



सत्यमेव जयते

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

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

(Friday the 5<sup>th</sup> day of March, 2021)

**APPEAL No.127/2019**

(Old No.969(7)2014)

Appellant : Chairman  
M/s.Sree Narayana Trust Medical  
Mission Sankar Sashtyabdapoorthi  
Memorial (S.S.M)Hospital  
Kollam - 691001

By Adv.A. N. Rajan Babu

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kollam – 691001

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

This case coming up for final hearing on 03.02.2021 and this Tribunal-cum-Labour Court on 05.03.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KLM/3230/PD/2013-14/7113 dt.19.06.2013 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 04/2004 to 03/2007. The impugned order is a composite order wherein the interest U/s 7Q of the Act for the same period was also assessed. The damages assessed is Rs.13,69,803/-.

2. The appellant establishment is an institution under Sree Narayana Trust, Kollam which is a public charitable trust having several educational institutions and hospitals. In a proceedings U/s 7A of the Act, the respondent assessed the dues in respect of bonded nurses and canteen and security employees. In the proceedings an amount of Rs.36,81,830/- was assessed. The appellant filed a review application U/s 7B of the Act and pending review the appellant paid Rs.12 Lakhs. The review application was partially allowed and the 7A order was modified reducing the amount to Rs.27,24,064.15 and after taking into account, the amounts remitted by the appellant, the respondent assessed an amount of Rs.17,24,064.15. The appellant sought an instalment facility to remit the assessed amount in 20 equal instalments. The respondent allowed the request. The appellant therefore remitted the contribution in 20 equal instalments. Alleging delay in remittance of contribution for the period from 04/2004 to 03/2007, the respondent issued notice to show cause why damages and interest shall not be assessed. Without appreciating the peculiar facts of the present case, the respondent issued the Annexure A1 order. The respondent also issued an order U/s 8F to the bankers of the appellant.

Aggrieved by the said attachment order the appellant moved the Hon'ble High Court of Kerala and the Hon'ble High Court was pleased to stay the operations of the said order to enable the appellant to prefer statutory appeal before EPF Appellate Tribunal, New Delhi. The appeal filed by the appellant before EPF Appellate Tribunal was dismissed as per Annexure A2 order. The appellant filed W.P.(C) no.3494/2012 before the Hon'ble High Court. The Hon'ble High Court found that delay in remittance of contribution does not attract levy of damages automatically since imposition of damages is punitive in nature. The Hon'ble High Court therefore directed the respondent to re-decide the matter in view of the decision of the Hon'ble High Court of Kerala in **Indian Telephone Industries Vs APFC**, 2006 (3) KLJ 698. A copy of the judgment of the Hon'ble High Court is produced and marked as Annexure A3. The appellant therefore filed a detailed representation which is produced and marked as Annexure A4. Without considering the pleadings in Annexure A4 representation, the respondent issued the impugned order. Aggrieved by the said order the appellant moved the Hon'ble High Court Kerala in W.P.(C) no.22003/2014 and vide order dt.27.08.2014 the Hon'ble High Court of Kerala directed the appellant to approach the EPF Appellate Tribunal for its statutory remedy. A copy of the order of the Hon'ble High Court dt.21.08.2014 is produced and marked as Annexure A7. The respondent authority failed to comply with the directions

issued by the Hon'ble High Court of Kerala in W.P.(C) no.3494/2012 to the extend that the principles laid down by the Court in **Indian Telephone Industries** case (Supra) was not considered by the respondent.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to enrol all the eligible employees to the Fund. This is a clear violation of the provisions of the Act. Therefore an enquiry U/s 7A of the Act was initiated and the dues were assessed. The appellant thereafter filed a review application U/s 7B of the Act. The Sec 7B review application was partially allowed and the assessed amount was reduced on the basis of evidence produced by the appellant. The appellant thereafter requested for an instalment facility to remit the contribution. The request of the appellant was allowed by the respondent and the appellant was directed to remit the contribution in 20 equal instalments. The appellant remitted the contribution on the basis of the instalment facility granted to them. Since there was delay in remittance of contribution, an enquiry U/s 14B of the Act was initiated and Annexure A1 orders assessing damages and interest was issued. The appeal filed before the tribunal was rejected. The appellant moved the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala set aside the order and directed the respondent to assess the dues keeping in mind the principles laid down by the Court in **Indian Telephone Industries** case (Supra). Hence the proceedings

were again initiated. The appellant was represented in the enquiry and after taking into account the decision of the Hon'ble High Court of Kerala in **Indian Telephone Industries** case and the facts of the present case, the respondent issued the impugned order. The respondent authority found that there was delay in payment of contribution due to non enrolment of the employees which is a violation of statutory provisions. The representative who appeared before the authority also filed a letter no.SNTMM2(a)1/2012 dt.25.06.2012 stating that the delay in payment of dues was due to oversight and negligence of an official of the establishment. The appellant failed to make contributions for a few months because of the official. The respondent also found that the facts in **Indian Telephone Industries** case (Supra) and the present case are entirely different since there was a deliberate attempt by the present appellant to evade the statutory provisions by non enrolment of eligible employees.

4. In **District Nirmithi Kendra Vs EPFO and others**, W.P.(C) 234/2012 the Hon'ble High Court of Kerala held that no appeal will lie against an order U/s 7Q of the Act.

5. The issue under challenge in this appeal is with regard to a composite order issued by the respondent assessing damages U/s 14B of the Act and interest U/s 7Q. According to the learned Counsel for the appellant, the appellant was under a bonafide belief that bonded nurses need not be enrolled

to the Fund. Similarly the contract employees were also not enrolled by the appellant. The respondent initiated an enquiry U/s 7A and decided that the bonded nurses and contract employees are required to be enrolled and quantified the dues. The said 7A order was modified in a review filed U/s 7B of the Act. The appellant sought instalment facility and the respondent allowed the amount to be paid in 20 equal instalments. The appellant remitted the contribution as per the instalment facility granted to them. According to the learned Counsel for the appellant, the respondent ought to have considered the plea of the appellant that there was no mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the non enrolment of employees is a deliberate violation of the provisions of the Act and hence the appellant cannot claim that there was no mensrea in belated remittance of contribution. Further it was also pointed by the learned Counsel for the respondent that instalment facility was granted only to facilitate the appellant to remit the contribution. It will not take away the statutory liability of paying penalty in the event of belated remittance of contribution. According to the learned Counsel for the appellant, the respondent failed to consider the principles laid down by the Hon'ble High Court in **Indian Telephone Industries** case (Supra) though there was a specific direction to that effect in its judgment in W.P.(C) no.3491/2012. The learned Counsel for the respondent however

pointed out that the respondent authority has considered the principles laid down in the above cited judgment however found that since there was a deliberate statutory violation by the appellant, those principles cannot be fully extended to the present case.

6. The facts of the case are generally admitted the appellant failed to enrol the bonded nurses and the contract employees to the fund which is a clear statutory violation. The respondent located the default, assessed the dues and recovered the same from the appellant. On the request of the appellant instalment facility was also granted to the appellant to remit the contribution in 20 equal instalments. As rightly pointed out by the learned Counsel for the respondent, the facts in **Indian Telephone Industries** case (Supra) and that of the present case are entirely different. In **Indian Telephone Industries** case, the issue is that the establishment was declared 'sick' by BIFR and the financial difficulties was not considered by the respondent organisation. In the present case the appellant violated the provisions of the Act by not enrolling substantial numbers of employees which was detected, assessed and recovered by the respondent in instalment. It is also relevant that the decision of the single judge of the Hon'ble High Court of Kerala in **Indian Telephone Industries** case is modified by the Division Bench of the Hon'ble High Court in W.A.no.2182/2006 and directed the Central Board of Trustees to consider the representation of the

petitioner “on its merits and in accordance with law, **untrammelled by any one of the observations made by the learned Single Judge while disposing of the writ petition** “. However the principle that the facts of each case will have to be considered separately before assessing damages and that the assessment of damages U/s 14B is not automatic when there is delay in remittance of contribution is valid and applicable in the present case as well. According to the learned Counsel for the respondent, the appellant has committed a violation of the provisions of the Act and ignorance of law cannot be pleaded as a ground which will amount to challenging the very object of a social welfare legislation. I agree with the pleadings of the learned Counsel of the respondent to the extent that the appellant cannot be given the benefit of a statutory violation. However it is not clear from the pleadings whether the respondent communicated to the appellant while granting instalment facility that the appellant will be liable to pay damages for belated remittance of contribution which is a normal condition when instalment facility is granted. It is further noticed that the delay in remittance of contribution is for the period 04/2004 to 03/2007 and the damages and interest was assessed vide order dt.02.06.2010. The appellant got more than adequate time by default, since the damages and interest which was liable to be paid is yet to be remitted by the appellant even after a period of 17 years and 11 years after the assessment of the same.



Considering 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 70% of the damages assessed as per the impugned order.

7. The learned Counsel for the respondent argued that the assessment of interest U/s 7Q cannot be challenged in an appeal U/s 7(l). The Hon'ble Supreme Court in M/s. **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that when there is a composite order issued U/s 14B and 7Q, the 7Q portion also can be challenged in an appeal. However the interest U/s 7Q is a statutory obligation, the quantification of which can be challenged only in the event of a mistake in the assessment. If there is any such mistake the appellant may approach the respondent with documentary evidence to support their case to get the same corrected.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 70% of the damages. If there is any mistake in the calculation of interest U/s 7Q, the appellant may approach the respondent for necessary correction.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer