



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

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

(Monday the 14th day of December, 2020)

Appeal No.683/2019

Appellant : M/s. Pushpagiri Institute of
Medical Sciences,
Thiruvalla
Kerala - 689101

By Adv. C.B Mukundan

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Trivandrum -695 004.

By Adv. Ajoy P.B

This appeal came up for hearing on
12/11/2020 and this Industrial Tribunal cum Labour
Court issued the following order on 14/12/2020.

ORDER

Present appeal is filed from Order No.KR/TVM/
3237/Damages Cell / 2019-20/ 2526 dt.12/9/2019

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 12/2017 to 11/2018. The total damages assessed is Rs. 11,83,087/-

2. The appellant is a Hospital engaged in Health Care Services and Health Care Education and run by a Charitable Society registered under Travancore Cochin Literally, Scientific and Charitable Society registration Act 1955. The appellant is also running a Medical College. The appellant is regular in compliance. While so, the appellant received a notice dt .06/05/2019 from the respondent directing to show cause why damages U/s 14B shall not be levied for belated remittance of contribution for the period from 12/2017 to 11/2018. The appellant was also given an opportunity to appear in person on 22/05/2019 and explain the delay. A representative of the appellant attended the hearing and explain that the delay was due to acute financial difficulties of the appellant. The

consolidated Income & Expenditure statement for the financial years 2017-2018 & 2018-2019 were produced and marked as Annexure A5 series. Clearly this documents show that the appellant was facing acute financial crisis during the relevant point of time. The Hon'ble High Court of Madhya Pradesh in **Assistant PF Commissioner Vs. Ashram Madhyamik**, 2007 LLR 1249 held that it is not mandatory that full damages shall be levied. And the respondent authority has all the discretion to levy damages depending on facts and circumstances of each case. There was no willful defiance of law or contumacious conduct on the part of the appellant.

3. The respondent filed counter denying the above allegations. The appellant defaulted in payment of provident fund contribution for the period from 12/2017 to 11/2018 Any delay in remittance will attract damages U/s 14B of the Act. Hence a summons dt. 06/05/2019 was issued to the appellant directing them to appear for a personal hearing on

22/05/21019. The appellant was represented in the enquiry. The representative of the appellant submitted that the delay was not intentional, but only due to financial difficulties. Though the Balance Sheet for the year 2017-2018 was produced before the respondent authority, he found that there was no justification for delayed payment of contributions. He also found that the salary of the employees were paid in time and there is absolutely no justification for delaying the contributions deducted from the salary of the employees. The appellant is a chronic defaulter in payment of statutory dues. The appellant defaulted in payment of contribution on 7/2000, 2/2004, 3/2007, 9/2007, 2/2008, 1/2009 and 3/2009 to 2/2010. 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 Civil Act. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and regulations would

immediately attract levy of penalty, irrespective of the fact whether contravention must be made by defaulter with guilty intention or not. In such cases it is wholly unnecessary to ascertain whether such violation was intentional or not. Though the Exbt A5 series show that there is deficit in Income over Expenditure in 2017-2018 and 2018-2019, the said statement are not reflecting the actual financial position of the society. The deficit is mainly due to the accounting procedure, wherein the depreciation is shown as an expense which is not an actual expense in terms of cash. There is no financial difficulty as projected by the appellant.

4. The only ground pleaded by the appellant for reducing or waving penal damages is that of financial difficulties. The appellant produced Exbt A5 series documents to support their claim of financial difficulties. As rightly pointed out by the learned Counsel for the respondent, the documents produced will not support the claim of the appellant do not disclose that there was financial difficulty during the

relevant point of time. **In Aluminium Company Vs Their Workmen**, 1963 (2) LLJ 629 SC the Hon'ble Supreme Court held that the Balance Sheet by itself is not a proof for the financial status of an establishment unless the assets and liability as reflected in Balance Sheet are properly proved before the authority. It is seen that the appellant society is having an approximate annual income of 180 crores and pays salaries and allowances to the employees to the tune of Rs.80 crores per annum. As rightly pointed by the learned Counsel for the respondent the depreciation for year 2018-2019 reflected in this documents is 14.02 crores and for previous year it is 13.79 crores. This kind of accounting will not show the actual financial position of the appellant establishment. Even the appellant failed to produce the complete schedules from which it is possible to ascertain the financial position of the appellant to a certain extend. It is also pointed out that the appellant was paying salary to its employees in time. When salary is paid the employees

share of contribution, which accounts for 50% of the total contribution is deducted from the salary of the employees. Non remittance of the 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 claim that there was no mensrea in belated remittance of contribution atleast to the extend of 50% of the total contribution deducted from the salary of the employees. Under Paras 30 & 32 there is statutory obligation cast upon the appellant, to pay this statutory dues within the stipulated time. Non remittance of contribution in time is an offence U/s 14 & 14AA of the Act, for which the appellant is liable to be prosecuted under the Act.

5. Considering the facts, pleadings and evidence in this appeal, I am not inclined to interfere the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer