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

सत्यमेव जयते

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

(Wednesday the 1st September 2021)

APPEAL No.408/2019
Old No. 1324(7)15

Appellant	M/s. Kerala State Co-operative Hospital Complex and Centre for Advanced Medical Services Limited Pariyaram, Thaliparamba Kannur, Kerala – 670 502 By : Adv.Swamidasan K N
Respondent	The Assistant PF Commissioner Sub Regional Office Employees Provident Fund Organization V K Complex, Fort Road Kannur, Kerala – 670 001 By : Adv. K C Santhosh Kumar

This case coming up for final hearing on 12/04/2021 and this Tribunal-cum-Labour Court on 01/09/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KNR/17186/ENF 1(2)/Damages/2015-16/2747 dated 29/9/2015 assessing damages under section 14B of EPF and MP Act (herein after referred as the Act) for delayed remittance of EDLI contribution for the period from 6/2005 – 5/2008. The Total damaged assessed is Rs 4,90,808/- (Rupees Four Lakhs Ninety thousand eight hundred and eight only)

2. The appellant is a co-operative society running a hospital and medical college. Respondent issued the impugned order dated 29/9/2015 assessing damages for delayed remittance of EDLI contribution. The appellant is a cooperative society registered under Cooperative Societies Act. The appellant is an establishment covered under the provisions of the Act with effect from 22/09/1997. The true copy of the coverage memo is produced and marked as Annexure A3. The appellant was remitting premium in respect of all the employees working in the appellant establishment to the EDLI Fund maintained by Life Insurance Corporation of India with effect from 01/06/2005. Hence no EDLI contribution was paid to respondent organisation. The appellant therefore applied for exemption from the EDLI Scheme of the respondent organisation. The respondent organisation rejected the application via letter dated 05/08/2005, a copy of which is

produced and marked as Annexure A4. The appellant challenged Annexure A4 order before The Honourable High Court of Kerala in WP(C) 6549 of 2006. The Honourable High Court stayed further proceedings consequent on Annexure A4 order. A true copy of the stay order is produced and marked as Annexure A5. Annexure A5 stay order was related to Annexure A1 and hence the respondent ought not have passed Annexure A1 order, directing the appellant to pay damages for the period for which there was stay by the High Court of Kerala. The respondent authority passed an order under section 7A of the Act contrary to the directions of the Honourable High Court. The appellant was forced to remit contribution under protest. A true copy of the challan evidencing the payment of contribution is produced herewith and marked as Annexure A6. A true copy of the order issued by the respondent under section 7A of the Act is produced and marked as Annexure A7. The respondent issued notice alleging delay in remittance of contribution. A representative of the appellant attended the hearing and filed Annexure A8 written statement. The proceedings as well as the impugned order are in violation of the principles of natural justice. The respondent authority ought to have noticed that the delay in remittance of contribution was due to the fact that there was an application filed by the appellant for exemption from EDLI scheme and was pending before the respondent authority.

3. The respondent filed counter denying the above allegations. The appellant is running a hospital and Medical college and charging huge fees from the public as well as students. The appellant establishment was brought under the provisions of the Act with effect from 22/09/1997. The appellant establishment defaulted in payment of dues under EDLI scheme for the period from 6/2005 – 5/2008 on the ground that establishment has taken Group Insurance Scheme from LIC with effect from 01/06/2005. On verification of the exemption application, it was found that the proposed application for exemption excludes huge number of employees employed by M/s Kerala Food House and Catering Cooperative Ltd., Kannur District Creative Women's Society and 46 security guards employed and directly paid by the appellant establishment. Accordingly the application for exemption was returned to the appellant with a direction to enroll all eligible employees under the Scheme. As per section 17(2A) of the Act,

an establishment may be exempted prospectively or retrospectively from the operations of all or any of the provisions of the Insurance Scheme if he is satisfied that the employees of such establishments are, without making any separate contributions or payment of premium is in enjoyment of benefits in the nature of life insurance, if such benefits are more favourable to the employees. The appellant was informed via letter dated, 8/11/2005 that their request for exemption can be considered only after all the employees are enrolled under the LIC scheme. The Appellant challenged the above direction before the Honourable High Court of Kerala vide WP(C) No. 6549/2006. Though the Honourable High Court initially granted stay vide order dated 7/3/2006, dismissed the appeal vide judgement dated 18/06/2013. The respondent authority initiated an enquiry under section 7A of the Act after dismissal of the writ petition and issued a final order dated 16/7/2014 assessing the dues under EDLI scheme. The appellant remitted the amount on 29/10/2014. Since there was delay in remittance of contribution under EDLI Scheme, the respondent authority initiated action under section 14B of the Act. The appellant was also given an opportunity for hearing on 22/9/2015. A representative of the appellant attended the hearing and filed a written statement explaining the reasons for the delayed remittance of contribution. After considering the grounds pleaded by the appellant, the respondent authority issued the impugned order. The exemption application filed by the appellant was rejected since the same did not satisfy the statutory requirements. It is particularly so, since large number of employees were not enrolled to the Scheme as per the application for exemption filed by the appellant. Later the appellant enrolled all the eligible employees to the Scheme and therefore appellant was granted exemption from EDLI Scheme with effect from 1/6/2008. The appellant was aware of the legal consequences when there is delay in remittance of contribution. All the action initiated by the respondent authority including the assessment of dues was subsequent to the dismissal of the writ petition by the Honourable High Court of Kerala on 18.2.2013.

4. It is seen from the pleadings that the appellant establishment subscribed to the Group Insurance Scheme of Life Insurance Corporation of India with effect from 1/06/2005 without seeking exemption from the respondent authority. The

appellant requested for exemption and on verification of the application for exemption, the respondent authority found that large number of employees were excluded from the benefit of the insurance scheme and therefore the respondent directed the appellant to ensure that all the employees are extended the benefit of the scheme before seeking exemption from the EDLI Scheme. Instead of complying with the above direction, the appellant challenged the same before the Honourable High Court of Kerala. The Honourable High Court granted stay. However the writ petition is dismissed vide its judgement dated 18/6/2013. Since the appellant failed to comply with directions, the respondent initiated action under Section 7A of the Act to assess the dues under the Scheme. After hearing the appellant the respondent issued a final order assessing the dues and the appellant remitted the contribution on 29/10/2014. Since there was delay in remittance of contribution, the respondent initiated action under Section 14B to assess the damages for belated remittance of contribution. The respondent forwarded a delay statement showing the due date of payment, the actual date of payment and delay in remittance of contributions. A representative of the appellant attended the hearing in response to the summons and filed a written statement alleging that it is not correct to assess damages when the writ petition is pending before the Honourable High Court of Kerala. After taking into account the grounds pleaded by the Appellant the respondent issued the impugned order.

5. It is seen that the appeal as well as the argument notes filed by the appellant are on the premise that the writ petition filed but appellant was pending before the Honourable High Court of Kerala and respondent authority initiated action for recovery of dues and also assessment of damages during the pendency of the writ petition. It is seen from the records that the writ petition itself is dismissed by Honourable High Court of Kerala on 18/6/2013 and the respondent authority initiated action for assessing the dues on 7/4/2014 providing an opportunity for personnel hearing on 29/4/2014. The order under Section 7A of the Act was issued on 16/07/2014 and the Appellant remitted the amount on 29/10/2014. It can therefore be seen that there is absolutely no irregularity or illegality in the proceedings initiated by the respondent authority, and the action for assessment and recovery of the

dues were taken after dismissal of the writ petition by the Honourable High Court.

6. In the proceedings under section 14B of the Act, the respondent issued notice to the appellant along with a delay statement. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed a written statement stating that the delay was due to the pendency of the writ petition before the Honourable High Court of Kerala. When statutory orders issued by the respondent authority was challenged, the appellant was aware of the legal consequences of the delay. Hence the pendency of the proceeding before the Honourable High Court cannot be pleaded as a ground for delayed remittance of contribution. It is particularly so, because the respondent authority has only pointed out that the exemption cannot be granted only because substantial number of employees working with appellant establishment was excluded from the benefits of the LIC scheme. However, the appellant has taken an LIC Group Insurance Scheme for some of the employees of the appellant establishment and also paid premium for the said periods. The only issue involved was that

substantial number of employees were excluded from the scheme. Further the Honourable High Court of Kerala in WP(C) No. 6549/2006 has granted stay against the order of the responded authority rejecting the exemption application and the stay continued till 18/6/2013. Though the stay would not prohibit the appellant from complying with the provisions, the appellant was probably under the impression that they will get some relief from the Honourable High Court of Kerala. In the above circumstances it is not possible to hold that there was mensrea in delayed remittance of contribution or delay on the part of appellant was intentional. It is seen that the Honourable High Court dismissed the writ petition on 18/6/2013 and there was a further delay of more than one year in remitting the contribution, as the appellant remitted the contribution only on 29/10/2014. The appellant cannot justify such delay in remittance of contribution and therefore the appellant is liable to remit damages for atleast the delay in remittance to that extend.

7. 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 60% of the damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed under Section 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer