



**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 March, 2021)

APPEAL No.96/2019
(Old No. ATA 856(7) 2014)

Appellant

M/s. Professional Security Force
Edathotti Building,
Medical College Jn.
Kolenchery,
Ernakulam – 682311.

By Adv. Mathew Sebastian

Respondent

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

By Adv. Sajeev Kumar K . Gopal

This case coming up for final hearing on
10/02/2021 and this Tribunal-cum-Labour Court on
17/03/2021 passed the following:

ORDER

Present appeal is filed from Order No. KR/KCH/
21119/ DAMAGES CELL / 2014 / 17592 DT. 04/03/2014
assessing damages U/s 14B of EPF & MP Act, 1952
(hereinafter referred to as 'the Act') for belated remittance of

contribution for the period 03/2010 to 02/2012. The total damages assessed is Rs.2,06,027/-. The interest demanded U/s.7Q of the Act is also being challenged in this appeal.

2. The appellant is a proprietor of a security agency supplying Security Personnels to various establishments. The appellant also supplied security personnels to M/s. Kolenchery Medical Mission Hospital. The salary paid to the security guards was Rs.2704/- for eight hours duty. They were also entitled for washing allowance and traveling allowance. Most of the security personnels were retired from military and para military services. The food for the security guards were provided by the hospital canteen at subsidized rate. Further they also get overtime allowance for the extra work done by them. The total emoluments of the security guards come within the range of Rs.4500 to Rs.6700/-. The security guards were not interested in enrolling to provident fund. However the appellant was collecting Rs.100/- from the salary of the employees and was being remitted to the respondent organization. An Enforcement Officer of the respondent inspected the hospital and directed the appellant to remit contribution on the actual wages paid to the security guards. The appellant explained the difficulty, as the security

guards were reluctant to contribute more as provident fund contribution. The Enforcement Officer directed the appellant and the principal employer, M/s. Kolenchery Medical Mission Hospital to remit an additional payment of Rs.5,06,715/- to be the short amount to be remitted for the period 2010-2011 and 2011-12. The true copy of the inspection report dt.13/06/2012 issued by the Enforcement Officer is produced and marked as Annexure A1. The appellant was forced to remit the said amount and the amount was remitted by the principal employer for and on behalf of the appellant. The true copy of the demand draft dt.27/06/2012 is produced and marked as Annexure A2. Even though the amount was remitted by the principal employer the same was recovered from the appellant. The respondent thereafter issued a notice dt.15/10/2013 demanding damages and interest. The notice is produced and marked as Annexure A3. The appellant gave a detailed explanation to the respondent. Without considering the pleadings, the respondent issued the impugned order. The respondent raised the demand for additional contribution on evaded wages as per the inspection report dt. 13/06/2012 and the amount was remitted by the appellant on 27/06/2012 and therefore there

is no delay in remitting the contribution. The appellant also filed a complaint dt. 10/04/2017 before the respondent authority and same was marked as Annexure A5.

3. The respondent filed counter denying the above allegations. The appellant raised a preliminary objection that the appeal is barred by limitation. According to the respondent the impugned orders were received by the appellant on 7/03/2014 and the appeal is filed only on 05/09/2014 after a lapse of more than 6 months from the date of receipt of the impugned order. Admittedly there was delay in remittance of provident fund contribution for the provident fund 03/2010 to 02/2012. Belated remittance of statutory dues will attract penal damage U/s 14B of the Act at the rates prescribed under Para 32A of EPF Scheme. The respondent therefore issued a notice dt.15/10/2013 to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act shall not be levied for belated remittance of contribution. A detailed delay statement showing the monthwise details of belated remittance was also enclosed along with the notice. The appellant was also given a personal hearing on 20/11/2013. The appellant was represented in the enquiry. The appellant

also filed a written statement dt.07/01/2014 stating that the additional contributions on evaded wages was paid by the principal employer, M/s. Kolenchery Medical Mission Hospital. The respondent considered all the submission and issued the impugned orders. The appellant never raised any dispute regarding the Annexure A1 inspection report dt. 13/06/2012 and remitted the contribution on 27/06/2012 as per Annexure A1 inspection note issued by the Enforcement Officer. There was clear evasion with regard to the contribution which was pointed out to the appellant by the Enforcement Officer of the respondent and the same was remitted by the appellant. Hence it is clear that there was deliberate attempt by the appellant to evade the provisions of the Act and Schemes by remitting only part of the due contribution. The appellant never raised any dispute regarding the demand of additional contribution on evaded wages and he cannot be allowed to raise the same in this appeal. In ***Chairman, SEBI Vs Sriram Mutual Fund, AIR 2006 SC 2287*** the Hon'ble SC held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act and that the penalty is attracted as soon as contravention of the statutory obligation as contemplated by

the Act is established and therefore the intention of parties committing such violation becomes immaterial.

4. The appeal against Sec 7Q order is not maintainable as there is no provision U/s 7(I) to file an appeal against an order issued U/s 7Q of the Act.

5. According to the learned Counsel for the appellant the security guards deployed at M/s. Kolenchery Medical Mission Hospital were paid a paltry amount as wages and the security guards were not interested in contributing to provident fund. According to the appellant an amount of Rs.100 was being deducted from the salary of the security guards and paid to the respondent organizations. An Enforcement Officer of the respondent who conducted an inspection of the principal employer, M/s. Kolenchery Medical Mission Hospital found that the contribution being paid by the security agency against the security guards were not in consonance with the provision of EPF and MP Act and Schemes thereunder. The Enforcement Officer therefore gave an inspection note dt.13/06/2012 to the appellant as well to the principal employer. The appellant remitted the contribution without any protest. As a natural consequence the respondent issued notice alleging delay in remittance of

the contribution. In the proceedings U/s 14B of the Act the appellant took a contention that the additional contribution due to evasion of wages is paid by the principal employer and therefore the appellant shall not be held liable for any damages and interest. The appellant at the fag end of the proceedings also produced a complaint dt.10/04/2017 before the respondent authority alleging that the demand of additional contribution was illegal and the amount was calculated by a Chartered Accountant who has no connection with the respondent organization. It is seen that Annexure A1 inspection report is dt. 15/06/2012 and the appellant remitted the contribution 27/06/2012. The proceedings for assessing damages was initiated on 15/10/2013 and the impugned order U/s 14B is issued on 04/03/2014. It can be seen that the complaint is dt. 10/04/2017 after almost five years after remitting the contribution. Hence it is very clear that the Annexure A5 complaint is a clear afterthought and cannot be in any way linked to the proceeding U/s 14B and 7Q of the Act. The learned Counsel for the appellant also pointed out that the demand for additional contribution was raised on 13/06/2012 and the amount was paid on 27/06/2012 and there is no delay in remittance of

contribution. According to the learned Counsel for the respondent there was clear evasion with regard to the contribution paid by the appellant establishment and the appellant thereby violated the provision of EPF and MP Act. After violating the provisions the appellant cannot plead that he should be given the advantage of his own default. The amount recovered from the appellant is credited to the individual accounts of the members and interest is also credited on the same. There was a deliberate attempt by the appellant for violating the provision of the Act and he cannot expect any leniency with regard to damages and interest.

6. The learned Counsel for the respondent also argued that the appeal is barred by the limitation. It is seen that the impugned order is dt. 04/03/2014 and the appeal is filed only on 05/09/2014. The appeal is therefore clearly barred by limitation. The appeal is originally filed before the EPF Appellate Tribunal New Delhi. EPF Appellate Tribunal vide its order dt. 17/09/2014 admitted the appeal. It is not fair to dismiss the appeal on the ground of the limitation alone after such a long time.

7. The learned Counsel for the respondent also pointed out that no appeal is maintainable against an order

issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPF**, AIR 2014 SC 295 held that no appeal is maintainable 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) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

8. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in **Standard Furniture Vs Registrar, EPF Appellate Tribunal**, 2020 (KLT) 105 to argue that all the mitigating circumstances shall be considered by an authority U/s 14B while issuing an order U/s 14 B. According to the learned Counsel for the respondent there is no mitigating circumstances pleaded by the appellant in this appeal, before the authority. There was a deliberate attempt by the appellant to evade the provision of the Act and Schemes and therefore the appellant is not eligible for any leniency as far as damages U/s 14B is concerned. It is seen from the documents produced by the appellant that the security guards employed by the appellant were given very low wages and it is also seen from the

documents that the contribution was remitted by the principal employer. The dispute, if any, regarding the quantification of dues ought to have been raised U/s 7A of the Act. Having failed to raise any dispute regarding the contribution U/s 7A of the Act, the appellant cannot challenge the same in a proceedings U/s 14B. However, considering the pleadings, evidence it is felt that the appellant is entitled to some relief as far as damages is concerned.

9. Considering all the facts, circumstances and pleadings I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed as per the impugned order.

10. The learned Counsel for the respondent submitted that no appeal is maintainable against an order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable 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) No.

234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal is partially allowed, and the impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer