



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

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

(Friday the 2nd day of April, 2021)

Appeal No.788/2019

Appellant : M/s. Samagra Shiksha Kerala
(formerly Sarva Shiksha Abhiyan)
Palace Road,
Thrissur - 680020

By Adv. Bijoy Chandran

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

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on 01/03/2021 and
this Industrial Tribunal cum Labour Court issued the
following order on 02/04/2021.

O R D E R

Present appeal is filed from Order No.KR / KCH /
27442 / Penal Damages / 2019 / 6474 dt. 22/10/2019
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 08/2003 to 09/2018. The total damages assessed is Rs. 46,39,261/-.

2. The appellant is a state implementing agency of various projects, funded by the HRD department of Government of India. Samagra Shiksha, Kerala was founded merging the earlier SSA and RMSA Societies registered under the Charitable Societies Act. The funds for the projects is received from Government of India as well as Government of Kerala. In April 2011 District Project Office Sarva Shiksha Abhiyaan was brought under the coverage of the Act with effect from 01/07/2003. The Samagra Shiksha remitted the entire contribution upto date and also continued to pay the contribution. There was no deliberate delay on the part of the appellant in delayed remittance of contribution. An amount of Rs.65,41,402/- including employees and employers share for the period from 07/2003 to 06/2010 was remitted to EPF account through demand draft on 31/03/2011. Thereafter the contribution is paid in

time except for the short delay for few months due to the delay in accounting by banks. During March 2012 to September 2012 there was some difficulty after e-payment system was introduced by the respondent. There was some difficulty in uploading the KYC Data in the unified portal of the respondent. The delay on the part of the respondent cannot be attributed to the appellant establishment. The appellant collects the employees' share of contribution from each BRC through cheque. The 18 BRCs in the district submits their cheques to the appellant and the appellant consolidates and pays the contribution to respondent organization. Hence the slight delay in remitting contribution for few months cannot be treated as deliberate. The respondent initiated action for assessing damages. The appellant opposed the same by providing the necessary particulars. Ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent failed to take note of the financial difficulties of the appellant which is only a co-ordinator for the projects. The respondent failed to consider the pleadings of the appellant that the

delay in remittance of contribution was not deliberate. The respondent failed to consider the financial constraints of the appellant establishment while imposing huge damages. The respondent ought to have considered the number of defaults, the extend of intentional delay, frequency of default and amount involved before issuing the impugned order. It is settled legal position that damages cannot be imposed unless there is mensrea in delayed remittance of contribution. The contributions were paid in 2010-11 and the proceedings were initiated for levying damages only in 2019 and there is undue delay in initiating proceedings U/s 14 B of the Act.

3. The respondent filed counter denying the above allegations. The appellant is engaged in centrally sponsored programmes under HRD Ministry of Government of India. It has got project office in every district. The project office at Trichur commenced its activity w.e.f 01/07/2003. The appellant establishment was covered w.e.f 01/07/2003 by virtue of Section 2A of the Act. The appellant was covered on

4/5/2011. The appellant thereafter remitted the contribution for the period from 07/2003 to 08/2011 during 09/2011 and 10/2011. The delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 24/07/2019 was issued to the appellant. A detailed statement showing the monthwise delayed payment along with the delay and proposed damages was also communicated to the appellant establishment along with the notice. The appellant was also given an opportunity for personal hearing on 20/08/2019. A representative of the appellant attended the hearing and filed a written statement explaining the reasons for the delay. The enquiry was adjourned to 18/09/2019 to assess the damages upto the date of coverage and for subsequent period. According to the appellant, the delay in remittance of contribution for the period from 07/2003 to 06/2011 was due to the delay coverage of the appellant establishment by the respondent organization. The delay in remittance during 7/2011, 9/2011, 11/2011, 1/2012 and 2/2012 were due to the

delay in banking procedure. The delay in remittance during the months 03/2012, 04/2012, to 09/2012 was due to the delay in updating KYC of the employees in the unified portal of the respondent. For the rest of the period the delay was due to the procedural difficulties in collecting contribution of the employees from 18 BRC's and consolidating and remitting the same with the respondent. The appellant could not explain further delay in remitting contribution inspite of the fact that many opportunities were given to the appellant to do so. The appellant submitted a bank statement for the period from 19/1/2016 to 30/4/2019 to show that the monthly contributions for the period from 12/2015 to 09/2018 were remitted in time. On verification of the bank statement it is found that the provident fund contributions for the period from 02/2016 to 06/2016 and 09/2016 to 11/2016 were paid in time and therefore it was decided not to assess any damages for the above period. It was also seen that the contribution in respect of 12/2015 was also paid in time. The appellant was informed of the coverage under the Act on 04/05/2011. The appellant failed to substantiate the

subsequent delay through any document and only pleaded the technical difficulty and delay in the bank as a ground for belated remittance of contribution. The provident fund dues are statutory in nature and the appellant cannot plead financial constraints as a reason for belated remittance of contribution. 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 delay in deposit of provident fund contribution. The appellant cannot plead that there was no mensrea in belated remittance of contribution as the appellant was aware regarding its statutory liability in remitting the contribution with effect from 01/07/2003. The appellant approached the respondent only in April 2011. It is amply clear that the appellant establishment was deducting and retaining the employees' share of contribution with them. The non-payment of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. The Hon'ble High Court of Kerala in **Ernakulam District Co-Operative Bank vs RPFC**, 2000 (1) LLJ 1662

held that even though there is sufficient reason for appellant to make belated payment, that is not a ground for granting exemption for paying penalty or damages.

4. The facts of this case are not disputed. The appellant establishment is liable to be covered under the provisions of the Act with effect from 01/07/2003. The appellant approached the respondent in April 2011 and the respondent issued a Code Number to the appellant establishment on 4/5/2011. According to the learned Counsel for the respondent the appellant was aware of its statutory obligation to remit contribution from 01/07/2003 and was deducting the employees share of contribution from the employees. However the appellant remitted the contribution with the respondent only on 27/09/2011. Though there is no statutory requirement for allotment of a Code number by the respondent, the delay in remittance of contribution upto 27/09/2011 can be justified to a certain extent. However the explanation given by the appellant for further delay in remittance of contribution such as the

procedure delay with the bank, technical delay with the unified portal of the respondent and procedural difficulties in collecting and consolidating and accounting the contribution every month cannot be accepted under any circumstances. The respondent authority has taken into account all the explanations given by the appellant and also has given credit to the extent possible. With regard to the question of limitation it a settled legal position that there is no limitation in initiating proceedings U/s 14B of the Act. In ***RPFC Vs KT Ruling Mills Pvt. Ltd.***, 1995 AIR (SC) 943 the Hon'ble Supreme Court held that the delay of 12 years cannot be held to be unreasonable as there is no limitation provided U/s 14B of the Act. In ***M/s K Street Light Electric Corporation Vs RPF Commissioner***, 2001 AIR (SC) 1818 the Hon'ble Supreme Court held that the delay in initiating proceedings U/s 14B of the Act will not be a ground for setting aside an order imposing damages even if the delay is more than 10 years. In ***Hindustan Times Ltd Vs Union of India***, 1998 AIR (SC) 688 the Hon'ble Supreme Court held that the delay of 14 years in initiating action cannot be a

ground for interfering with the assessment of damages of 14B of the Act. The Hon'ble Supreme Court also held that it is an advantage for an employer when there is delay in assessing the damages as the employer will be utilizing the money in his business or for his personal purposes.

5. The learned Counsel for the respondent pleaded that there is an element of mensrea in belated remittance of contribution as the appellant was retaining the employees' share of contribution deducted from the salary of the employees for a long time. Non-payment 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 claim that there was no mensrea in belated remittance of contribution atleast to the extent of employees share.

6. The appellant establishment is an organization funded by the central and state governments. There was delay on the part of the appellant in approaching the respondent, getting the provident fund code number and

remitting the contribution in time. However, there is no delay in allotting code number to the appellant establishment after the request was made by the appellant. Though the learned Counsel for the appellant pleaded financial constraints, no evidence is produced in the proceedings U/s 14B and also in this proceedings. However taking into account the facts and circumstances in this case, it is felt that the appellant is entitled for some relief as far as damages U/s 14B is concerned.

7. 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, 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