



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer
(Friday the 9th day of April, 2021)

Appeal No.342/2018

Appellant : Kozhikode District Co-operative
Press Ltd., No. F 1375,
Kallai Road, Chalappuram P.O
Kozhikode – 673 002.

By Adv. Arjun Raghavan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Eranhipalam P.O,
Kozhikode -673 006

By Adv. Dr. Abraham P Meachinkara

This appeal came up for hearing on 10/03/2021
and this Industrial Tribunal cum Labour Court issued the
following order on 09/04/2021.

ORDER

Present appeal is filed from Order No. KR / KKD /
887 / Enf-1 (3) / Dam. / 2018 / 4446 Dt. 10/09/2018
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 09/2013 to 03/2018 (remittance received from 28/04/2017 to 28/05/2018) The total damages assessed is Rs.3,80,547/-.

2. The appellant is a Co-Operative Society engaged in the business of printing and book binding. Earlier the appellant society was functioning under the name and style of Parasparasahayi Co-Operative Printing and Publishing Work Ltd No. F 137. Though the appellant establishment was working on profit, from 1987 onwards the appellant started sustaining heavy losses. The respondent initiated recovery proceedings against damages and penalty orders for various periods ranging from 1997 to 2004. The appellant challenged the said proceedings by way of filing Writ Petition No. 23696/2010. The Hon'ble High Court, taking note of the financial position of the appellant society scaled down the damages to 25% of the damages assessed. A copy of the judgment is produced and marked as Annexure 2. The amount fixed by the single bench was confirmed by the Division Bench of the Hon'ble High Court

of Kerala in Writ Appeal No. 1143/2014. The judgment in WA No. 1143/2014 is produced and marked as Annexure A3. The respondent again issued demand covering even the period which was subject matter of challenge before Hon'ble High Court in the earlier round of litigation. The demand for damages U/s 14B and 7Q interest for the period from 04/2000 to 04/2009 was already covered by the earlier judgment of the High Court. The appellant challenged the consequent recovery proceedings before the Hon'ble High Court of Kerala in WPC No. 15965/2015. The Hon'ble High Court vide interim order dt.25/01/2016 directed the appellant to remit 1/3rd of the amount demanded. A copy of the interim order dt. 25/01/2016 is produced and marked as Annexure A8. The appellant was continued under severe financial constraints. The appellant could get the total losses of Rs. 83 lakhs for the year 2016-17 reduced to Rs. 69 lakhs for the year 2017-2018. In this financial constraints there was some delay in remittance of provident fund contribution. The respondent issued notice dt. 29/05/2018 to assess damages and interest for the delay in remittance

of contribution during the period 28/04/2017 to 22/05/2018. The Secretary of the appellant appeared before the respondent and appraised him of the financial condition of the appellant establishment. Ignoring the above submissions the respondent issued the impugned orders. In ***Assistant PF Commissioner EPFO and Another Vs Management of RSL Textiles India Pvt. Ltd***, 2017 (3) SCC 110 the Hon'ble Supreme Court held that mensrea is a relevant consideration while deciding the quantum of damages. The Hon'ble High Court of Kerala in ***RPFC Vs Harrison Malayalam Ltd***, held that the financial difficulties of an establishment shall be a mitigating circumstance while deciding the quantum of damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment committed delay in remittance of provident fund contribution for the period from 09/2013 to 03/2018. When there is delay in remittance of contribution as per Section 6 of the Act and Para 30 & 38 of EPF Scheme, damage U/s 14B of the Act

read with Para 32A of EPF Scheme is attracted. Hence the respondent issued the summons to the appellant. A detailed delay statement furnishing the due date, the actual date of remittance and the delay in remittance of contribution was communication to the appellant along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pleaded financial difficulties as a ground for delayed remittance of contribution. From the pleading by the appellant it can be seen that the appellant is a chronic defaulter in remittance of provident fund contribution. In ***Organo Chemical Industries Ltd Vs Union of India***, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court held that " Even if it is assumed that there was loss as claimed it does not justify delay in deposit of money which is an unqualified obligation and cannot be allowed to be linked with the financial position of the employer over different points of time. 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 the provisions of a Civil Act. The Hon'ble Supreme Court further pointed out that penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial.

4. The learned Counsel for the appellant produced the true copies of the audit certificate for the financial years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 in this proceedings to substantiate his case that the appellant was facing real financial difficulties during the relevant point of time. According to the learned Counsel for the appellant the loss during 2012-13 was Rs.64.85 lakhs, for the year 2013-14 Rs.65.66 lakhs and 2014-15 the loss was Rs.81.49 lakhs and for 2015-16 the loss was Rs.86.80lakhs, 2016-17 the loss was Rs.83.26 lakhs, 2017-18 the loss was Rs.69.56 lakhs and for the year 2018-19 the loss was Rs.71.58 lakhs as per the statutory audit under the Kerala Co-operative Societies Act. The learned Counsel for the appellant also submitted that the

pay revision for the employees could not be implemented due to the financial difficulties of the appellant establishment. The learned Counsel for the respondent argued that the documents now produced by the appellant shall not be taken into account for deciding the quantum of damages as the appellant failed to produce any documents before the respondent authority to substantiate their financial difficulties at the time of Sec 14B hearing. It is the settled law that when financial difficulties is plead by the appellant for delayed remittance of contribution it is the responsibility of the appellant to plead and prove the difficulties before the respondent authority to substantiate the mitigating circumstances of the appellant establishment. The learned Counsel for the respondent also pointed out that the financial statement may not be accepted in view of the fact that the figures reflected in these reports are not proved by any competent authority. In ***Aluminium 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. The Hon'ble Supreme Court also held that the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence before the authorities. However it is seen that the documents now produced by the appellant are statutory audit reports prepared by the auditors under Kerala Co-operative Societies Act and therefore cannot be completely ignored in this proceedings. The documents now produced by the appellant shows that the appellant had financial difficulties during the relevant point of time. However it is seen that there are huge amounts outstanding to be recovered by the appellant establishment. It is further seen that the appellant was paying salary to its employees in time. The learned Counsel for the respondent argued that when the wages of employees are paid, the employees' share of contribution is deducted from the salary of the employees. The appellant even delayed remittance of employees' share of contribution in time. Non-remittance employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 405 of Indian Penal Code. Having

committed the offence of breach of trust, the appellant cannot plead that there was no mensrea or intention in delayed remittance of contribution atleast to the extent of employees' share of contribution which amounts to 50% of the total dues. However considering the fact that the appellant is a Co-Operative Society and was under severe financial constraints during the relevant point of time, the appellant is entitled to some relief with regard to the damages assessed U/s 14B of the Act.

5. Considering all the facts, circumstances, pleadings and evidence, 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