



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

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

(Friday the 23rd day of April, 2021)

Appeal No.309/2019

(Old No. ATA 1030 (7) 2015)

Appellant : M/s. Sree Sankara Educational Trust
(Sree Kanchi Sankara Public School)
Kalady, Aluva
Kochi – 683574.

By Adv. K.K.Premalal

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

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on 09/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 23/04/2021.

O R D E R

Present appeal is filed from Order No. KR/KCH/ 27401/ Damages Cell/2014/13767 dt.19/02/2015 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 02/2006 to 04/2012. The total damages assessed is Rs. 2,50,954/-.

2. The appellant is a educational trust formed with the main objective of establishing educational institutions. The trust is running the institution on no profit no loss basis. The educational institution started functioning in the year 06/2003 with 5 employees. The appellant approached the respondent voluntarily for registration under the Act and Schemes thereunder. A true copy of the letter dt. 24/11/2010 is produced and marked as Annexure A2. At the time of applying, the appellant school had only 17 employees. On the direction of the respondent the appellant furnished the name of 17 employees eligible to be enrolled vide letter dt.16/12/2010. A copy of the letter is produced and marked as Annexure A3. The appellant received a communication dt.04/01/2011 from the Enforcement Officer of the respondent for submission of Form 5A for allotment of code number. A true copy of the letter dt.04/01/2011 from the Enforcement Officer is produced and marked as Annexure A4. The

appellant received a letter dt.03/02/2011 from the respondent directing to produce certain records. A copy of the said letter is produced and marked as Annexure A5. The appellant produced the records and the staff in the respondent office prepared the statement of dues for the period from 2005 onwards. The appellant did not dispute the assessment. The respondent now issued a notice for assessing damages U/s 14B, on the ground that there was delay in remittance of contribution. A true copy of the notice is produced and marked as Annexure A6. The appellant school deposited the interest amount. The appellant also requested for the waiver for damages. A copy of the letter is produced and marked as Annexure A7. The manager of the appellant school attended the hearing before the representative authority and explained the financial difficulties of the appellant. The appellant school is running under loss which is reflected in the balance sheet for the year 2011-12. A true copy of the balance sheet for the year 2011-12 is produced and marked as Annexure A10. The appellant school is not a chronic defaulter and delay in remittance of contribution was not at all intentional.

3. The respondent filed counter denying the above allegations. The respondent raised a preliminary objection that there was a delay of 190 days in filing the appeal and therefore the appeal is barred by limitation. As per rule 7(2) of EPF Appellate Tribunal (Procedure Rules), the appeal is required to be filed within a period of 60 days of receipt of the impugned order. The Tribunal can condone the delay up to 60 days. The claim of the appellant that the appellant establishment is not coverable from 06/2005 as the employment strength never reached 20 is not correct. From Exbt R2, the salary bill for the month of June 2005, it can be seen that the employment strength of the appellant establish for June 2005 was 21 and is therefore statutorily coverable. Though the appellant establishment was statutorily coverable with effect from 01/06/2005, the appellant approached respondent for coverage under the Act only on 24/11/2010 as per Annexure A2. The appellant was required to start compliance from 06/2005 as the EPF Act acts on its own force. Admittedly there was delay in remittance of contribution. When there is delay in remittance of contribution the damages U/s 14B read with Para 32A of EPF Scheme is attracted. Hence a summons dt.07/04/2014 was issued

to the appellant to show cause why damages as envisaged U/s 14B of the Act should not be recovered from the appellant establishment. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pleaded that the delay in remittance of provident fund contribution was not intentional. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 688 held that bad financial condition is no defense for delayed deposit of provident fund money. When the appellant claimed financial difficulties it ought to have established before the respondent authority that the appellant establishment was under continuous loss and was unable to pay even the salaries on time. Otherwise the loss by itself is not a ground for delayed remittance of contribution. In ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court of India observed that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over

different points of time. During the course of the proceedings the representative of the appellant admitted the delay in remittance of contribution. The damages were assessed after providing adequate opportunity to the appellant and therefore there is no violation of principles of natural justice. In **Chairman, SEBI Vs Sriram Mutual Fund**, Civil appeal No.9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provision of a civil Act. Penalty is attracted as soon as the contravention of the statutory provision as contemplated by the Act and regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. In **Maharashtra State Co-operative Bank Ltd Vs Assistant PF Commissioner**, 2009 (10) SCC the Hon'ble Supreme Court held that the expression "any amount due from an employer" includes the liability of the employer to pay interest and damages if there is a default in making contribution to the fund.

4. The appellant establishment approached the respondent authority vide Annexure A2 letter dt.24/11/2010 requesting to allot a code number so that they can remit the contribution

deducted from 36 employees into the EPF account. When the respondent specifically asked for the details of the employees the appellant vide Annexure A3 letter dt.16/12/2010 informed them that they employed only 17 employees. After further investigation by the respondent organization it was seen that the appellant establishment engaged 21 employees as on June 2005 and therefore the appellant establishment was statutorily coverable from that date and accordingly the code number was allotted to the appellant establishment. From Annexure R2 produced by the respondent it is clear that the appellant establishment was coverable with effect from June 2005 as the employment strength crossed 20 during that month. Hence the claim of the appellant that the appellant establishment is coverable only from 2010 is not correct. According to the learned Counsel for the appellant the appellant establishment bonafidely believed that the appellant is coverable only from 2010 and therefore did not deduct any provident fund contribution from the employees. PF contribution was deducted from the employees only from October 2010. According to the learned Counsel for the respondent EPF and MP Act being a social security legislation acts on its own force and

therefore it is for the appellant to approach the respondent and start compliance from that day. Having failed to comply with the statutory requirement the appellant cannot plead that they should be given the advantage of delayed coverage for delayed remittance of contribution. It is true that the appellant establishment which is due for coverage from 1/6/2005 is covered only in 2010. However the appellant complied with the statutory provisions and remitted the contribution.

5. The learned Counsel for the appellant also pleaded financial difficulties as one of the ground for belated remittance of contribution. The appellant produced the income and expenditure account for the year 31/03/2011 to substantiate their claim of financial difficulties. According to the learned Counsel for the respondent the financial statement now filed by the appellant for one year as on 31/03/2012 is not relevant for deciding the question of damages for the period from 02/2006 to 04/2012. If the appellant actually relied on the statement of financial difficulties they ought to have produced the financial statements from 2006 to 2012 to substantiate their claim. Further it was also

pointed out that the financial statement by itself is not a reliable document to substantiate the claim of financial difficulties unless the figures reflected in the statement is proved through some competent authority. As rightly pointed out by the learned Counsel for the respondent the financial statement for the one year will not in any way prove the financial difficulties of the appellant for a period of 6 years. Even as per the financial statement produced the appellant establishment is having an income of Rs.25.55 lakhs and the expenditure of Rs.27.04 lakhs. The salaries and wages components comes to Rs.17.26 lakhs. The excess of expenditure over income is only Rs.1.50 lakhs for the year ending 31/03/2012. These figures by itself will not in any way establish the financial difficulties of the appellant establishment for a period over 6 years.

6. Though the respondent strongly objected to the claim of the appellant that the appellant establishment was under a bonafide relief that it is coverable from 2010 only, the fact remains that the appellant establishment is covered under the provision of the Act from 01/06/2005 only in 2011. Hence the claim of the learned Counsel for the appellant that the employees share of the

contribution is not deducted from the salary of the employees for the period from 2005 to 2010 can be accepted, in the absence of any evidence to the contrary. To that extent no intentional delay can be attributed to the appellant for delayed remittance of contribution. However the fact remains that there was a delay of more than 6 years, in remitting the contribution and the interest U/s 7Q may not be sufficient to compensate the loss of interest to the employees.

7. The learned Counsel for the respondent raised a preliminary issue regarding limitation. According to the learned Counsel for the respondent the impugned order was issued 19/02/2015 and the appeal is filed only on 04/09/2015. There is a delay on more 190 days which is beyond the permitted time limit of 190 days. According to the learned Counsel for the appellant the impugned order was never served on the appellant. The appellant came to know about the impugned order only when a recovery notice dt.27/07/2015 is received from the recovery officer of the respondent. The appellant approached the respondent office, collected a copy of the impugned order and filed the appeal. Hence

there is no delay in filing the appeal. The learned counsel for the respondent was directed to confirm whether the impugned order served on the appellant, if so on what date. Thereafter the matter was posted on various dates for the respondent to confirm the date when the impugned order was served on the appellant. Since no confirmation was forthcoming from the respondent, the claim of the learned Counsel for the respondent that the impugned order is received by them only in August 2015 was accepted and the appeal was admitted vide order dt.22/12/2020.

8. 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 60% of the damages assessed U/s 14B of the Act.

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.

Sd/-
(V.Vijaya Kumar)
Presiding Officer