



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

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

(Friday the, 15th day of July 2022)

APPEAL No. 135/2018

Appellant : M/s. Madhavi Mandiram Lokseva Trust
Ooruttukala
Neyyattinkara
Thiruvananthapuram – 695 121

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom
Thiruvananthapuram – 695 004

By Adv. Nita.N.S

This case coming up for final hearing on 13.07.2022 and this
Tribunal-cum-Labour Court on 15.07.2022 passed the following:

ORDER

Present Appeal is filed from order No.KR/TVM/12499/Enf
II(1)/2017/8691 dated 19.01.2018 assessing dues under Sec 7A
of EPF and MP Act 1952 (hereinafter referred to as 'the Act') in
respect of non-enrolled employees and non-enrolled contract

employees for the period from 06/2012 – 07/2017. The total dues assessed is Rs.10,16,617/-/- (Rupees Ten lakh sixteen thousand six hundred and seventeen only)

2. The appellant is a charitable society registered under the provisions of Travancore Cochin Charitable Societies Act, 1955. The society is running an educational institution. The trust is employing its own employees to cater to the needs of the school. The Trust and the school are separately covered under the provisions of the Act. The school run by the trust is having buses which are operated one Mister Godson who has taken the buses on rent from the Trust. Mister Godson is paying rent for the buses to the Trust. The employees engaged are the employees' of Mister Godson and the trust is not having any control or supervision over the employees of Mister Godson. The trust has entered into a written agreement for plying buses on contract. An Enforcement Officer inspected the records of the school and submitted a report stating that

1. there was short remittance,

2. Two employees who joined in 06/2017 were not enrolled to the fund
3. There is belated enrolment of some employees.
4. The contract employees are not enrolled to the fund.

A copy of the report is produced and marked as Annexure A2. Thereafter the trust received a notice from the respondent. A copy of the notice is produced and marked as Annexure A3. The respondent conducted the enquiry during the midterm examination. The appellant could not participate in the enquiry. The respondent therefore issued an ex-parte order against the appellant in violation of the provisions. The respondent failed to consider the terms and conditions of contract between the appellant and Mister Godson. The relationship between the appellant and Mister Godson is that of principle to principle and is not that of supply of manpower. Mister Godson is paying salary to his employees and paying rent for the buses owned by the Trust.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the

Act. An Enforcement Officer conducted an inspection of the appellant establishment and vide his inspection report dated 18.08.2017, reported that the appellant defaulted in payment of contribution in respect of non-enrolled employees, belatedly enrolled employees and contract employees. The Enforcement Officer served a copy of the inspection report on the appellant under acknowledgement. Since the appellant failed to remit the contribution, a notice dated 19.09.2017 was issued under Sec 7A of the Act. The appellant was also given an opportunity for personnel hearing on 23.11.2017. None appeared in the enquiry on 23.11.2017 and the enquiry was adjourned to 03.01.2018. None appeared on that day also. No objection was filed and no application is received seeking adjournment. Hence the respondent issued the impugned order assessing dues on non-enrolled employees, belatedly enrolled employees and contract employees. Though as per the contract, the buses are given on rent, the buses are owned by the appellant and the fees for transportation are also collected by the appellant. As per Sec 2(f) of the Act, employees engaged through contract in or in connection with the work of the establishment are also required

to be enrolled to the fund by the appellant. As per Sec 8A of the Act and Para 30 of EPF Scheme, the appellant as a principle employer is liable to remit the contribution in respect of the contract employees. Copy of the inspection report and inspection notes were duly acknowledged by the appellant and the acknowledgement is produced and marked as Exhibit R1. A list of non-enrolled employees was also served under registered post to the appellant establishment which was also acknowledged by the appellant. A copy of the acknowledgement is also produced and marked as Exhibit R2. The appellant did not file any objection nor attended the enquiry.

4. According to the learned Counsel for the appellant, the impugned order is an ex-parte order. The appellant could not attend the enquiry in view of the midterm examination. According to him, from the agreement between the appellant and the contractor, it is clear that the contractor who was plying the buses have taken the buses on contract from the appellant. The respondent failed to issue any notice to the contractor before assessing the liability of the contractor and adding the liability on the appellant. According to the learned Counsel for the

respondent, the contract is only a sham arrangement, as the buses are owned by the appellant and the transportation fee is collected by the appellant from the students. The so called contract arrangement was only to escape the statutory liabilities under labour welfare legislation.

5. The main contention of the learned Counsel for the appellant is that the appellant was not given adequate opportunity for hearing, before issuing the impugned order. It is seen that the inspection report was served on the appellant and the same was acknowledged under the seal and signature of the appellant establishment, a copy of which is produced and marked as Exhibit R1. Subsequently, a notice dated 19.09.2017 was issued to the appellant furnishing the details of the 28 non-enrolled contract employees whose name, date of joining, wages and the proposed liability under the Act was furnished. The said notice was also seen acknowledged by the appellant. Since nobody attended the hearing on 23.11.2017, the enquiry was adjourned to 03.01.2018. Nobody attended the enquiry on the said date also. It is also seen that the appellant failed to file any objection to the inspection report and also the detailed summons

issued by the respondent authority. The respondent therefore issued the impugned order. The claim of the learned Counsel for the appellant that there was violation of principles of natural justice cannot be sustained in view of the complete inaction on the part of the appellant in responding to the summons.

6. Another issue raised by the learned Counsel for the appellant is with regard to the assessment of dues in respect of the contract employees. According to him, as per the agreement between the appellant and the contractor, the buses owned by the appellant are given on rent to one Mister Godson and he employed his own staff and was running the buses. According to the learned Counsel for the respondent, the buses are owned by the appellant and the contract is only to run the buses for transporting the students from different location to the school. Therefore the appellant cannot escape the statutory obligation of remitting contribution in respect of the contract employees. As per Sec 2(f) of the Act, an employee means any person employed for wages in any kind of work in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or

through a contractor in or in connection with the work of the establishment. As per Para 30(3) of EPF Scheme “it shall be the responsibility of the principle employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges”. The word ‘in connection with the work of the establishment’ has wider implications. In **Royal Talkies and Others Vs Employees State Insurance Corporation**, 1978 (4) SCC 204, the Hon’ble Supreme Court held that

“The expression in connection with the work of an establishment ropes in a wide variety of workmen who may not be employed in an establishment but may be engaged only in connection with the work of an establishment. Some nexus must exist between the establishment and the work of the employee, but it may be a loose connection. In connection with the work of an establishment, only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the

establishment; he may not do anything statutory obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance too or linked with the object of the establishment”.

Applying the above test to the facts of the present case, it can be seen that the contract employees were doing the work in connection with the work of an establishment and therefore they will come within the definition of employee and the appellant cannot escape the liability arguing that the contract employees are engaged by the contractor. As rightly pointed out by the learned Counsel for the respondent, the buses are owned by the appellant and the transportation fee is also collected by the appellant and the contract in between is only a sham arrangement to escape the statutory liability.

7. Though the assessment includes other non-enrolled employees and belatedly enrolled employees, the same are not contested by the appellant.

Considering the facts, circumstances and pleadings, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer