



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

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

(Friday the 01st day of April, 2022)

Appeal No.397/2018

(Old No. ATA 494 (7) 2014)

Appellant : M/s. Express Publications (Madurai) Ltd.,
Express House,
East Hill Road,
West Hill P.O,
Kozhikode – 673 005

By Adv.V. Krishna Menon

Respondent : The Assisstant PF Commissioner
EPFO, Regional Office
Eranhipalam P.O,
Kozhikode -673 006

By Adv. Dr. Abraham P Meachinkara

This appeal came up for hearing on 23/11/2021 and this Industrial Tribunal cum Labour Court issued the following order on 01/04/2022.

ORDER

Present appeal is filed from Order No. KR/ KK/14142 / Enf-1(1)/14B/2014/1117 dt.19/05/2014 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for

belated remittance of contribution for the period from 04/2012 to 12/2013. The total damages assessed is Rs. 35,335/-.

2. Appellant is company registered under Companies' Act and engaged in the Newspaper Industry. The appellant is covered under the provisions of the Act. The appellant was facing heavy financial constraints during the relevant period. Even prior to 2012 the appellant was facing losses consistently. The financial strain is continuing due to reasons beyond the control of the appellant. The Total paid up share capital of appellant is Rs.18,00,00,000/- as on 31/03/2013. The total accumulated losses of the appellant by year ending 2011 and 2012 were Rs. 86,96,08,218/- and Rs. 4,50,16,702/- respectively. Due to financial difficulties the appellant was not in a position to pay various financial commitments. Though there was delay, the appellant remitted the contribution in spite of the financial difficulties. The respondent issued a show cause notice dt. 03/02/2014 proposing to impose damages for belated remittance of contribution. A true copy of the notice is produced and marked as Annexure A1. The appellant filed their objection on 31/03/2014, a copy of which is produced and marked as Annexure A2. Ignoring the contentions the respondent

issued the impugned order, a copy of which is produced and marked as Annexure A3. The respondent failed to prove that there was intentional default in payment of contributions. The respondent had an interest liability of Rs. 6.70 crores as on 31/03/2012 and 6.57 crores as on 31/03/2013. The respondent had the discretion U/s 14B to reduce or waive damages. Financial constrains is sufficient reason for reducing or waiving damages. The respondent authority also failed to notice that after introduction of Sec 7Q, the damages component has undergone substantial change which was not considered by the respondent authority.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/09/1994. The appellant is required to remit the contribution as per Paras 30 & 38 of EPF Scheme. There was delay in remittance of contribution. The respondent therefore issued a notice U/s 14B along with a detailed delay statement. A representative of the appellant attended the hearing and filed a written statement pleading that the delay was due to the financial constrains of the appellant establishment. There is no dispute regarding the fact that there was delay in remittance of

contribution as the delay statement was admitted by the representative of the appellant who attended the hearing. The appellant was also given more than adequate opportunity to represent the case. In **Bharat Plywood Timber Products Pvt. Ltd Vs Employees PF Commissioner**, 1997 (50) FJR 74 (Ker HC) the Hon'ble High Court of Kerala held that if an employer makes default in payment of contribution to the fund, he shall be liable to pay the amount by way of penalty such damages not exceeding the amount of arrears specified in the Scheme. Though there is sufficient reason to make belated payment, that is not a ground for claiming exemption for paying penalty or damages. The financial crisis of an establishment is not a justifiable ground. Even if it is assumed that there was a loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation. In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1981 (1) LLJ 440 the Division Bench of the Hon'ble High Court of Kerala held that even in case of lock out, failure to make contribution resulting in default will have to be visited with damages U/s 14B of the Act. The Hon'ble High Court also held that the employer is bound

to pay contribution under the Act every month voluntarily irrespective of the fact that the wages have been paid or not.

4. Admittedly there was delay in remittance of provident fund contribution for the period 04/2012 to 12/2013. The respondent therefore initiated action for quantifying the damages. A notice was issued to the appellant along with a detailed monthwise delay statement. A representative of the appellant attended the hearing and filed a written statement pleading that the delay in remittance was due to the financial constrains of the appellant establishment. After considering the submission, the respondent issued the impugned order.

5. In this appeal the appellant pleaded that delay in remittance of contribution was not intentional and was due to the financial constrains of the appellant establishment. The appellant failed to produce any documents to substantiate the claim of the financial difficulties either before the respondent authority or in this appeal.

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 **Elston Tea Estates Ltd Vs RPF**, 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 relied on the decision of the Hon'ble High Court of Kerala in **M. Sundara Rajan son of Muthuswamy, Proprietor, Bharat Engineering Industrial Company Vs Employees PF Appellate Tribunal and another** to argue that financial constraints is a ground for reducing damages U/s 14B of the Act . In the above decision also the Hon'ble High Court held that “ It is observed that as per the Scheme for levy of damages under the Act, the authorities are bound to consider the severe

financial constraints **if supported by documents in a pragmatic manner.**” .As already pointed out the appellant failed to produce any document to support the claim of financial difficulties.

8. The learned Counsel for the appellant also pleaded that there was no mensrea in belated remittance of contribution and the delay was not intentional. The learned Counsel for the respondent pleaded that the appellant had no case that the wages of employees were not paid in time by the appellant establishment. When the wages are paid, the employees’ share of contribution is deducted from the salary of the employees. The Non-payment of employees’ share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code.

9. 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”

10. 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