



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Tuesday the 6th day of April, 2021)

APPEAL No.124/2019

Appellant

M/s. Rashtra Deepika Limited
P.B. No.7,Deepika College Road
Kottatam -686 001

By Adv. Jomy George

Respondent

The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 19.02.2021
and this Tribunal-cum-Labour Court on 06.04.2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KTM/
70/APFC/ Penal Damage/14B / 2018-19 / 3512 dt.
08/02/2019 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 04/2014 to 05/2018. The total damages assessed is Rs. 15,43,988/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a public limited Company registered under provision of Company's Act 1956. The appellant is regular in compliance. Due to unpresidential financial crisis, the appellant was running under heavy loss since 2008 and the accumulated loss of the company during 2018 was Rs.24,25,60,595/-. In spite of heavy losses the appellant was paying wages and other statutory dues to employees in time. The appellant was first among the malayalam newspapers to implement the pay scale recommendations of Majithia Wage Board w.e.f 01/04/2014. The appellant also paid the additional allowance of 20% of basic pay as "variable pay" as recommended by Board. In the Majithia Wage Board recommendations there was no specific mention regarding the recovery of provident fund contribution from "variable pay". Hence the appellant did not pay provident fund

contribution for “variable pay”. The appellant was otherwise regular in paying contribution on basic pay and DA. The Enforcement Officer of the respondent organization conducted an inspection of the appellant establishment and informed the appellant that provident fund is required to be paid on the variable pay also. Subsequently on 15/11/2015 the appellant got an order instructing payment of provident fund on variable pay. Immediately thereafter the appellant started deducting provident fund on variable pay from salary of the employees. More over the establishment also started paying arrears. In spite of the financial crisis, the appellant paid the contribution without interruption. In the financial year 2016-17 the loss of the appellant was Rs.1,65,43,182/- and in the year 2017-18 it was Rs.3,57,03,696/-. The accumulated loss of the company as on 31/03/2018 is Rs.24,25,60,595/-. The balance sheets along with the annual reports for the year 2016-17 and 2017-18 are produced and marked as Annexure A1 series. The respondent issued notice dt. 14/12/2018 alleging delay in remittance of contribution. The appellant on receipt of notice requested the respondent

to accept the contentions and waive claim of damages. The appellant was also given an opportunity for personal hearing 21/01/2019. A representative of the appellant attended the hearing and explained the financial crisis faced by the appellant. Without considering the representation of the appellant the respondent issued the impugned orders. The respondent failed to exercise the discretion vested on him U/s 14B of the Act. In **RPFC Vs SD College, Hoshirpur** 1997 (2) LLJ 55 The Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether he has the discretion to reduce the percentage of damages. The Hon'ble High Court of Kerala in **Harrisons Malayalam Ltd Vs RPFC** held that financial constraints are to be considered as a valid reason for reducing the damages.

3. The respondent filed counter denying the above allegations. The appellant is a newspaper establishment covered under the provisions of the Act. The appellant committed delay in remittance of provident fund contribution for the period from 04/2014 to 05/2018. Hence a notice U/s 14B of the Act was issued to the

appellant to show cause why damages U/s 14B shall not be levied. A detailed statement was also send along with the notice furnishing therein the due date of payment, the amount, the actual date of payment and delay in remittance of contribution. The appellant was also given an opportunity for personal hearing. The representative of the appellant who attended the hearing admitted the delay in payment of dues and requested for waiver of damages due to the financial crisis of the appellant establishment. The claim of the appellant that they were paying provident fund contribution regularly is not correct and the same can be seen from the Annexure A2 delay statement. The appellant did not produce any evidence to prove their financial difficulties before the respondent authority. The Majithia Wage Board decisions was accepted by the Central Government and notified on 11/11/2011. The notification was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the challenge vide its judgment dt. 07/02/2014. Hence the appellant is liable to pay the wage revision from the date of notification. The appellant is liable to pay provident fund contribution on the

“variable pay” being paid to the employees as per the recommendations of Majithia Wage Board. The appellant cannot plead ignorance that they were not aware that the “variable pay” will be treated as wages for the purpose of provident fund deduction. The appellant failed to pay contribution on “variable pay” even after direction, to remit the same. Hence an enquiry U/s 7A of the Act was initiated and an order was issued directing the appellant to remit the contributions on variable pay from the due date of payment. Financial difficulties now pleaded by the appellant is entirely untenable since the nature and causes of financial difficulties have not been pleaded. The appellant cannot find fault with the impugned order as the mitigating circumstances are not disclosed to the respondent authority. The appellant has suppressed the real causes of the so called financial difficulty and has failed to establish that the so called losses was despite the exercise of due and reasonable care on the part of the appellant. The financial difficulty has neither been pleaded nor proved in accordance with law and therefore is liable to be rejected.

4. The learned Counsel for the appellant pleaded two grounds for delayed remittance of contribution. One ground pleaded is that the appellant was not aware of the fact that the “ variable pay ” awarded by the Majithia Wage Board will form part of basic wages and therefore will attract provident fund deduction. The learned Counsel for the respondent pointed out that ignorance of law cannot be pleaded as an excuse for delayed payment of contribution and that to as a defense for reducing or waiving damages. He also pointed out that the Enforcement Officer of the respondent during his routine inspection on 18/02/2016 pointed out to the appellant the illegality of not remitting contribution on the variable pay being paid to the employees from 01/04/2014. The appellant failed to comply with the directions issued by the Enforcement Officer. Hence the respondent was forced take up the matter U/s 7A of the Act and only after the final order U/s 7A that the appellant started compliance and corrected the illegality. According to the learned Counsel for the respondent the appellant committed the illegality fully

knowing the statutory requirement and therefore cannot plead as an excuse for reducing the damages.

5. The learned Counsel for the appellant also pleaded financial difficulties as a ground for reducing the damages. According to the learned Counsel for the respondent the appellant never pleaded any financial difficulties before the respondent or substantiated the same by producing evidence. In this appeal the appellant produced two annual reports for 2016-17 and 2017-18. As per these documents now produced in this appeal, the revenue receipt in the year 2017 is Rs.48.46 crores and employees benefit payments comes to Rs. 12.13 crores. For the year 2018 the revenue receipts is Rs. 52.82 crores and the employee benefit expenses is Rs. 13.54 crores. An establishment with such huge revenue income and employees benefit expenses cannot justifiably plead financial difficulties as a ground for delayed payment of provident fund contribution. However as pointed out by the learned Counsel for the appellant the appellant establishment was running under heavy financial loss

during the year 2016-17 and 2017-18 and there is an accumulated loss of more than 24 crores as per the balance sheet produced by the appellant. According to the learned Counsel for the respondent the documents now produced by the appellant in this appeal cannot be accepted as a proof of financial difficulties. In ***Aluminum Corporation Vs Their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. Further the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence before the authority by a responsible person. According to the learned Counsel, in the absence of such validation the figures in the balance sheet cannot be taken as proof of financial difficulties of the appellant establishment. The learned Counsel for the respondent also pointed out that the appellant had no case that the wages of the employees were not paid in time. When the wages are paid, the employees' share of the contribution is deducted from the salary of the employees. Non-payment 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 offense of breach of trust the appellant cannot claim there was no mensrea in belated remittance of contribution. In fact the appellant specifically pleaded in the appeal memo that "Inspite of heavy losses petitioner was paying wages and other statutory dues to the employees in time. However considering the financial difficulties, the appellant is entitled for some relief as far as damages U/s 14B is concerned.

6. Considering all the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 75 % of the damages levied under Sec 14B of the Act.

7. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act it is seen that no appeal is provided U/s 7(I) from an order

issued U/s 7Q of the Act. In ***Arcot Textile Mills Vs RPFC***, Civil Appeal No. 9488/2013 the Hon'ble Supreme Court held that no appeal is provided for against imposition of interest at stipulated rate U/s 7Q of the Act. In ***District Nirmithi Kendra Vs EPFO***, WPC No. 234/2012 the Hon'ble High Court of Kerala also held that no appeal is maintainable against the 7Q order.

Hence the appeal is partially allowed the impugned order U/s 14B of the Act is modified and the appellant is directed to remit 75% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer