



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

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

(Thursday the, 14<sup>th</sup> day of July 2022)

**APPEAL No. 41/2020**

Appellant : M/s. Kerala State Co-operative Marketing  
Federation Ltd. No. 679  
Coirfed Regional Office  
PB No.255, Jew Town Mattanchery  
Kochi – 682 002

By Adv. Suraj S

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office,  
Bhavishya Nidhi Bhavan, Kaloor  
Kochi – 682 017.

By Adv. Sajeevkumar K Gopal

This case coming up for final hearing on 06.07.2022 and  
this Tribunal-cum-Labour Court on 14.07.2022 passed the  
following:

**ORDER**

Present Appeal is filed from order No. KR/KCH/4681/Penal  
Damages/2019/10012 dated 21.01.2020 assessing damages  
under Section 14B of EPF and MP Act 1952 (hereinafter referred

to as 'the Act') for belated remittance of contribution for the period from 01.04.1996 to 31.03.2019. The total damages assessed is Rs.8,91,636/-(Rupees Eight lakh ninety one thousand six hundred and thirty six only)

2. The appellant is the apex body of 628 primary Coir Co-operative Societies. The main objective of the federation is to procure the entire produce of the member societies and market the same through its sales outlets. The federation and its member societies provide employment, better wages and better living conditions to coir workers. It is estimated that around 20 lakh people are indirectly supported by the industry. The appellant is instrumental in implementing Schemes of Government of Kerala such as distress purchase scheme, fibre subsidy scheme, price fluctuations fund, purchase price stabilisation scheme etc. The main source of working capital of the appellant was the cash credit facility from NABARD and a cash credit facility from Kerala State Co-operative Bank Ltd. From the year 2004-2005, NABARD stopped sanctioning credit facility to the appellant. This severely affected the financial position of the appellant and ultimately resulted in shortage of

working capital. Even though rehabilitation proposals were implemented there is no substantial improvement in the financial crisis. A true copy of the revival and restructuring steps made and orders issued by the Government of Kerala dated 12.03.2010 is produced and marked as Annexure A1. In spite of the financial package, the financial difficulty continues with the appellant. Some of the properties of the appellant were put to sale by Kerala State Co-operative Bank Ltd. A true copy of the sale notice dated 25.01.2013 is produced and marked as Annexure A2. Due to the financial crisis as explained above, there was some delay in remittance of provident fund contribution. The appellant received a notice dated 11.04.2019 proposing to levy damages. A true copy of the notice is produced and marked as Annexure 3. A representative of the appellant attended the hearing and filed a written submission dated 06.01.2020. A true copy of the written submission is produced and marked as Annexure A4. Without considering the submissions made by the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A5. The term used in Sec 14B is “may recover”. Penalty is imposed only in cases where

there is contumacious conduct or wilful disobedience. The existence of mensrea or actus reus to contravene a statutory provision must be necessary ingredient as pointed out by the Hon'ble Supreme Court in ***Employees State Insurance Corporation Vs HMT Ltd***, AIR 2008 SC 1322, and ***Assistant Provident Fund Commissioner, EPFO and Another Vs Management of RSL Textile India Private Ltd.***, 2017 (3) SCC 110. The decision of the Hon'ble Supreme Court in ***Organo Chemical Vs Union Of India***, 1979 (2) LLJ 416, is no more relevant after the introduction of Sec 7Q and amendment to Sec 14B w.e.f. 01.09.1991. ***Chairman, SEBI Vs Sri Ram Mutual Fund***, 2006 (5) SCC 361, is also not relevant to the present case, as the penalty is imposed under the sections in that case were mandatory and in the present case, the penalty is discretionary as the word used is "may recover" in Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act. The appellant defaulted in remittance of contribution for the period from 04/1996 – 03/2019. Belated remittance will attract damages under Sec 14B of the Act. The respondent therefore

issued notice dated 16.07.2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed month wise delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personnel hearing. The appellant, though, pleaded financial difficulty as a ground, failed to produce any documents to substantiate the claim of financial difficulty. The appellant also failed to give any cogent or tangible reason for not remitting the employees' share of contribution deducted from the salary of the employees. In a proceedings under Sec 14B, on a previous occasion, for delayed rem of contribution for the period 04/2010-11/2013, the appellant filed a written submission dated 02.06.2014, a copy of which is produced and marked as Exhibit R1. As per Exhibit R1, the Managing Director of the appellant confirmed that the financial position of the appellant is good after implementation of the restructuring package approved by the Government. The appellant is a chronic defaulter in remittance of provident fund contribution. It is seen that on earlier occasions also provident fund contribution were defaulted by the appellant assessed under Sec 7A and recovered from the appellant

establishment. The Act is a social welfare legislation and the success of the legislation is dependent on the prompt compliance of the covered establishments. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd. Vs Union of India***, AIR 1998 SC 688, held that bad financial condition is no defence for belated remittance. No dispute was raised by the appellant regarding the delay in remittance of contribution. The only ground pleaded by the respondent authority was that of financial constraints. The decisions referred to by the appellant such as ***ESI Corporation Vs HMT Ltd. (Supra)*** and ***Assistant Provident Fund Commissioner and Another Vs Management of RSL Textiles India Pvt. Ltd., (Supra)*** is not applicable to the present case as there is a clear finding in the impugned order that there is mensrea in view of violation of the provisions of the Act and EPF Scheme. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC, held that "even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the

establishment over different points of time. Besides 50% of the contribution deposited late, represented the employees' share of contribution which had been deducted from the employees' wages and was a trust money with the employer for depositing the statutory fund. The delay in deposit of this part of contribution amounted to breach of trust and does not entitle the employer to any consideration for relief".

4. Admittedly the remittance of contribution for the period from 01.04.1996 – 31.03.2019 was delayed. The respondent therefore initiated action for assessment of damages. The respondent issued notice to the appellant along with a detailed delay statement. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed a written statement pleading that the delay in remittance was due to financial constraints of the appellant establishment. The appellant however failed to produce any documents to substantiate the claim. The respondent authority found that the appellant establishment was liable to remit the contributions as per Para 30 and 38 of EPF Scheme and since there is violation of the

provisions, there is mensrea in delayed remittance of contribution and therefore issued the impugned order.

5. In this appeal also, the learned Counsel for the appellant reiterated its position before the respondent. According to the learned Counsel, one of the reasons for the delay in remittance of contribution was financial constraints. The learned Counsel for the appellant relied on Annexure1 Order from Government of Kerala dated 12.03.2010 approving a revival and restructuring package for the appellant establishment. As per the above package, the Government allowed the appellant to convert the principle and interest amount of NCDC loan of Rs.1,183.03 lakhs and Government loan of Rs.825.48 lakhs as share capital contribution. It also approved a one time working capital assistance of Rs.1500 lakhs and release of Rs 2.6 crores provided in the budget 2009 – 2010. The learned Counsel for the appellant further relied on a communication dated 25.01.2013 issued by Kerala State Co-operative Bank Ltd. under Sec 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 regarding the notification for sale of some property belonging to appellant for

recovery of Rs.46,53,67,307/- . The appellant however could not clarify the outcome of the above notice. Though the appellant failed to produce direct evidence to prove the financial difficulty of the appellant establishment, the documents now produced will indicate that there was some financial difficulty during the relevant point of time.

6. The learned Counsel for the appellant heavily relied on the earlier decisions of the Hon'ble Supreme Court and also the Hon'ble High Court of Kerala to argue that there was no mensrea or actus reas in delayed remittance of contribution. The learned Counsel for the respondent on the other hand argued that there is a clear finding in the impugned order that there was mensrea in view of the fact that the appellant violated the mandatory provisions of the Act and Schemes thereunder. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in ***Mcleod Russell India Ltd. Vs Regional Provident Fund Commissioner***, 2014(15) SCC 263 and ***Assistant Provident***

***Fund Commissioner Vs Management of RSL Textiles India***

***Pvt. Ltd.***, 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/ damages for breach of civil obligations/liabilities”*

The above judgement of the Hon'ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

7. Though the appellant failed to produce any direct evidence to establish the financial constraints, the Annexure A1 and A2 documents produced by the appellant in this appeal will

indicate that there was some financial difficulty during the relevant point of time and the appellant establishment was surviving on revival and restricting package sanctioned by Government of Kerala. Annexure 2 would show that the State Co-operative Bank has brought a property owned by the appellant for sale for an outstanding amount of Rs. 46.53 crores. Taking into account the financial difficulty, the appellant establishment is entitled for some relief in damages under Sec 14B of the Act.

8. 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 under Sec 14B of the Act.

Hence the appeal is partially allowed, the impugned order under Sec 14B is modified and the appellant is directed to remit 70% of the assessed damages.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer