



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

सत्यमेव जयते

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

(Wednesday the 2<sup>nd</sup> day of December, 2020)

**Appeal No.27 /2018**

(Old No. KL/11/2016)

Appellant : M/s. Silverstorm Amusement Park Pvt.Ltd  
Athirappilly, Vettilappara  
Chalakkudy  
Trichur - Kerala – 680 582

By Adv. P.Ramakrishnan

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kaloor , Kochi -682017

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on 05/11/2020 and this Industrial Tribunal cum Labour Court issued the following order on 02/12/2020.

**ORDER**

Present appeal is filed from order No. KR/KCH/19660/Damages Cell/2015/16004 dt. 28/01/2016 assessing damages U/s 14B of EPF & MP Act 1952

(hereinafter referred to as 'the Act') for belated payment of provident fund contribution for the period from 08/2000 to 07/2010. The total damages assessed is Rs. 2,61,693/-

2. The appellant is a company incorporated under Company's Act 1956. The appellant has established an amusement park in the name and style of Silver Storm Water Theme Park. The appellant was regular in compliance. While so the appellant received a notice dt. 26/05/2014 directing the appellant to show cause why damages U/s 14B of the Act shall not be levied for delayed remittance of contribution for the period 08/2000 to 09/2010. A representative of the appellant appeared before the respondent. The appellant received an order dt. 28/01/2016 on 02/02/2016 quantifying the damages. From the proceedings it is seen that the enquiry was finalized on 02/01/2015 but the order was issued after one year. It is also seen that the respondent proceeded on the ground that appellant had no explanation to offer for delayed payment of contribution. The impugned order is issued without hearing the appellant. The appellant appeared before the respondent on 13/06/2014 and a proceedings were

adjourned to 10/10/2014 and then to 31/12/2014. As already pointed out as per the impugned order the proceedings were concluded on 02/01/2015 without any notice to the appellant. The appellant was going through severe financial difficulties during 2000 to 2010. The delay in contribution was due to the financial constraints. It was not deliberate or willful.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the Act w.e.f 05/08/2000. There was delay in remittance of contribution for the period from 08/2000 to 07/2010. The Act and schemes thereunder mandates that the dues shall be paid every month within 15 days of the close of the month any delay in remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. Hence a notice dt. 26/05/2014 was issued to the appellant along with a delay statement showing the details of the delay in remittance of contribution. The appellant was also given a personal hearing. The appellant was represented by his Advocate in the hearing and the enquiry was adjourned to 10/10/2014. There was no

representation for the appellant. The enquiry was further adjourned to 31/12/2014 for providing one more opportunity to the appellant to explain the delay in remittance of contribution. The appellant neither attended the hearing nor send any request for adjournment. The respondent however verified the documents and found that the damages for the period for 04/2006 to 06/2008, 01/2009 to 10/2009 and 12/2009 has already been levied. Hence that period was excluded and the impugned order was issued. The appellant has not filed any statement or request of any adjournment and therefore the proceedings were concluded on the basis of the available information before the respondent authority. The Hon'ble Supreme Court of India in **Organic Chemical Industries Vs Union of India** 1979(2) LLJ 416 held that the very purpose of introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the fund most often with ulterior motive of mis-utilizing not only their own but also the employees contribution. The damages occurring in Sec 14B of the Act is in substance the penalty imposed on the employer for breach of statutory

obligation. The total amount of contribution payable by the appellant in terms of Sec 6 of the Act includes employees' share of contribution as well as employers share. Approximately 50% of the contribution payable by the employer represents the employees' share of contribution . The employees share of contribution is deducted from the salary of the employees and appellant cannot attribute any financial difficulties for not remitting the same as stipulated under Paras 30 & 38 of EPF Scheme. In **Chairman SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provision of civil Act and penalty is attracted as soon as contravention of statutory obligation as contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial.

4. The learned Counsel for the appellant argued that the appellant was not provided adequate opportunity by the respondent before the impugned order is issued. On a perusal of the impugned order it is seen that the enquiry was posted

on 13/6/2014, 10/10/2014 and 31/12/2014 for hearing. On 13/06/2014 the appellant was represented by a Counsel. However no documents or any statement was filed by the Counsel before the respondent authority. The matter was posted on 10/10/2014 and 31/12/2014 but there was no representation for the appellant in the enquiry. Having not availed the opportunities provided by the respondent the appellant cannot come up in appeal and argue that he was not given adequate opportunity to represent his case. On the other hand it is seen that the respondent on his own verified the records and found that for certain period the damages and interest were already quantified and he on his own excluded those periods from the assessment. Hence it is not possible to accept the pleading of the appellant that he was not given adequate opportunity before the impugned order is issued. Another ground pleaded by the learned Counsel for the appellant is that of financial difficulties. The appellant failed to produce any document to substantiate the claim of financial difficulties during the relevant point of time either before the 14B authority or in this appeal. Hence it is not possible to

accept the plea of the appellant that the reasons for delay in remitting provident fund contribution was due to financial difficulties. In **M/s. Kee Pharma Ltd Vs Assisstant PF Commissioner**, 2017 LLR 871, the Hon'ble High Court of Delhi held that if the employer failed to produce documentary evidence before the authority to substantiate his claim of financial difficulties, the mitigating circumstances cannot be considered by levying damages. The learned Counsel for the respondent pointed out that the appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time. The appellant has no case that there was delay in payment of wages. When wages are paid to the employees, the employees share of contribution, which accounts for 50% of the total contribution, is deducted from the salary of the employees. Non remittance of employees share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that there was no mensrea in belated remittance of contribution.

5. Considering all the facts, pleading and arguments I am not inclined to interfere with the impugned order is issued U/s 14B of the Act.

6. Though the Sec7Q order is not challenged in this appeal, a copy of the same is produced along with the appeal. The learned Counsel for the respondent submitted that no appeal is maintainable from an order issued U/s 7Q. It is seen that no appeal is provided U/s7(I) of the Act from an order issued U/s 7Q of the Act.

In view of the above the appeal is dismissed.

Sd/-

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