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

सत्यमेव जयते

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

Thursday the 2nd day of December, 2021)

APPEAL No.126/2019

(Old No. ATA No.980 (7)2014)

Appellant — Perinthalmanna Municipality,
Perinthalmanna P.O
Malappuram, Kerala -679322

By Adv P.C. Sasidharan

Respondent — The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on 21/09/2021 and this Tribunal-cum-Labour Court on 02/12/2021 passed the following:

O R D E R

Present appeal is filed from Order No. KR / KK / 28176 / Enf-3(3) / 14B / 2014 / 1235 dt.22/05/2014 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 03/2011 to 08/2013. The total damages assessed is Rs.1,87,157/-.

2. The appellant is a Municipality constituted under the provisions of Municipality Act. The regular employees of the Municipality are covered under a provident fund managed by the Director of Urban Affairs. In addition to regular employees the appellant is also engaging CLR/temporary employees as contingent employees. When the services of the contingent employees are regularized they are also enrolled to Central Provident Fund. By way of amendment made in EPF and MP Act 1952, which came into effect from 08/01/2011, the contingent staff of the local bodies are brought under the purview of EPF and MP Act. The respondent directed the appellant to furnish the details of the CLR workers and also directed the appellant to remit the contribution. A true copy of the communication issued by the respondent dt. 01/06/2011 is produced and marked as Annexure A1. The appellant sought a clarification from the

government of Kerala vide Annexure A2 letter dt.30/10/2011. Since no clarification was received from the government, another letter was issued to the government on 10/05/2012. A copy of which is produced and marked as Annexure A3. The government vide communication dt.16/02/2013 clarified that all the contingent employees of the local bodies will have to be covered under the provisions of the Act. A copy of the communication dt.16/03/2013 is produced and marked as Annexure A4. Thereafter the matter was placed before the Council on 06/04/2013 and as per the resolution further action was taken. A true copy of the resolution is produced and marked as Annexure A5. Thereafter the appellant remitted the contribution and informed the respondent vide communication dt. 21/10/2013. A true copy of the said communication dt.21/10/2013 is produced and marked as Annexure A6. The respondent issued a notice directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. Ignoring the contentions of the appellant, the respondent issued the impugned order which is produced and marked as Annexure A7. Section 14B is a punitive provision and therefore the respondent authority ought to have considered the circumstances leading to the delayed remittance of contribution. The respondent authority has discretion U/s 14B to reduce or waive the damages depending on the circumstance of each case. In this case the delay was only due to the delay in getting the approval at various levels from the government as well as the Council.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act and they are liable to remit contribution as required under Para 30 of EPF Scheme. Since there was delay in remittance of contribution the respondent initiated action U/s 14B of the Act. A notice was issued to the appellant with all the details of belated payments and was also given a personal hearing on 12/05/2014. Representative of the appellant attended the hearing, admitted the delay and informed that the delay in remittance was due to the delay in getting

sanction from the Director of the Urban Affairs. After hearing the appellant respondent issued the impugned order. Regarding the use of word "may recover " in Sec 14B, the Hon'ble Supreme Court held in **RPFC Vs SD College Hoshiarpur,** 1997 (1) LLN 520 that the RPFC has no power to waive penalty altogether.

4. All the temporary CLR and casual workers working in Municipalities and Corporations were notified under the provisions of the Act by Government of India w.e.f 08/01/2011. Accordingly the appellant Municipality was also required to comply with the provisions of the Act w.e.f 08/01/2011. The respondent authority issued coverage memo, Annexure A1 dt.01/06/2011 covering the appellant establishment w.e.f 08/01/2011. The appellant as per Annexure A2 letter dt. 13/10/2011 sought a confirmation from the government with regard to compliance under the provisions of the Act. Since there was a delay in getting confirmation, the appellant issued Annexure A3 reminder dt.10/05/2012 seeking confirmation regarding compliance.

Government of Kerala vide Annexure A4 order dt.01/03/2013 informed all the Municipalities to comply under the provisions of the Act. The appellant therefore took an item before the Council and the Council passed a resolution as per Annexure A5. Thereafter the appellant took action to comply under the provisions of the Act. The appellant therefore satisfactorily explained the delay in compliance with the provisions of the Act. Though it is an administrative delay the appellant cannot ignore the procedure to be adopted while taking such decisions having financial implications. According to the learned Counsel for the respondent the administrative delay, in implementing the provisions of the Act cannot be considered while levying damages U/s 14B of the Act. According to him once the delay is established the appellant is liable to comply with the provisions of the Act and any failure will attract damages U/s 14B. I am not in a position to fully agree with the stand of the learned Counsel for the appellant. The appellant is a Government body. It is established that they took all efforts to start compliance as per the directions of Government of India. However the delay was only due to the approvals to be secured at various levels from the government as well as the Municipal Council. Hence it is not possible to argue that the delay was intentional. Considering the fact that the appellant is a municipality brought under the provisions of the Act for the first time, required approvals at various levels, deserves some reduction in damages U/s 14B of the Act .

5. 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 damage assessed U/s 14B of the Act.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer