



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

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

(Thursday the 8<sup>th</sup> day of April, 2021)

**Appeal No.258/2018**

(Old No. A/KL-36/2017)

Appellant : M/s. Kendriya Vidyalaya Parent-Teacher Association Sub Committee for Bus Maintenance, Puranattukara, Trichur, Kerala -680 551.

By Adv. C.B. Mukundan

Respondent : The Assistant PF Commissioner EPFO, Sub-Regional Office Kaloor, Kochi – 682 017.

By Adv.Thomas Mathew Nellimoottil

This appeal came up for hearing on 05/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 08/04/2021.

**ORDER**

Present appeal is filed from Order No KR / KCH / 29442/ Damages Cell (Spl) / 2016 / 11763 dt. 01/12/2016 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 02/2011 to 03/2015. The total damages assessed is Rs.3,05,163/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. M/s Kendriya Vidyalaya Parent/Teachers Association Sub-Committee for bus maintenance has been constituted for the operation and maintenance of buses for transportation of the students of Kendriya Vidyalaya pursuant to the judgment dt. 08/01/2010 of the Hon'ble High Court of Kerala. True copy of judgment is produced and marked as Annexure A2. The ownership of the vehicles are vested in the Chairman, Kendriya Vidyalaya Management Committee who is the District Collector of Trichur. PTA was managing the affairs relating to the operation of business in the beginning but at a later stage PTA discontinued the management. This created some dead lock in transportation of the students to school. Hence some of the parents approached the Hon'ble High Court of Kerala and the Hon'ble High Court directed the District Collector, Trichur to find some solutions to the problem. Hence the present sub-committee was constituted to manage the operation and maintenance of school buses. Neither the committee nor the members deriving any monetary benefit and they are only doing honorary work. The appellant is under

the bonafide belief that the committee will not come under the purview of EPF and MP Act. The Enforcement Officer of the respondent visited the appellant and recommended coverage under the provisions of the Act. Accordingly the appellant establishment was covered w.e.f 01/08/2010 vide coverage memo dt. 11/2/2014. On receipt of the coverage memo the appellant remitted both the employer and employees' share of contribution for the month of April 2013. The appellant did not collect any contribution from the employees prior to April 2013. The respondent thereafter issued a notice dt. 25/09/2015 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for hearing on 05/11/2015. A representative of the appellant attended the hearing and explained the circumstances leading to delay in remittance of contribution. The appellant establishment had also submitted a detailed written statement dt. 14/03/2016. A copy of the letter is produced and marked as Annexure A5. Without taking into consideration any of the submissions made, the respondent issued the impugned order. The expenses for running the buses are partly met out of the caution deposit received from the student. The caution

deposit will have to be refunded to the students on completion of their course. Total deposits to be refunded to the students as on 31/3/2014 was Rs.60,29,515/-. Total bank balance in the account as on 31/03/2014 was Rs. 35,38,958/-. Hence there is a deficit of Rs. 24,90,557/- in the caution deposit account, which is spend for the operation and maintenance of the buses. A certificate issued by the Chartered Accountant dt. 02/03/2016 is produced and marked as Annexure A6. The Damages U/s 14B cannot be levied in a mechanical manner and the circumstances leading to the delayed payment ought to have been considered by the respondent authority. The respondent authority failed to exercise the discretion vested in him as per Sec 14B of the Act and Para 32A of EPF Scheme.

3. Respondent filed counter denying the above allegations. The appellant defaulted in payment of contribution for the period from 02/2011 to 03/2015 and delay in remittance of contribution will attract damages U/s 14B of the Act. Hence a notice dt. 25/09/2015 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed statement showing the monthwise details of belated remittance was also annexed to the notice. The

appellant was also given a personal hearing on 5/11/2015. A representative of the appellant attended the enquiry and filed a written statement. The appellant did not dispute the delay in remittance of provident fund contribution. After considering the written submission made by the appellant the respondent issued the impugned order. The grounds pleaded by the appellant establishment such as financial difficulties and technical problems are not valid grounds for reducing or waiving damages. In ***Hindustan Times Ltd Vs Union of India and Others***, 1998(2) SCC 242 the Hon'ble Supreme Court held that power cut, financial problems etc will not be a justifiable ground for the appellant to escape the liability. The existence of financial hardship is not sufficient explanation for delay in payment of contribution unless it is also shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period of time. If factors which are not within the control of the industry are responsible for the delay such as strike, act of God, floods etc then, that would be relevant circumstances for sympathetic consideration of the claim of the appellant. The appellant cannot ignore the statutory liability cast upon him as employer under Para 30 & 38 of EPF Scheme to

remit the monthly contribution payable within 15 days of close of every month. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court held that the reason for introduction of Sec 14B was to deter and thwart the employers from defaulting in forwarding contribution to the funds, most often the ulterior motive of mis-utilizing, not only their own but also the employees contribution. In **Calicut Modern Spinning & Weaving Mill Vs RPFC**, 1981 (1) LLJ 440 the Hon'ble High Court of Kerala held that the failure to make contribution resulting in default will have to be visited by damages U/s 14B of the Act and financial constraints cannot be a reason for waiving the same. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for contravention of the provisions of a Civil Act and penalty was attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of a parties committing such violation becomes immaterial.

4. The appellant establishment is a sub-committee to manage the transportation of students and maintenance of the

school buses. The committee was under a bonafide belief that appellant is not coverable under the provisions of the Act. The committee itself is constituted as per the direction of the Hon'ble High Court of Kerala in W.P (C) No. 223/2010. The committee consists of member who are working on honorary basis. The respondent covered the appellant establishment vide coverage memo dt.11/02/2014 retrospectively from 02/08/2010. The appellant remitted the employer and employee share of contribution from 04/2013 and the employers' share of the contribution w.e.f 08/2010. The transportation and maintenance of buses and salary of the employees are partly met from the caution deposit account of the school and there is a huge deficit already in the account. The caution deposit is to be returned to the students as and when they leave the school on completion of course or on transfer. This impliedly means that the appellant is under severe financial constraint. The mere fact that the appellant establishment is covered retrospectively prove that there was no mensrea or intentional delay in remittance of provident fund contribution.

5. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that interest of

justice will be met, if the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act.

6. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On a perusal of Section 7(I) of the Act it is seen that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in ***M/s. Arcot Textile Mills Vs RPFC***, AIR 2014 C 295 held that no appeal is maintainable against an order issued U/s 7Q of the Act. The Hon'ble High Court Kerala in ***District Nirmithi Kendra Vs EPFO***, WP (C) No. 234/2012 also held that no appeal can be entertained against an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer