



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

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

(Friday the 20th day of May, 2022)

APPEAL No. 77/2021

Appellant : M/s. IRE Loading Unloading
Workers Welfare Forum,
Chavara P.O,
Kollam – 691 583.

By M/s. Menon & Pai

Respondent : The Assistant 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 18/05/2022
and this Tribunal-cum-Labour Court on 20/05/2022 passed the
following:

ORDER

Present appeal is filed from Order No. KR/KLM/274 C
/PD/2021-22 /596 dt.16/08/2021 assessing damages U/s 14B
of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for
belated remittance of contribution for the period from 11/2009 to

04/2014. The total damages assessed is Rs.1,01,828/-.

2. The appellant is a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act. The appellant was regular in compliance. The appellant is supplying manpower to the Contractors engaged by M/s IRE Ltd, a company owned and controlled by Central Government. The only income of the appellant is the payments made by the contractors. The Forum was facing financial constraints during the period 11/2009 to 04/2014 and there was delay in payment of wages to the employees and consequential delay in remitting contribution. The delay occurred on account of various factors beyond the control of the appellant. The respondent issued notice U/s 14B alleging delay in remittance of contribution. A representative of the appellant attended the hearing and explained the financial constraints. However without adverting to any of the contentions raised by the appellant respondent issued the impugned order. In the cause title of the order, the name of the employer was shown as M/s Indian Rare Earths Ltd., Chavara, in the place of IRE Loading Unloading Workers Welfare Forum. The respondent issued a corrigendum dt.14/09/2021 rectifying the mistake which is produced as

Annexure 2. The original order dt.12/08/2021 is produced and marked as Annexure A1. The appellant failed to exercise its discretion available U/s 14B of the Act. In **RPFC Vs SD College, Hoshiarpur** 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percent of damages. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 held that the officer has to exercise discretion while looking at mitigating circumstances which includes financial difficulties. The Hon'ble Supreme Court in **McLeod Russel India Ltd Vs RPFC**, AIR 2015 SC 2573 and in **Assistant PF Commissioner EPFO and another Vs Management of RSL Textiles India Pvt. Ltd**, 2017(3) SSC 110 held that the presence of mensrea or actus reus would be a determinative factor while imposing damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/07/1990. The appellant delayed remittance of contribution for the period from 11/2009 to 04/2014. The respondent therefore initiated action U/s 14B of the Act vide notice dt.24/09/2014. A detailed delay

statement was also forwarded along with the summons. The appellant was also given an opportunity for personal hearing on 17/12/2014. None attended the hearing on 17/12/2014. The matter was not taken up for quite some time and restarted the enquiry on 16/03/2021. On 16/03/2020 a representative of the appellant attended the virtual hearing and requested for a copy of the delay statement. A copy was send by email and the enquiry was adjourned to 12/04/2021. The enquiry was again adjourned to 28/04/2021. The Secretary of the appellant sent a letter dt.15/04/2021 through e-mail stating that the remittance could not be made due to financial difficulties and technical issues. The letter received from the Secretary dt.15/04/2021 is produced and marked as Annexure R1. After considering the request of the appellant, the respondent issued the impugned order. Sec 14B of the Act was inserted in the Act with an object of acting as a deterrent on the employers to prevent them from not carrying out of their statutory obligation to make payments to provident fund. The Act is a welfare legislation and for the successful working of Social Security Schemes framed thereunder depends on the prompt compliance of the employers. In **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1101 (PH) (DB) the

Division Bench of the Hon'ble Punjab and Haryana held that financial stringency or poor financial capacity is not a ground for not paying provident fund of employees. In **Sky Machinery Vs RPFC**, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waving penal damages for delay in deposit of provident fund money. In **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 the Hon'ble Supreme Court held that financial problems is not relevant explanation to avoid liability for payment of dues in time.

4. The appellant establishment delayed remittance of contribution for the period 11/2009 to 04/2014. The respondent, therefore, initiated action for assessing damages for belated remittance of contribution. The respondent issued notice along with a delay statement. The appellant was also given an opportunity for personal hearing through video conference. A representative of the appellant attended the hearing and filed Exbt R1 dt.15/04/2021. The contentions taken in the Annexure R1 representation are that of financial difficulties and some technical issues in online payment. The appellant however failed to produce any documents to support their claim. The respondent

authority therefore issued the impugned order after taking into account the submissions made by the representative of the appellant.

5. In this appeal also the learned Counsel for the appellant reiterated its stand taken before the respondent authority. According to the learned Counsel, the delay in remittance was due to the delay in receipt of money from the principal employer and the consequent financial difficulties of the appellant. It was also pleaded that there was delay in payment of wages to its employees. However the appellant failed to produce any document to support their claim of financial difficulties, delay in transfer of funds by the principal employer and delayed payment of salaries to the employees during the relevant point of time.

6. 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.

7. The learned Counsel for the appellant also argued that there was no mensrea or intentional delay in remittance of contribution .

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. Considering 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