



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Tuesday the 18<sup>th</sup> day of January, 2022)

**Appeal No. 783/2019**

Appellant : Aswini Hospital Pvt. Ltd  
Karunakaran Nambiar Road  
Thrissur- 680020

By Adv. K.K. Premalal &  
Adv. Vishnu Jyothis Lal

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

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on 01/10/2021 and this Industrial Tribunal cum Labour Court issued the following order on 18/01/2022.

**ORDER**

Present appeal is filed from Order No. KR/ KCH/ 13309/ Penal Damages/2019/7056 dt. 31/10/2019 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 06/2017 to 05/2019. The total damages assessed is Rs. 63,86,370/-.

2. The appellant is a hospital covered under the provisions of the Act. The employees of the appellant hospital resorted to an unjustifiable strike during the month of July 2017 which affected the working of the hospital. The appellant was also forced to pay interim allowance to the employees consequent on the strike which pushed the appellant establishment to acute financial crisis. The appellant managed the financial crisis by availing higher credit facility from the banks. The appellant remitted the entire arrears immediately thereafter. The appellant received a notice dt. 16/08/2019 from the respondent proposing to levy damages. A copy of the notice is produced and marked as Annexure 1. The appellant filed a reply dt. 09/09/2019 explaining the reasons. A copy of the reply dt. 09/09/2019 is produced and marked Annexure 2. A representative of the appellant attended the hearing and submitted another statement dt. 17/10/2019. A copy of the same is produced and marked as Annexure 3. Without considering any of the submissions, the respondent issued the impugned order, a copy of which is

produced and marked as Annexure 4. The respondent authority failed to exercise his discretion available U/s 14B of the Act. The Hon'ble High Court of Kerala in **Quilon District Automobile Workers Co-operative Society Vs ESI Corporation**, 2017 (2) KLT 21 held that the very expression “may recover” would undoubtedly reveal the existence of legal discretion to consider even the question whether damages need to be levied, in a given circumstance. Since the failure to carry out the statutory obligation is adjudicated by a quasi judicial enquiry, such damages will not ordinarily be imposed unless the party obliged to pay the amount acted either deliberately or in defiance of law or was guilty of contumacious conduct. The delay in remittance of contribution was beyond the control of the appellant. The unjustifiable strike resorted by the union affected the entire functioning of the hospital and revenue. Because of the pressure and compulsion the management was forced to release an interim allowance which unsettled the financial structure of the appellant. This would clearly establish the fact that there was no mensrea in belated remittance of contribution. After introduction of Sec 7Q the law regarding damages U/s 14B has undergone sea change. This has

been clarified by the Hon'ble High Court of Kerala in **Regional PF Commissioner Vs Harrsions Malayalam Ltd**, 2013 (3) KLT 790. The Hon'ble Supreme Court of India in **ESIC Vs HMT Ltd and another**, AIR 2008 SC 1322 and **Assistant PF Commissioner EPFO and another Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 held that the existence of mensrea or actusreus to contravene a statutory provisions must also be held to be a necessary ingredient for levy of damage. The reliance placed by the respondent in **Chairman, SEBI Vs Sriram Mutual Fund**, 2007 AIR 2287 is not correct. In the above case, the statutory provisions makes it mandatory for remittance of penalty. Whereas U/s 14B the respondent authority is given the discretion as the words used is “may recover”.

3. The respondent filed counter denying the above allegations. The appellant failed to remit the contribution for the period from 06/2017 to 05/2019 in time. Therefore the respondent issued a notice dt.16/08/2019 along with a detailed delay statement and also affording an opportunity for personal hearing on 12/09/2019. In the written statement filed by the appellant on 12/09/2019, the appellant contended that the delay

in remittance of contribution was due to an illegal strike during July 2017 upsetting the financial balance of the appellant establishment . The provident fund contribution was remitted in June 2019 by raising bank loans. The representative who attended the enquiry also made the submissions of the above lines stating that provident fund contribution was remitted after availing additional funds sanctioned by south Indian bank as per their sanction letter dt. 31/05/2019. No documents were produced before the respondent authority to substantiate their claim of the financial difficulties. The appellant also did not raise any dispute regarding the delay statement forwarded along with the summons. The appellant establishment is a chronic defaulter in remittance of statutory dues. The defaulted contribution include even the contributions deducted from the salary of the employees. Financial hardship or constraint cannot be taken as a license to commit default. Mere existence of financial hardship is not sufficient explanation, unless it is also shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period. The appellant would have proved that no funds were available to remit the contribution as on that date. The

Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC held 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. Besides 50% of the contribution deposited late, represented the employees’ share which had been deducted from the employees’ wages and was a trust money with the employer for the deposit in this statutory fund. The delay in deposit of this part of the contribution amounted to breach of trust and does not entitle the employer for any consideration for relief.” The impugned order issued U/s 14B of the Act is a speaking order after taking into account all the relevant factors and the claims of the appellant . In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPF**, 1982(1) LLJ 440 the Division Bench of the Hon'ble High Court of Kerala held that a combined reading paras 30 & 38 of EPF Scheme shows that in cases where due payment of wages is made in practicable for certain reasons, the obligation of the employer to pay both the contributions payable by himself and

on behalf of the member continues. The representative of the appellant during the course of the enquiry admitted the delay in remittance of contribution. It is relevant that the salary of the employees were paid and the employees' share of the contribution is deducted from the salary of the employees, but not remitted to the fund. After introduction of interest U/s 7Q of the Act the percentage of damages is also substantially reduced with effect from 26/09/2008. Therefore it is not correct to say that there is substantial change in law after introduction of Sec 7Q. The Hon'ble Supreme Court of India settled the issue of mensrea in Civil proceedings in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361, holding that mensrea is not an essential ingredient for contravention of provisions of a civil Act. The respondent organization is under an obligation to pay interest to the subscribers to the fund at the rate declared by the government from time to time irrespective of the fact whether the employer has remitted the contributions in time or not. Further there will also be loss due to the fact that the respondent organization will not in a position to invest the money in time to generate funds to take care off the interest of the employees. The decision of the Hon'ble

High Court of Kerala in **Regional PF Commissioner Vs Harrisons Malayalam (Supra)** is not at all applicable to the facts of the present case. In the above case the delay in remittance of contribution was caused due to stay granted by the Hon'ble High Court regarding implementation of Employees Pension Scheme 1995. The said establishment was otherwise regular in compliance. In terms of Paras 30 & 38 of EPF Scheme the liability of the employees arise the moment the wages are earned by the members irrespective whether it is actually paid or not. 50% of the contribution payable by the appellant represents the employees' share of contribution deducted from the salary of the employees and the appellant cannot attribute any financial difficulty for not remitting the same regularly within the times stipulated under paras 30& 38 of EPF Scheme.

4. The appellant establishment delayed remittance of contribution under the Act and Schemes for the period 06/2017 to 05/2019, (remittance period 07/2017 to 31/07/2019). The respondent initiated an enquiry U/s 14B of the Act to levy damages. A detailed delay statement showing the due date of payment, the actual date of payment, the amount involved and the



delay in remittance was communicated to the appellant along with a summons. The appellant filed Annexure A2 and A3 written statements stating that the delay was due to the financial constraints caused due to the strike of the employees in the month of July 2017. The appellant failed to produce any documents before the respondent authority to substantiate their claim. The respondent authority considered the pleading, in the written statement and also the oral submissions made by the representative of the appellant and thereafter issued the impugned order.

5. In this appeal also the appellant pleaded the illegal strike by the employees on July 2017 and consequential financial difficulty for the delayed remittance of contribution. According to the appellant, they availed additional credit facility in the month of June 2019 and remitted the contribution immediately thereafter. The appellant also pleaded that there was no mensrea in delayed remittance of contribution.

6. The learned Counsel for the respondent argued that the strike by the employees in July 2017 is taken as an excuse for delayed remittance of contribution. The learned Counsel for the respondent pointed out that the appellant even failed to remit the

employees' share of contribution deducted from the salary of the employees during the relevant point of time, which challenges the bonafides of the appellant's claim that only due the strike and consequential financial constraints they delayed the remittance of contribution. The learned Counsel for the appellant produced the balance sheets for the year ending 31/03/2017, 31/03/2018 and 31/03/2019 to substantiate their claim of financial difficulties in this appeal. According to the learned Counsel for the respondent these documents cannot be accepted at the appellate stage as the figures reflected in the balance sheet are not proved through a competent person before the respondent authority. He further pointed out that it is a settled legal position that the current assets and liabilities reflected in the balance sheet cannot be taken to prove the financial status of the appellant establishment unless the figures are proved by a responsible and competent persons before this Tribunal. On a perusal of the profit and loss account for the year ending 2015-2016 it is seen that the total revenue was Rs.45.67 crores and the same increased to Rs.51.59 crores for the year 2016-2017 and further increased Rs. 54.72 crores for the year 2017-2018 and further increased Rs.61.21 crores for the

year 2018-2019. Similarly the employees benefit expenses for the year 2015-2016 was 12.90 crores and for the year 2016-2017 was Rs.14.62 crores and for the year 2017-2018 it was Rs.16.28 crores and for the year 2018-2019 it was Rs.21.30 crores. The salary component of the employees benefit expenses for the year 2015-2016 was Rs.8.28 crores and for the year 2016-2017 it was Rs.11.11.crores, for the year 2017-2018 it was Rs.13.16 crores and for the year 2018-2019 it was Rs.18.06 crores. It is also seen that huge amounts are shown as provident fund and ESI contribution during all these years. Hence it is clear from the above narration that financial crisis is not the only ground for delayed remittance of contribution by the appellant establishment. As rightly pointed out by the learned Counsel for the respondent the documents now produced by the appellant establishment in this appeal clearly establish the fact that the appellant establishment paid huge salaries to the employees during the relevant point of time. When the salary is paid to employees, the employees' share of 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 of breach

of trust and the appellant cannot plead that there was no intentional delay in remittance of atleast 50% of the contribution which accounts for the employees' share of contribution deducted from the salary of the employees.

7. the learned Counsel for the appellant relied on various decisions of the Hon'ble Supreme Court of India and Hon'ble High Courts to argue that there was no mensrea in bleated remittenance of contribution by the appellant .

8. 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 actusreus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

9. The learned Counsel for the appellant pleaded that the financial constrains restrained for the appellant from remitting the contribution in time. As already pointed out financial constrains cannot be an exclusive ground for belated remittance of contribution. However it is seen that for the year ending 31/03/2017 the appellant establishment incurred a loss of Rs.1.36 crores and for the year ending 31/03/2018 there was profit of Rs. 1.25 crores and for the year ending 31/03/2019 there is a loss of Rs.1.20 crores for the appellant establishment. Taking into account the overall financial position the appellant establishment can be given some accommodation as regards assessment of damages U/s 14B of the Act .

9. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold interest of justice will be met, if the appellant is directed to remit 80 % of the damages.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 80% of the damages.

Sd/~

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