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

सत्यमेव जयते

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

(Friday the 30th day of April, 2021)

APPEAL No.233/2019

(Old No. ATA No. 421(7) 2015)

Appellant

M/s. MES Women's College
Pookkayil Bazaar,Tirur,
Malappuram District
Pin 676107 , Kerala

By Adv. Ajmal. P.

Respondent

The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on 23/03/2021 and this Tribunal-cum-Labour Court on 30/04/2021 passed the following:

O R D E R

Present appeal is filed from Order No. KR/KK 14828/ Enf-III (2)/14B/2014/10651 dt.16/12/2014 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 03/2010 to 07/2013. The total damages assessed is Rs. 53,266/-.

2. The appellant is Parallel College established for the purpose of providing education to girl students. The appellant also provided free education to the poor and needy. The main source of income is the fee collected from the students. The appellant establishment is running in a rented building. The appellant establishment was running under huge financial loss ever since its establishment. The accumulated loss of the appellant establishment is Rs. 40,46,837/-. A copy of the income and expenditure account of the college along with the balance sheet and auditors reports dt. 03/10/2013 is produced and marked as Annexure A1. On account of financial difficulties and insufficiency of funds, management could not remit provident fund contribution on time. There was no intentional delay on the part of the appellant in remitting the contribution. In ***Indian Telephone Industries Vs APFC,*** 2006(3) KLJ 698 the Hon'ble High Court of Kerala held that just because of there is delay in remit liability to damages does not

automatically arise. In ***Hindustan Steel Ltd Vs State of Orissa***, AIR 1970 SC 253 the Hon'ble Supreme Court held that " An order imposing penalty for failure to carry out statutory obligation is the result of a quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation ".

3. The appellant establishment is covered under the provision of the Act. It is statutory obligation on the part of the appellant to remit the contribution in time. Since the appellant failed to remit the contribution in time a notice U/s 14B of the Act was issued to the appellant. A delay statement was also enclosed along with the notice. Appellate was also given an opportunity for personal hearing on 21/7/2014. A representative of the appellant attended the hearing. He also filed a written statement stating the financial difficulties of the appellant establishment. He failed to produce any documents to substantiate the claim of financial difficulties. The appellant did not raise any dispute regarding the

delay statement forwarded to the appellant along with the summons. In ***Chairman, SEBI Vs Sri Ram Mutual Fund,*** 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of a Civil Act. In ***Calicut Modern Spinning & Weaving Mills Vs RPFC,*** 1992 KLT 303 the Division Bench of the Hon'ble High Court of Kerala held that employer is bound to pay contribution under the Act every month irrespective of the fact whether wages have been paid or not. In ***Associated India Vs RPFC,*** 1963 (2) LLJ 652 the Hon'ble High Court of Kerala held that employers are under legal obligation to deposit their share of contribution to the fund within the time prescribed, the moment the Act and Scheme becomes applicable to them.

4. The main ground pleaded by the appellant for belated remittance of contribution is that of financial difficulties. The learned Counsel for the respondent submitted that though the appellant claimed financial difficulties as a ground for belated remittance of contribution, they failed to produce any documents to substantiate the same before the 14B authority. He also

submitted that the income and expenditure statement and the Balance Sheet for the year ending 31/03/2013 now produced by the appellant in this appeal may not be taken into consideration as the appellant failed to produce any such document before the respondent authority. He further pointed out that in ***Aluminium Corporation Vs Their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court of India held that the mere statements in the Balance Sheet as regards current assets and current liabilities cannot be taken as sacrosanct. It further emphasized that the correctness of figures as shown in Balance Sheet itself are to be established by proper evidence by those responsible for preparing the Balance Sheet or other competent witnesses. The learned Counsel for the appellant argued that the respondent failed to consider the request of the appellant that the delay in remittance was due to financial difficulties of the appellant establishment. He cited various decisions of the Hon'ble Supreme Court as well as the Hon'ble High Court of Kerala to argue that the assessment of damages cannot be automatic and the respondent will have to consider the circumstances leading to the belated remittance of contribution. As per the Balance Sheet produced by the appellant for the year ending 31/03/2013 the total assets comes to Rs.40.47 lakhs and the total liability is Rs. 49.35 lakhs. There is a excess expenditure of Rs.4,05,946/- over income. According to the learned Counsel for the respondent the documents now produced by the appellant would clearly show that the appellant was regularly paying the salary to its employees and the provident fund contribution is also being deducted from the salary. Even the employees' share of contribution deducted from the salary of the employees which amounts to 50% of the total contribution was not remitted by the appellant in time. Non-remittance of provident fund contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution. The documents produced by the appellant would show that the appellant was running under loss during the relevant point of time. At the time of hearing the learned Counsel for the appellant also pointed out that the appellant establishment is closed due to financial difficulties.

5. Considering the fact, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of damages.

Hence the appeal is partially allowed the impugned order is modified, the appellant is direct to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer