



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

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

(Tuesday the, 17th day of May 2022)

APPEAL No. 9/2020

Appellant : M/s. YMCA Ernakulam,
Chittoor Road
Ernakulam – 682 035

By Adv.C.B.Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Kaloor,
Kochi – 682 017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 30.09.2021 and this Tribunal-cum-Labour Court on 17.05.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KCH/2525/Enf.-5(2)/2019/8538 dated 15.11.2019 assessing dues under Sec 7A of the Act of EPF and MP Act 1952 (hereinafter referred to as 'the Act') on non-enrolled employees for period from

08/2011 – 05/2016. The total dues assessed is Rs.6,27,886/- (Rupees Six lakh twenty seven thousand eight hundred and eighty six only)

2. A copy of the impugned order dated 08.11.2019 is produced and marked as Annexure A1. The appellant is an association of members registered under the Travancore-Cochin Literary Scientific Society Registration Act 1955. The object of the association is to unite young men and women together for the development of their physical, social, intellectual and spiritual development. The appellant establishment is covered under the provisions of the Act. The contributions payable for eligible employees are being paid regularly. No objections were raised during the inspection by Enforcement Officers. The appellant is not engaged in any commercial activities. Hence it is not an establishment under Sec 1(3)(b) of the Act. However the appellant extended the provident fund benefits to all its regular employees. The appellant is exempted from the purview of the Act in terms of Government of India notification dated 14.05.2010. Whileso an Enforcement officer of the respondent organisation conducted an inspection of the appellant establishment on 14.06.2019.

On the basis of the report of the Enforcement officer, the respondent authority initiated an enquiry under Sec 7A of the Act vide summons dated 23.09.2014. A representative of the appellant attended the hearings, produced all the records called for and filed a written submission. A copy of the written submission is produced and marked as Annexure A2. Without considering the submissions made by the appellant, the respondent issued the impugned order. Many of the employees against whom the assessment made is not eligible to be enrolled. Some of the employees had already been covered and dues were already paid even before the proceeding under Sec 7A was initiated. The respondent is taking all types of allowances paid to the employees as part of their basic wages. In the instant case, the respondent excluded various allowances drawn by the employees while assessing the dues. If all the allowances are taken into account, the employees are excluded under the provisions of the Scheme. It is true that the High Courts and the Apex Courts often use to emphasise the need of a liberal interpretation with regard to beneficial

legislation. Further the employees in question are also not interested in the Scheme of the respondent.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f. 31.05.1968. The respondent received a complaint regarding the non-enrolment of employees by the appellant. Hence an Enforcement Officer, who is an Inspector appointed under Sec 13 of the Act was deputed to the establishment, to investigate. The Enforcement Officer reported that besides the main centre, there are two more branches. There are also other projects like Boys Home, Chaithanya Charitable Trust, Women's Hostel and YMCA Residency. It was also reported that the appellant was also engaging many contract employees who were not enrolled to the fund. Based on the report of the Enforcement Officer, an enquiry under Sec 7A of the Act was initiated. The appellant was given 17 opportunities from 25.11.2014 to 18.09.2019 before the impugned order is issued. The Government of India notification dated 14.05.2010 under Sec 16(2) of the Act is produced and marked as Exhibit R1. Certain class of establishment

registered under the Societies Registration Act 1860 were exempted from the operation of the Act w.e.f. 01.04.2010 to 31.03.2015. The notification stated that the establishments running any university, college, school, scientific institutions etc. imparting knowledge or training against fees or charges from the students or run any hospital, clinic etc. where medical treatment/procedure etc. are carried out against fees/charges, such activities shall not be exempted from the operation of the Act. Hence the appellant establishment will not come under the class of establishment exempted, as the appellant establishment is carrying out its activities and charging fees. Moreover the appellant has no ground to challenge the applicability as it was covered and complying from 31.05.1968. The Enforcement officer who conducted the inspection, reported that 25 eligible employees were not enrolled to the fund. After examining the documents produced by the appellant, the respondent concluded that 25 non-enrolled employees are liable to be enrolled to the fund. The enquiry spanned for a period of almost 5 years and the appellant never took a stand before the respondent authority that some of the

employees are already enrolled to the fund from the date of their eligibility. The appellant failed to produce any document to substantiate the claim. The Hon'ble High Court of Rajasthan in ***Ess Dee Carpet Enterprises Vs Union of India***, 1985 LIC 1116, held that a question of fact not raised before the Regional Provident Fund Commissioner in the enquiry under Sec 7A cannot be raised in the writ petition. On a combined reading of Sec 2(f) of the Act and Para 26 of EPF Scheme, it is clear that every employee employed in connection with the work of an establishment to which the EPF Scheme applies shall be entitled and required to become a member of the fund from the date of joining the said establishment. Para 2(f) of EPF Scheme defines the excluded employees. None of the employees will come within the category of excluded employees. The non-enrolled employees were evidently engaged in various capacities in connection with the work of the activities of the appellant establishment. Hence they will come within the definition of the employees. The appellant nor their employees have any choice with regard to the enrolment to the social security legislation. If there is a scope for beneficial interpretation of

law, it will indeed go in favour of the employees. Para 36 of the EPF Scheme mandates that the employer shall send to the Commissioner within 15 days of commencement of Scheme, a consolidated return showing the details of the employees eligible and entitled to be enrolled to the fund. The present appeal is filed only to delay the process of compliance under the Act and Schemes.

4. The respondent received a complaint from one Sri.Suresh Gopan, through EPFIGMS, that the appellant establishment is not enrolling all the employees to provident fund Scheme. Accordingly an Enforcement Officer, who is a notified Inspector under Sec 13 of the Act was directed to investigate. The Enforcement officer reported that the appellant establishment is having many activities and 25 eligible employees are not enrolled to the fund. The Enforcement Officer also clearly identified the names of the employees with their date of joining and wages as on date of joining. Accordingly an enquiry under Sec 7A was initiated vide notice dated 23.09.2013 fixing the date of hearing on 25.11.2014. The appellant was represented in the enquiry

through its Advocate. The appellant also produced the documents called for and also filed a written submission. After taking into Account all the documents, submissions and pleadings of the appellant and the report of the Enforcement officer, the respondent issued the impugned order.

5. In this appeal, the learned Counsel raised certain issues which were already considered by the respondent authority in the elaborate speaking order issued by him.

6. One of the contentions raised by the learned Counsel for the appellant is that, the appellant being a society registered under the Societies Registration Act 1860, was excluded from the provisions of the Act w.e.f. 01.04.2010 to 31.03.2015. Hence the appellant establishment is not coverable under the Act. The learned Counsel for the respondent clarified that the above notification dated 14.05.2010 is applicable to societies which don't collect any fees for their activities. The appellant being a society, collecting fees for all their activities, is not covered by the above notification. Further it was also pointed out that the appellant establishment is covered under the

provisions of the Act w.e.f. 31.05.1968 and was complying all throughout and the appellant cannot take a contention that the appellant establishment is excluded for the above period only for enrolling the 25 eligible non-enrolled employees.

7. The next contention taken by the learned Counsel for the appellant is that, if the gross salary is taken, many of the employees will be excluded from the provisions of the Act. According to the learned Counsel for the respondent, as per explanation to Para 2(f) of the Scheme, the pay includes basic wages with Dearness Allowance and retaining allowance, if any, and the cash value of food concession admissible thereon. If there are any allowances which will form part of basic wages and which is not excluded as per Sec 2(b)(ii) of the Act, then those allowances will also have to be considered while deciding wages of the employees. The respondent in the impugned order has specified the wages as on the date of joining. It is seen that none of the employees are drawing wages above the statutory limit. It can also be seen that the respondent authority has considered the enrolment in respect of few employees after the enhancement of the statutory wage limit w.e.f. 01.09.2014, though they joined the appellant establishment much before

their proposed date of enrolment. If at all there is any dispute regarding the wages, the appellant ought to have raised the same before the respondent authority and substantiated the same with documentary proof.

8. Another contention taken by the learned Counsel for the appellant is that many of the employees are not interested in joining the Scheme. As rightly pointed out by the learned Counsel for the respondent, neither the appellant nor their employees have any choice with regard to the enrolment, if the employees are eligible to be enrolled to the fund. Further it is to be noted that the enquiry was initiated on the basis of a compliant and therefore the claim of the learned Counsel that the employees were not willing to join the Scheme has no basis.

9. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer