



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

सत्यमेव जयते

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

(Thursday the 22nd day of October, 2020)

Appeal No.485/2019

(Old No. ATA NO. 466(7)2016)

Appellant

M/s. Divine Medical Centre Ltd
Wadakkancherry
Trichur - Kerala - 680 582

By Adv. C.B. Mukundan
Adv. Binitha C.Mukundan

Respondent

The Assistant PF Commissioner
EPFO, Kaloor
Kochi -682 017

By Adv.Thomas Mathew Nellimmoottil

This case is coming up for final hearing on
05.10.2020 and this Tribunal-cum-Labour Court on
22.10.2020 passed the following:

ORDER

Present appeal is filed from Order No.KR/KCH/
13136/Damages Cell/2015/162 dt. 23.02.2016
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 05/2010 to 09/2013. The total damages assessed is Rs. 3,84,156/-.

2. The appellant is a hospital started with the main objective to provide medical treatment at affordable charges to the local public. The appellant was regular in compliance. The hospital plunged into financial crisis and the appellant could not even disburse the wages in time, and therefore there was delay in remittance of provident fund contribution also. In spite of earnest efforts the management could not continue the hospital and was forced to close down on all activities. The management is forced to initiate liquidation proceedings. The appellant surrendered all the licenses for the conduct of hospital activities. The statutory authority were also informed that the appellant establishment is closed w.e.f 10/03/2012.

3. The appellant received a notice dt 30/03/2014 from the respondent proposing levy of damages for belated payment of contribution for the period from 05/2010 to 09/2013. An authorized representative of the appellant appeared before the respondent and explained a real circumstances leading to delay in remittance of contribution. It is settled legal position that damages

cannot be levied in a mechanical manner. Damages can be levied only when there is willful defiance of law and contumacious conduct on the part of the appellant.

4. According to the respondent the appellant delayed remittance of contribution for the period from 05/2010 to 09/2013. The delay in remittance will attract damages U/s14B of the Act read with Para 32A of EPF Scheme. The appellant was offered an opportunity for personal hearing before the impugned order was issued. A representative of the appellant attended the hearing and agreed to remit the interest U/s 7Q of the Act. The representative of the appellant also pointed out that the unit is closed and is under liquidation. In spite of the financial difficulties the appellant remitted the contribution belatedly. Though the representative of the appellant were indicating financial difficulties, no documentary evidence was produced before the respondent authority. The appellant failed to give any cogent explanation for non remittance of the employee's share of contribution deducted from the salary of the employees. In **EPFO Vs Birlapur Vidyalaya**, 2007(1)CHN 173 the Hon'ble High Court of Calcutta held that both

employee's and employer's share become payable as soon as the wages become payable even though the wages are not paid. The Hon'ble High Court further observed that to allow the employer to make the contribution only when he pays wages would be to stultify the project. The learned Counsel for the appellant pointed out that the appellant establishment is closed w.e.f 10.3.2012. He produced Annexure A4 to Annexure A10 letters sent to various statutory authorities informing the closure of establishment and also produced the annual report of the appellant establishment for the year 2010-11 and 2011-2012 as Annexure A11 to A13 to show that the appellant was in real financial constraint during the relevant point of time. The documents produced by the appellant clearly establish the fact that the appellant establishment was facing real financial constraint during the relevant point of time and was ultimately closed because of the financial crisis. The learned Counsel for the respondent in his argument submitted that there was in delay in remittance of contribution and hence the appellant is liable to pay damages U/s 14B. The learned Counsel for the respondent also pointed out that the

employees' share of contribution deducted from their salary were also not remitted by the appellant in time. According to him the appellant cannot attribute any financial difficulties for not remitting the employees share of contribution deducted from the salary of the employees. He also pointed out that no documents were produced before the respondent authority to substantiate the claim of financial difficulties. Even according to the statement filed by the Managing Director before the 14B authority the establishment was working well from 2011 onwards after the approval of the restructuring package.

5. The ground taken by the learned Counsel for the appellant for reduction of waiver of damages as per impugned order is that of financial difficulties. According to the learned Counsel for the respondent, no documents were produced before respondent authority at the time of hearing. However, the documents produced in this appeal would substantially prove that the appellant was in real financial strain and ultimately the financial constrains lead to the closure of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant deserve no sympathy as far as the employees

share of contribution is concerned as there was delay in remitting the employees share of contribution also which was deducted from the salary of the employees. To that extent, there is an element of mensrea.

6. Considering the facts, pleadings and evidence and arguments in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 50% of the damages assessed as per Sec 14B of the Act.

Sd/-

(V.Vijaya Kumar)
Presiding Officer