



सत्यमेव जयते

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

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

(Thursday, 16<sup>th</sup> day of December 2021)

**APPEAL No. 244/2018**

Appellant : M/s. Forward Media Pvt. Ltd.  
34/547, Open Media Space,  
2<sup>nd</sup> Floor, Anand Buildings,  
N.H.Bypass Road, Near Oberon Mall  
Kochi – 682 024

By Adv. C.B.Mukundan

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Bhavishya Nidhi Bhavan, Kaloore,  
Kochi – 682 017.

By Adv. S.Prasanth

This case coming up for final hearing on 10.09.2021 and this Tribunal-cum-Labour Court on 16.12.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KCH/Enf-III(4)/1300228/(7A)/2018/1106 dated 04.05.2018 preopening the coverage of the appellant establishment and assessing the dues

for the period from 09/2014 to 02/2016. The total dues assessed is Rs 8,00,019/- (Rupees Eight lakh and nineteen only).

2. The appellant is a company incorporated under Indian Companies Act, 1956 and engaged in the business of printing and publishing a magazine. The appellant started business in November 2011 with 6 employees. On the basis of an anonymous complaint received in the office of the respondent, an Enforcement Officer visited the office of the appellant in January 2015. The appellant produced all the records before the Enforcement Officer. At the time of inspection, the total employment strength was only 18. Nothing was heard after the inspection and no copy of the report was provided to the appellant. On 22.03.2016, another Enforcement Officer came for inspection in the appellant establishment and informed the appellant that the appellant establishment is covered w.e.f. 01.09.2014. The Enforcement Officer who visited the appellant establishment on 22.03.2016 informed that the Enforcement Officer who visited the appellant establishment on January 2015 had taken certain computer print outs of the punching machine

kept in front of the office and on the basis of the names seen in such print outs, the respondent came to the conclusion that the appellant establishment engaged more than 19 employees on 01.09.2014. The appellant was engaging only 19 employees as on that date and the additional 9 persons appearing in the computer printout are that of unpaid trainees who attended the appellant establishment to get training during 2014-2015. The Enforcement Officer who visited the appellant establishment in January 2015 inspected all the records including the Muster Roll, Wage Register, computer prints of punching machine etc. Punching of all persons including the unpaid trainees was compulsory for security reasons. As far as the trainees are concerned, attendance is required for issuing internship certificate. The trainees are students sponsored by various educational institutions and training is for the purpose of internship certificates for the students. Appellant was giving free internship training to those students as part of their curriculum. The appellant during the 7A proceedings had submitted all the applications and request letters received from various educational institutions through E-mail. The trainees were not paid any honorarium or allowances. The trainees were

not supposed to or required to attend any kind of jobs in appellant establishment. The trainees were given not only practical training but also theoretical classes. The respondent authority initiated an enquiry under Sec 7A on the basis of the report submitted by the Enforcement Officer. The appellant was in receipt of summons dated 13.12.2016. A copy of which is produced and marked as Annexure A2. The appellant appeared before the respondent along with the records. During the course of the enquiry, it was brought to the notice of the appellant that the Enforcement Officer who visited the appellant establishment in January 2015 has recommended coverage of appellant establishment from 09/2014 on the ground that 28 persons including the 9 trainees were working in the appellant establishment. The month wise or employee wise dues were not shown in the computation. The appellant produced the attendance register for the period 2014 – 2015 and 2015 – 2016, wage registers for the period 04/2015 to 03/2016, balance sheets and audit reports for the years 2014 – 2015 and 2015 – 2016. The employment strength of appellant establishment reached 20 in the month of October 2015. These records were also produced before the Enforcement Officer at the time of his

inspection. The appellant also filed a detailed written statement on 21.06.2017, a copy of which is produced and marked as Annexure A3. The Enforcement Officer who visited appellant establishment never questioned the appellant or the trainees regarding the nature of training programme. The respondent failed to notice that no wages/salary was drawn by the trainees. The respondent is claiming contribution on the basis of the difference in balance sheet for the year 2014 – 2015. The difference is due to inclusion of all payments made to the employees including bonus. Balance sheet for the year 2014 – 2015 shows an amount of Rs. 31,88,986/- towards salaries, wages and bonus. The figures shown in the Balance Sheet was including the bonus paid to the employees for the financial year 2014 – 2015, and not wages alone. The respondent failed to provide the details of the employees against whom the assessment is made. The respondent has relied on imaginary figures submitted by the Enforcement Officers for making the assessment. The appellant establishment is liable to be covered only w.e.f. 10/2015. The decision of the respondent authority covering the appellant establishment w.e.f. 09/2014 is in violation of the provisions of the Act and Schemes. The

respondent failed to apply his mind to the facts and circumstances of this case and completely relied on the report of the Enforcement Officer while covering and assessing the dues.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act w.e.f. 01.09.2014. The respondent received a complaint from the employees of the appellant establishment that even though the establishment has sufficient number of employees and fulfilled the criteria for coverage, the appellant establishment is not extending social security benefits to the employees. Based on the complaint, an Enforcement Officer conducted an inspection of the appellant establishment and submitted a report dated 02.02.2015. The Enforcement Officer reported that the employment strength of the establishment reached 20 as on 09/2014 and the appellant establishment is required to be covered from 01.09.2014. There is no basis in the claim of the appellant that the respondent authority took an ex parte decision to cover the appellant establishment w.e.f. 01.09.2014. The Act and Schemes applies to an establishment on its own, as soon as the conditions for coverage are met. No

action on the part of the statutory authorities' under the Act is required for an establishment to be covered. On a verification of the records submitted by the Enforcement Officer, it is evident that the records including the punching details were attested by the appellant. In the monthly status report for January 2015, the appellant furnished the employment strength as 20. A copy of the monthly status report for January 2015 is produced and marked as Exhibit A. During the month of January 2015, the number of working days of Mr. Arun Balachandran is shown as "0" days in punching machine and in the salary statement the total leave is shown as "0" and salary was paid. According to the appellant, the nine additional person appearing in the punching machine records are unpaid trainees. However the appellant could not satisfactorily explain the huge difference in the total wages as per the wage register and also in the Balance Sheet. According to the appellant, the unpaid trainees are allowed to undergo training on the request of students as recommended by the educational institutions. The emails submitted by the appellant of the students of Stella Marris College dated 09.04.2015 does not mention that the training is free. Section 2(f) of the Act, while defining employee, specifically

includes trainees and apprentices with a specific exclusion of trainees engaged under Apprentices Act 1961 and also under the Standing Orders of the establishment. The appellant failed to produce any documents regarding the training and to show that the trainees had no right of employment in the appellant establishment. The appellant also failed to produce the copies of certificates issued to the so called trainees. The appellant admitted that the employment strength of the appellant establishment exceeded 20 w.e.f. 10/2015, however failed to start compliance atleast from the said date. 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 lower authority in an enquiry under Sec 7A cannot be raised in a writ petition. The Enforcement Officer is appointed as Inspector under Sec 13 of the Act and therefore an investigation report submitted by the Enforcement Officer can be accepted, provided it is not proved otherwise by the appellant establishment. The appellant was offered 9 opportunities for hearing. The appellant also filed a detailed written statement on 20.06.2017. The Act will become applicable to the appellant establishment once the employment strength reaches 20. The



respondent authority issued the impugned order on the basis of the records maintained by the appellant establishment. As per Para 26(2) of EPF Scheme, every employee employed in connection with the work of a factory or establishment to which EPF Scheme applies other than excluded employees shall be entitled and required to be a member of Provident Fund from the date of joining of the said establishment.

4. The respondent authority received a complaint from some of the employees of the appellant establishment alleging that the appellant establishment is not extending social security benefits to its employees from the date of their eligibility. The respondent conducted an investigation through an Enforcement Officer. They found that the appellant establishment is eligible to be covered w.e.f. 09/2014 since the employment strength as on that date was 28. The respondent reached that conclusion on the basis of the records produced by the Enforcement Officer, specifically a print out of the punching machine records which showed that the employment strength as on 09/2014 was 28. According to the learned Counsel for the appellant all the records called for by the Enforcement Officer as well as the

respondent authority were produced before the Enforcement Officer as well as the respondent authority. None of these records would indicate the employment strength of the appellant reached 20 during 09/2014. According to the learned Counsel for the appellant, the employment strength reached 20 only on 10/2015 and is statutorily coverable only from that date. According to the learned Counsel for the respondent, the appellant failed to comply even from the date the appellant admitted the liability under the Act. According to the learned Counsel for the respondent, the print out of the punching machine would clearly show that the employment strength as on 09/2014 was 28 and is therefore coverable under the provisions of the Act. The learned Counsel also pointed out that from Exhibit A, the monthly status report as on 1/2015 the employment strength reached 20. According to the learned Counsel for the appellant, the respondent authority has treated the 9 trainees deputed by various educational institutions for training as employees and covered the appellant establishment w.e.f. 09/2014. According to him all these 9 trainees were taken for unpaid training on the request of students and on the recommendations of the management of Stella Marris College.

The learned Counsel for the appellant also submitted that all the relevant records including the requisition by the educational institutions were produced before the respondent authority. According to the learned Counsel for the respondent, the claim of the appellant that the trainees are unpaid is not correct as there is a huge variation between the wages reflected in the wage register and also the balance sheet. However the learned Counsel for the respondent could not categorically state that on what basis the quantification of dues is done when the salary or allowance paid to the trainees are not known to the respondent authority. The reason given by the learned Counsel for the respondent as to why the evidence regarding deputation of students from an educational institution is ignored is also not convincing. It is upto the respondent authority to utilise his powers under Sec 7A to analyse and find out why there is variation in the wages furnished in the wage register and also in the balance sheet. It is not correct to presume or jump into a conclusion that the huge variation in wages is only due to the allowances paid to the 9 trainees by the appellant establishment.

5. The learned Counsel for the appellant conceded that the appellant establishment is coverable under the provisions of the Act w.e.f. 10/2015, since the employment strength reached 20 by that date. However no explanation is forthcoming from the learned Counsel as to why they fail to start compliance atleast from the said date. The appellant shall start compliance under the provisions of the Act from the admitted dates ie; from 10/2015 and remit the contribution in respect of its employees. The issue regarding coverage w.e.f. 09/2014 and assessment of dues in respect of trainees will have to be re-decided by the respondent authority on the basis of the documents made available during the course of enquiry.

6. Considering the facts, circumstances, pleadings, arguments and evidences in this appeal, I am not inclined to accept the impugned order covering the appellant establishment w.e.f. 09/2014 and assessing the dues in respect of all employees including the trainees.

Hence the appeal is allowed, the impugned order covering the appellant establishment from 09/2014 and the assessment of dues from that date for all employees including the trainees is

set aside. The appellant shall start compliance with respect to its employees from the admitted date of 10/2015. The respondent authority shall secure compliance from the appellant establishment from 10/2015 with immediate effect, if it is not already done. The question of coverage of the appellant establishment w.e.f. 09/2014 and assessment of dues from 09/2014 to 09/2015 shall be re-decided by the respondent authority after issuing notice to the appellant. If the appellant fails to appear or produce records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant under Sec 70 of the Act, as directed by this Tribunal shall be adjusted or refunded after completion of the enquiry.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer