



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

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

(Friday the 17th day of September, 2021)

Appeal No.10/2020

Appellant : M/s. Quilon District Motor Transport
Workers Co-Operative Society Ltd.,
Kavanad P.O
Kollam – 691 003

By Adv. Pallichal S.K. Pramod

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Kollam – 691 001.

By Adv. Pirappancode V.S. Sudheer
Adv. Megha . A

This appeal came up for hearing on 14/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 17/09/2021.

ORDER

Present order is filed No. KR/KLM/4301/PD/2019-20 dt.24/09/2019/982 dt.23.09.2019 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter referred as ‘the Act’.) for belated remittance of contribution for the period

from 05/2008 to 05/2018. The total damages assessed is Rs.46,74,095/-.

2. The appellant is a co-operative society operating state carriage buses. The appellant is registered for the welfare of motor workers who are members of the society. The internal management of the appellant establishment is regulated and controlled by a committee collectively known as Board of Directors. The said board is being elected from among the members of the society. The respondent issued a notice U/s 14B of the Act directing the appellant to show cause as to why damages shall not be levied for belated remittance of contribution for the period from 05/2008 to 05/2018. The appellant was offered an opportunity for being heard. A representative of the appellant attended the hearing and submitted that the delay was not intentional and was due to acute financial crisis of the appellant establishment . The dues of the above said period were remitted after selling the property owned by appellant co-operative society. The appellant co-operative society is declared as “sick co-operative” and government of Kerala

had awarded Rs.10 lakhs vide government order dt. 27/03/2010. Due to the financial difficulties even the wages of the employees were not disbursed in time. The co-operative department audit for the year 2018-19 has shown a net loss of Rs. 11 crores. The said loss occurred during the previous years also. For the period from 06/1999 to 03/2000 the appellant society stopped functioning due to financial crisis. It re-started with financial aid from the government. The respondent authority ought to have seen that the appellant establishment is a co-operative society and the members of the society are the workers. The respondent is also aware of the fact that the contributions were remitted after selling the property of the appellant establishment, thorough the Recovery Officer of the respondent organization. The respondent authority failed to exercise his discretion available U/s 14B of the Act as well as Para 32A of EPF Scheme. The respondent failed to consider whether the delay in remittance of contributions was deliberate inaction on the part of the appellant. The

respondent also failed to consider the fact that the appellant is a sick co-operative society.

3. The respondent filed counter denying the above allegations. There is no dispute regarding the fact that the appellant delayed remittance of contribution for the period from 05/2008 to 05/2018. Since the appellant failed to remit contribution, an enquiry U/s 14B of the Act was initiated and the amount of damages was quantified. The contribution were recovered from the appellant on 19/08/2019 by selling the property of the establishment attached by the Recovery Officer. Since there was delay in remitting the dues, notice U/s 14 B of the Act was issued to the appellant. A delay statement specifying the amount of dues, due date of payment, actual date of payment and the period of the delay committed by the appellant and also the proposed damages and interest was also communicated to the appellant. The appellant was also given an opportunity for personal hearing on 10/7/2018. There was no representation for the appellant on 10/07/2018. The enquiry was adjourned to 31/07/2018 & 30/ 8/2018. On

30/08/2018 a representative of the appellant attended the hearing and requested for some time to complete the procedures for the sale of attached property. On 26/09/2018 the representative of the appellant attended and submitted that the sale proceeds will be realized shortly and therefore requested for some more time for remitting the damages. The enquiry was further adjourned to 13/11/2018, 09/1/2019, 28/2/2019 and 15/5/2019. During the pendency of the proceedings the appellant remitted the contribution for the period 05/2016 to 05/2018. Therefore it was decided to revise the assessment period from 05/2008 to 05/2018. Accordingly a revised notice dt. 02/09/2019 was issued to the appellant. The appellant was also given further opportunity for personal hearing on 16/09/2019. A representative of the appellant attended the hearing and admitted the delay as furnished in the delay statement. Accordingly the assessment is completed and the impugned order is issued. The appellant establishment is not entitled for any relief on the ground that the appellant is a co-operative society registered for the

welfare of the motor workers. The provisions of the Act and Schemes apply to all covered establishments uniformly. The benefits under the Act including contribution is credited to the members account on due month basis, so that the employees are entitled to get statutory benefits available from the fund such as interest on monthly running balance and monthly pension on higher wages. The provisions of the Act and Schemes do not make any distinction whether the appellant establishment is declared a “sick co-operative” or not. In **Assistant PF Commissioner Vs EPF Appellate Tribunal and M/s Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd**, WP.(C) No. 4633/2012. The Hon’ble High Court of Madras held that if the appellant failed to produce documents to show that they were declared sick under BIFR, then the reduction of damages is in violation of Sec 14B. In **M/s. Sky Machinery Ltd Vs RPFC**, 1998 LLR 925 the Hon’ble High Court of Orissa held that financial crunch will not be sufficient for waving penal damages for delay in depositing PF contribution. In the case of **Hindustan Times Vs Union of India**, 1998 (2) SCC 242

the Hon'ble Supreme Court held that financial problems cannot be taken as ground for delayed remittance of contribution. In ***Elsons Cotton Mills Vs RPFC***, 2001 (1) SCT 1104 (P&H) (DB) the Division Bench of Hon'ble High Court of Punjab & Haryana rejected financial crisis as ground for not paying provident fund of employees. The appellant deducted the employees share of contribution as and when the salary of the employees were paid. The appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time.

4. The appellant establishment was in default in remitting provident fund contribution. The respondent authority therefore assessed the dues U/s 7A of the Act. Since the appellant could not remit the amount due to financial constraints, the Recovery Officer of the respondent organization attached a portion of the property belonging to the appellant. Later by consent of parties the above said attached property of the appellant was sold and the amount realized was adjusted towards provident fund contribution.

Naturally there was delay in remittance of contribution and therefore the respondent initiated action for assessing the damages. The appellant was given notice along with a delay statement. The appellant requested for some time to finalize the sale of the property. The respondent granted further time to facilitate the appellant to remit the damages. However the appellant could not remit the amount and therefore the respondent issued the impugned order. The ground taken by the appellant in this appeal is that there was no intentional delay on the part of the appellant and there was no mensrea in belated remittance of contribution. The learned Counsel for the appellant pointed out that the provident fund contribution itself is recovered by the Recovery Officer of the respondent organization by attaching and selling some properties of the appellant. This itself should adequately disclose the financial difficulties of the appellant establishment. The appellant further produced Annexure A1 series orders issued by the government of Kerala, Co-operative department to show that the appellant establishment is a "sick co-operative" and also that the

appellant society was being paid grand in aid by government of Kerala. From the documents produced by the appellant it is clear that the appellant is a “sick co-operative”. From the impugned order it is clear that the respondent recovered the provident fund contribution by attaching and selling some properties belonging to the appellant. This will further prove the financial constraints of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant failed to remit even the employees share of contribution which is deducted from the salary of the employees. Though the learned Counsel for the appellant argued that there was delay in payment of wages, the same is not substantiated by any evidence. Hence the delay in remittance of provident fund contribution deducted from the salary of the employees will amount to the criminal offence of breach of trust under 405 & 406 of Indian Penal Code. The appellant cannot claim that the delay in remittance of employees share of contribution deducted from the salary of the employees is not intentional and there is no mensrea in

the delayed remittance of contribution to the extent of employees' share deducted from the salary of the employees.

5. Considering the fact that the appellant is a sick co-operative society and also due to the fact of financial constraints pleaded and proved by the appellant, they are entitled for some relief as far as the assessment of damages is concerned.

6. Considering the facts, circumstances and pleadings in this case, 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