



सत्यमेव जयते

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

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

(Monday the 2<sup>nd</sup> day of November, 2020)

**APPEAL No.75/2018**  
(Old No.A/KL-50/2016)

Appellant : M/s.Indo Asian News Channel Pvt Ltd  
IV/220, Reporter Studio Complex  
Kalamassery, H.M.T. Colony  
Ernakulam – 683503

By M/s.KNS Legal Advocates &  
Solicitors

Respondent : The Regional PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi – 682017

By Adv.S. Prasanth

This case coming up for final hearing on 20.10.2020 and this Tribunal-cum-Labour Court on 02.11.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/27767/DAMAGES CELL/SPL/2016/112 dt.15.06.2016 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 02/2013 to 07/2013. The total damages assessed is Rs.10,53,156/-. 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 private limited company incorporated under the Companies Act, 1956. The appellant is a Malayalam language news broadcasting channel. The appellant company was established on 26.07.2010. There was delay in payment of contribution for the period from 02/2013 to 07/2013 on account of financial crisis and paucity of funds. The respondent issued a notice dt.13.04.2016 directing the appellant to show cause why damages shall not be levied U/s 14B of the Act. The appellant was also given an opportunity to explain the delay. A representative of the appellant appeared before the respondent on 25.04.2016 and 12.05.2016. The authorised representative who appeared before the respondent explained that the delay was due to paucity of funds and due to the financial crisis in the appellant establishment. The balance sheets for the year 2012-13 and 2013-14 is produced and marked as Annexure A3 and A4 respectively. Without considering the submissions made by the appellant, the respondent issued the impugned orders. The impugned orders are issued in violation of the principles of natural justice. The respondent posted the hearing on 25.04.2016 which was adjourned suo moto by the respondent due to administrative exigencies. The

appellant appeared before the respondent on 12.05.2016 whereas the impugned order is issued on 05.05.2016. Hence it is clear that the impugned order was issued without hearing the appellant. The finding of the respondent that there is mensrea on the part of the appellant is not supported by any reason. The respondent failed to consider the mitigating circumstances that led to the delay in remittance of provident fund contribution. In **Sreekamakshy Agency Pvt Ltd Vs EPF Appellate Tribunal and another**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the authorities are under obligation to consider levy of damages objectively, taking note of the peculiar facts and circumstances of each case.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of contribution for the period from 02/2013 to 07/2013. Belated remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. The respondent initiated action for assessment of damages for belated remittance of contribution vide its notice dt.13.04.2016. A detailed delay statement was send also along with the notice. The appellant was also given an opportunity for personal hearing on 25.04.2016. The enquiry was adjourned to 12.05.2016 due to administrative reasons. The Manager appeared on behalf of the appellant on 12.05.2016. The appellant failed to produce any records or file any statement. The authorised

representative of the appellant did not raise any dispute regarding the amount of dues defaulted, the date of remittance, the amount of remittance and the period of delay indicated in the damages statement. The enquiry was concluded on 12.05.2016 as the appellant admitted the delay and did not seek any further adjournment. None of the ground pleaded in the appeal is sustainable as the appellant failed to raise any such ground before the respondent 7A authority. No plea which was not taken before the authority cannot be taken for the first time in the appeal. It is a statutory obligation on the part of the appellant to remit the contributions in time as stipulated in the Act and Schemes thereunder. The respondent is compelled to assess damages, as compound interest in terms of Para 60 of EPF Scheme has already been credited to the individual accounts of the employees. In **Organo Chemical Industries Vs UOI** 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the legislative intention while introducing Sec 14B was to deter and thwart employers from forwarding contribution to the funds. The Hon'ble Court also observed that the pragmatics of the situation is that if the stream of contributions were frozen by employer's default after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the fund. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not

an essential ingredient for contravention of the provisions of a civil Act and that the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of the parties committing such violation becomes immaterial. It is also pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act.

4. This appeal is filed mainly on two grounds. The first ground raised by the appellant is that there was violation of principles of natural justice as the impugned order dt. 05.05.2016 whereas the hearing took place on 12.05.2016. A perusal of the impugned order, it is seen that the impugned order is issued on the basis of proceedings held on 12.05.2016 and the order is dt.15.06.2016. Further it is seen that the appearance of Sri.Biju, Manager representing the appellant and the submission made by him is also recorded in the impugned order. It is true that in the closing para it is indicated that the order is issued on 5<sup>th</sup> day of May 2016. However the respondent cannot presume in advance the person who is going to be present in the enquiry on 12.05.2016 to incorporate his pleadings in the impugned order. Hence at the best it can be treated as a clerical mistake and not as a violation of principles of natural justice. The second ground pleaded by the appellant is that of financial difficulties. The appellant produced balance sheets for the year ending 31.03.2013 and 31.03.2014 as Annexure A3 and A4 to substantiate the claim of

financial difficulties. On a perusal of the above documents, it is seen that the appellant is a company with approximately 14.5 Crores revenue income. The profit during the year 2012-13 was Rs.13,46,467/- and in the year ending 31.03.2014, the profit was Rs.1,08,81,546/-. The approximate expenses towards salary and allowances comes to 4.5 Crores and the contribution towards provident fund is roughly 18.32 lacs in the year ending 31.03.2013. Though the financial statements in Profit & Loss account cannot be taken to prove the current assets and liability of the appellant establishment, the picture as pointed out above would clearly indicated that the appellant was not in such a financial constraint to remit approx. 1.5 lacs/month towards provident fund contribution. Further it is seen from the documents produced by the appellant that the salary of the employees were paid in time and when the salary is paid, the employees' share of contribution which accounts for 50% of the total contribution is deducted from the salary of the employees. Even the employees' share of contribution deducted from the salary of employees is not remitted by the appellant with the respondent in time. Non remittance of employees' share contribution deducted from the salary of employees is an offence U/s 405/406 of IPC. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea atleast to the extend of employees' share deducted from the salary of employees.

5. Considering all the facts and circumstances of this case, I am not inclined to interfere with the impugned order issued U/s 14B of the Act.

6. The learned Counsel for the appellant pointed out that an order issued U/s 7Q cannot be challenged in appeal. On a perusal of Sec 7(l) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court of India held that no appeal is maintainable against an order issued U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 the Hon'ble High Court of Kerala also held that no appeal can be filed U/s 7(l) against an order issued U/s 7Q of the Act.

In view of the above, the appeal against 14B order is dismissed. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer