



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

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

(Tuesday the, 7th day of September 2021)

APPEAL No.668/2019

(Old ATA No. 102 (7) 13)

Appellant

Jeevana
(Calicut Diocese Social Services Society)
Eranjipalam.P.O.
Kozhikode – 673 006

By : Adv. Antony Sebastian

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
P.B.No.1806, Eranjipalam.P.O
Kozhikode – 673 006

By : Adv. (Dr). Abraham P Meachinkara

This case coming up for final hearing on 22/03/2021 and this Tribunal-cum-Labour Court on 07/09/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KK/28469/ENF-1(1)/2012-13/2819 dt.17/10/2012 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for the period 01/01/2001 to 02/2012. Total dues

assessed is 38,78,169/- (Rupees Thirty Eight Lakh, Seventy eight thousand one hundred and sixty nine only)

2. The appellant is a charitable organisation functioning under Calicut Roman Catholic Diocese and is registered as an Non Governmental Organisation under the Societies Registration Act, 1860. The appellant is involved in various socially committed activities and projects. M/s Jeevana and Santhi De – Addiction Centre are two such projects undertaken by Calicut Diocese Social Service Society. The work of the appellant society is being conducted with the support and cooperation of volunteers, social workers, nuns and financial assistance from the Government. One of the main activities of the appellant society is running of the De–Addiction Centre of Alcoholics and drug users. Treatment of addicted public is under taken with the help of professionally qualified volunteers. This part of the function is undertaken by “Santi Integrated Rehabilitation Centre for Addicts”. Jeevana and Santi are two separate projects with separate functional ways. The books of accounts are maintained separately. There is no employer and employee relationship between the volunteers and the appellant. An Enforcement Officer of the respondent authority conducted an

inspection in the appellant establishment in the year 2012 and according to him, Jeevana and Santhi projects are required to be covered under the provisions of the Act and therefore initiated action for assessing the dues under section 7A of the Act. The respondent authority ought to have considered that Jeevana and Santhi are two entirely separate projects functioning under the auspices of Calicut Diocese Social Service Society. The respondent authority ought to have considered the identification and facts of employment before assessing the dues. The quantum of dues assessed is without any basis. The respondent authority ought to have seen that the appellant establishment is maintaining a welfare fund for its employees.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions Act. The appellant defaulted in remittance of contribution for the period 01/2001 – 02/2012 and Enforcement Officer of the respondent was deputed to investigate. The Enforcement officer reported that the appellant failed to comply with the provisions of the Act from the date of coverage and also furnished the assessment of dues on the basis of records maintained by the appellant. In the enquiry under Section 7A,

possibility of covering the appellant establishment w.e.f. 20/09/1978 was also explored. Since the representative of the appellant who attended the hearing reported that the records prior to 01/2001 is irretrievably lost, the coverage of the appellant establishment is confirmed w.e.f. 01/01/2001, and dues for the period from 01/2001 to 02/2012 were assessed on the basis of the report of the Enforcement officer and also the original record produced by the Enforcement officer. The appellant filed a review application under Section 7B of the Act on the ground that Jeevana and Santhi De – Addiction Centres are different entities and cannot be clubbed for the purpose of coverage under the Act. The respondent authority under Section 7B of the Act found that both the organisations are run by Calicut Diocese Social Service Society and even the building for running the De – Addiction Centre has been let out to the Secretary of Calicut Diocese Social Service Society. The respondent authority dismissed the review application holding that the coverage of the appellant is according to law.

4. The appellant establishment was covered under the provisions of the Act w.e.f. 01/2001 and the appellant did not comply with the provisions of the Act. The respondent

therefore initiated an enquiry under Section 7A of the Act and assessed the dues on the basis of the wage registers, in original, produced by the Enforcement officer. It is relevant to point out that the appellant did not challenge the coverage of the appellant establishment before the respondent authority under Section 7A of the Act. The appellant establishment filed a review under Section 7B on the ground that Jeevana and Santhi De – Addiction Centre are two separate establishments and therefore it cannot be clubbed for the purpose of coverage. The respondent authority rejected the review application holding that the coverage is as per law. The appellant came up in this appeal challenging the very coverage on two grounds that:

(i) There is no schedule head under the Act to cover the appellant establishment as the activities are entirely social welfare.

(ii) That Jeevana and Santhi De – Addiction centres are two different establishments and it cannot be clubbed for the purpose of coverage.

5. The appellant also challenged the quantification of dues on the ground that the same is not done on the basis of the records maintained by them. It is seen that none of these

grounds were taken up before the 7A authority though the clubbing of two units was raised in the review application. The appellant also produced a lot of documents in this appeal which were never considered by the 7A authority. Hence it is not proper to consider these new grounds raised by the appellant in this appeal for the first time. Since the coverage of the appellant under the Act itself is disputed, it is better that respondent authority examined the whole issue and decide the question of coverage, clubbing and also assessment of dues and pass a fresh order taking into account all evidence produced by the appellant. The respondent authority shall decide

(1) Whether the schedule head under which the appellant establishment covered is correct.

(2) Whether the clubbing of two units is in accordance with law in view of various tests laid down by Courts.

(3) The respondent shall also see whether the quantification of dues is done properly on the basis of the records maintained by appellant.

6. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the impugned order cannot be sustained.

Hence this appeal is allowed, the impugned order is set aside and matter is remitted back to the respondent authority to issue fresh orders after hearing the appellant, within a period of six months. If appellant failed to produce records called for, the respondent is at liberty to decide the matter in accordance with law. The pre-deposit made by the appellant as per the direction of the EPF Appellate Tribunal, New Delhi shall be adjusted/refunded after issuing the final order.

Sd/-

(V. Vijaya Kumar)
Presiding Officer