment failed to comply. The respondent authority therefore initiated an enquiry U/s 7A of the Act and assessed the dues for the period from, 01/1996 to 06/2006. There was further delay in remitting the contribution. The respondent authority therefore initiated recovery action and recovered the assessed dues. The respondent thereafter initiated action for assessing damages and interest. Notice was issued to the appellant establishment along with a detailed delay statement and the damages and interest were quantified after hearing the appellant. Aggrieved by the order the appellant approached the EPF Appellate Tribunal, New Delhi. EPF

Appellate Tribunal dismissed the appeal vide order dt. 20/09/2011. The appellant challenged the order before the Hon'ble High Court of Kerala in W.P.(C) No. 234/2012. The single bench of the Hon'ble High Court dismissed the petition. The appellant challenged the order before the Division Bench in Writ Appeal No. 696/2015. The Division Bench of the Hon'ble High Court of Kerala allowed the Writ Appeal, set aside the impugned order and remitted the matter back to the respondent, to re-examine the assessment in view of the earlier decision of the Courts in **Indian Telephone Industry Ltd., Vs Assistant PF Commissioner**, 2006 KHC 1655. The respondent authority initiated fresh enquiry, the appellant entered appearance and filed Annexure P3 written statement. After hearing the appellant the respondent issued the impugned order.

6. The learned Counsel for the appellant challenged the impugned order in this appeal basically on three grounds. The first ground pleaded by the learned Counsel for the appellant is that the appellant establishment is covered retrospectively w.e.f 01/01/1996 vide order dt. 25/10/2006, therefore the appellant cannot be penalize for the delay in remittance for the said period. According to the learned Counsel for the respondent the law is very clear that EPF and MP Act 1952, acts own its own force and

no action from the respondent is required to cover the establishment under the provisions of the Act. It is the responsibility of the appellant to start compliance under the Act the moment the statutory requirements are met. The allotment of code number to an establishment is not mandated under any provisions of the Act or Schemes and therefore that cannot be taken as an excuse for delayed remittance of contribution.

7. The 2nd ground pleaded by the appellant is that of financial difficulties. The learned Counsel for the respondent pointed out that though financial difficulties were pleaded before the respondent authority also, no documents were produced to substantiate the claim. No documents were produced in this appeal also. To substantiate the claim of the appellant regarding financial difficulties. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B if the appellant pleads and produces documents to substantiate the

same. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

8. The 3rd ground pleaded by the learned Counsel for the appellant is that there was no intentional delay in delayed remittance of contribution. According to him the first part of the delay was due to delayed coverage of the establishment and secondly there was no finding by the respondent authority that there was deliberate and intentional delay and mensrea in belated remittance of contribution by appellant establishment. The law on the subject has undergone a lot of changes over a period of time. The authoritative exposition of law on the subject was that of the Hon'ble Supreme Court of India in **Organo Chemicals case** (supra). Thereafter the Hon'ble High Court of Kerala has also considered the above issue in various decisions. The Division Bench of the Hon'ble High Court of Kerala in Writ Appeal No. 696/2015 has specifically referred to the decision of the Hon'ble High Court in **Indian Telephone Industries Vs Assistant PF Commissioner and others**, 2006 KHC 1655. It is pointed out that the above decision of the single bench of the Hon'ble High Court of

Kerala was modified by the Division Bench and the assessment of damages U/s 14B was referred to the Central Board of Trustees to examine the same. Subsequently the Hon'ble Supreme Court in **McLeod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs the Management of RSL Textile India Pvt Ltd**, Civil Appeal No. 96/97 of 2017 held that presence of mensrea or actusreus would be a determinative factor in imposing damages U/s 14B, as also the quantum thereof. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Ltd** has also held that mensrea is a relevant consideration while assessing damages and financial difficulties is one of the ground which is required to be considered while deciding the quantum of damages U/s 14B of the Act . In the SLP No. 21174 of 2015 from the above decision filed by the respondent organization, though the Hon'ble Supreme Court upheld the quantification of damages, the question of law involved in **Harrison Malayalam case** was kept open to be decided in an appropriate case. The Hon'ble Supreme Court of India considered the issue in a recent decision. 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 RPF**, 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. Having examined the legal position as above, the question is whether the appellant establishment is entitled for any reduction in damages in view of the pleadings by the appellant. The appellant establishment is under the control of government of Kerala. There is no dispute regarding the fact that the appellant establishment is covered retrospectively from 01/01/1996 on 25/10/2006. The learned Counsel for the respondent pointed out

that the liability under the provisions of the Act are automatic and the appellant establishment will have to start compliance on satisfying the statutory requirement. The appellant establishment has rightly claimed that they were not aware of their liability under the Act till the communication is received from the respondent organization. The appellant establishment can therefore be given some relaxation as far as damages U/s 14B is concerned.

10. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 75 % of the damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 75% of the damages.

Sd/-

(V. Vijaya Kumar)
Presiding Officer