



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer
(Tuesday the 22nd day of February, 2022)

APPEAL No.700/2019

Appellant : Karuna Medical College
Vilayodi, Chittur,
Palakkad – 678 103

By Adv. Premalal &
Adv. Vishnu Jyothis Lal

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

By Adv. Dr.Abraham P.Meachinkara

This case coming up for final hearing on 17/11/2021 and this Tribunal-cum-Labour Court on 22/02/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR /KK / 23277 / Enf-4(5)/14B / 2019/ 3331 dt. 20/09/2019 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 04/2018 to 03/2019 The total damages assessed is Rs. 6,20,572/-.

2. Appellant is a Medical College run by a charitable trust. The appellant is covered under the provisions of the Act. The appellant received a notice dt. 13/06/2019 directing to show cause why damages shall not be levied for belated remittance of contribution. A copy of the notice is produced and marked as Annexure 1. The appellant vide its letter dt. 02/09/2019 explained the reasons for delay and made it clear that the delay was not intentional. A true copy of the letter dt. 02/09/2019 is produced and marked as Annexure 2. The delayed remittance of contribution was due to acute financial shortage. Every year, after the month of September, the trust does not have regular inflow of cash till next September. Even the payment of salary was delayed upto three to four months and consequently the delay in remittance of provident fund. The annual fee fixed by the government is not even enough to meet the salary commitments the teaching and non-teaching staff of the appellant. Hence the day to day administration is done on borrowed funds. Without considering the written statement filed by the appellant the respondent issued the impugned order. A copy of the order is

produced and marked as Annexure 3. The delay in remittance of contribution was not intentional. There is no finding by the respondent regarding mensrea so as to attract penalty by way of damages. The respondent ought to have found that after introduction of interest U/s 7Q there is a drastic change with regard to levy of damages U/s 14B of the Act. The respondent failed to exercise its discretion available U/s 14B. The Hon'ble Supreme Court in **Employees State Insurance Corporation Vs HMT Ltd and another**, AIR 2008 SC 1322 and **Assistant PF Commissioner EPFO and another Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 held that the existence of mensrea or actus reus to contravene a statutory provisions must also be held to be a necessary ingredient for levy of damages.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. Hence there is a statutory obligation on the appellant to remit contributions within 15 days of close of a month. The appellant failed to remit the contribution in time. Hence notice number KR/KKD/23277/Enf-5(4)/Damages/1710 dt.13/06/2019 was issued to the appellant to show cause why damages U/s 14B of

the Act shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 16/07/2019. A detailed delay statement was also enclosed along with the notice. Nobody attended the hearing on 16/07/2019. The enquiry was adjourned to 17/09/2019. Nobody attended the hearing on 17/09/2019 also, inspite of the fact that the notice was acknowledged by the appellant. Hence it is felt that the appellant has no dispute regarding the proposed damages and also the delay statement send along with the notice. Accordingly the respondent issued the impugned order. The contention of the appellant that the contributions could not be paid due to financial constrains cannot be accepted as a ground for delayed remittance of contributions. The Hon'ble Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC** , 1982 KLT 303 held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact whether wages have been paid or not. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act. In **RPFC Vs SD College Hoshiarpur and others**, 1997 (1) LLN 520

the Hon'ble Supreme Court held that the Provident Fund Commissioner has no power to waive the penalty altogether. After the amendment of the Act and Schemes provisions in 1988, the Commissioner got no discretion to waive or reduce damages.

4. The appellant establishment delayed remittance of contribution for the period 04/2018 to 03/2019. The respondent therefore issued show cause notice directing the appellant to explain the reasons for the delay. The appellant was also given an opportunity for personal hearing. The appellant acknowledged the summons issued by the respondent but failed to attend the hearing. The respondent gave one more opportunity to the appellant to represent his case. According to the learned Counsel for the appellant the appellant filed Annexure 2 representation which was not considered by the respondent authority. On a perusal of the Annexure 2 written statement filed by the appellant, it is seen that the appellant received the notices dt.29/07/2019 and 05/08/2019. According to the Counsel for the respondent, no such letter is received by the respondent authority till the date of issue of the impugned order. The learned Counsel for the appellant also pointed out that the appellant

failed to produce any documents to substantiate their claim of financial difficulties before the respondent authority.

5. In this appeal the appellant produced the copy of expenditure statement for the year ending 31/03/2018 and 2018-2019. The learned Counsel for the respondent opposed the additional documents on the ground that the appellant failed to produce any statutory documents such as Balance Sheet or Profit and Loss account of the appellant establishment for the relevant point of time. The Hon'ble Supreme Court of India in **Management of Trichinappilly Mills Ltd Vs National Cotton Textile Mill Workers Union**, AIR 1960 SC 1003 held that balance sheet itself is not a proof to establish the financial condition of the establishment unless the current assets and current liabilities of the establishment are proved through a competent witnesses. That being so, the financial statements prepared by the appellant cannot be accepted to establish the financial condition of the appellant establishment. The learned Counsel for the respondent pointed out that the claim of the appellant that wages were delayed is disproved by the documents produced by the appellant in this appeal. Further he also pointed out that the appellant failed to remit even the employees' share of contribution deducted

from the salary of the employees during the relevant point of time. It is seen from the Annexure 1 that the delay in remittance of contribution varied from 177 days to 456 days. The appellant was utilizing the employees' share of contribution for such a long period for which the appellant cannot claim any relief. Further it is seen that in Annexure 2 written statement filed by the appellant it is stated that "The deducted provident fund contribution were also not remitted in time due to the pressure from the financial institutions for servicing their interest debt". It is clear from the above that even the employees' share of contribution deducted from the salary of the employee is diverted to the business of the appellant which amounts to criminal breach of trust U/s 405 & 406 of Indian Penal Code.

5. The learned Counsel for the appellant also pointed out that there is no finding by the respondent authority with regard to mensrea in the impugned order. When the appellant failed to attend the hearing and produce documents to substantiate their claim of financial difficulties before the respondent authority, the appellant cannot come up in appeal and argue that the respondent failed to consider the question of mensrea. The Hon'ble High Court of Punjab and Haryana in **TCM Woolen Mills Vs RPFC**, 1980 (57) FJR 222 held

that “ Unless the objections and factual matters are pressed before the Commissioner, he cannot imagine the same adjudicate thereon. When the objections raised are vague and devoid of necessary particulars, a finding that a plea is untenable would be sufficient compliance with the requirement of a reasoned order.”

6. 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”

7. Considering all 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