



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 12th day of October 2021)

APPEAL No.277/2019

Appellant

M/s. Ajith Associates Architectural
Consultants Pvt. Ltd.
Registered Office at 3rd Floor,
Puthuran Plaza, KPCC Jn, MG Road
Ernakulam – 682 011

By Adv. M S Narayanan
By Adv. Terry V James

Respondent

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

By Adv. S Prasanth

This case coming up for final hearing on 13/07/2021
and this Tribunal-cum-Labour Court on 12/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KCH/ENF – 1
(1)/27275/2018/5089 dated 31/12/2018 assessing dues

under Sec 7A of EPF and MP Act (hereinafter referred to as 'the Act') for non-enrolment of eight employees for period from 07/2010 to 08/2015. Total dues assessed is Rs. 3,55,370/- (Rupees Three lakh fifty five thousand three hundred and seventy only).

2. The appellant is an establishment engaged in the business of Architectural Consultancy and is registered under provisions of Indian Companies Act. Almost all employees of the appellant company are excluded employees as provided in Para 2(f)(ii) of the EPF Scheme as they are paid monthly salary of more than Rs.15000/-. The appellant company is the Project Management Consultant for the Army Welfare Housing Organisation. An Enforcement Officer of the respondent visited the work site on 14/08/2015 and found that eight of the employees of the appellant deployed at the site, were not enrolled to the fund. These employees are

1. Sri. Alex Thomas, who joined the appellant establishment as Assistant Project Manager on 11/06/2015 and resigned

from the appellant establishment on 30/11/2018 and he was drawing a monthly salary of Rs. 20,000/-.

2. Sri. Akhil Sajeev, who joined the service of appellant establishment as Project Engineer on 07/07/2014 and left on 30/06/2016 and he was drawing a monthly salary of Rs. 20,000/-.

3. Sri. K.K.Vasudevan, who joined the appellant establishment as Project Engineer on 08/07/2013 and resigned from the appellant establishment on 30/11/2018 and he was drawing a monthly salary of Rs. 23,000/-.

4. Sri. Salish.K.C, who joined the appellant establishment as Site Supervisor on 02/02/2015 and resigned on 30/11/2016 and he was drawing a monthly salary of Rs. 16,000/-.

5. Sri. C.Guru Murthy, who joined the appellant establishment as Structural Engineer and was drawing a salary of Rs. 30,000/- and left the service of appellant on 30/05/2017.

6. Smt. Shiny V.V, who joined the appellant establishment as Quantity Surveyor on 13/08/2010 and drawing a salary of Rs. 14000/- and still continues in service.

7. Sri. Ramesh.S, who joined the appellant establishment as Site Engineer on 18/08/2014 and left on 30/09/2015 and was drawing a salary of Rs. 15000/-

8. Sri. Irshad.B, who joined the appellant establishment as Site Engineer on 03/06/2015 and resigned from the appellant establishment on 30/03/2017 and he was drawing a monthly salary of Rs. 20,000/-.

The true copies of employment contract of these employees from Serial No. 1 to 4 and 7 to 8 are produced and marked as Annexure A1 to A6. The Form 11 filed by these employees are produced and marked as Annexure A7 to Annexure A14. A copy of the spot mahazar prepared by the Enforcement Officer was not provided to the appellant. The representative who appeared before the respondent could not produce the records as he was new to the appellant establishment and the allegedly non employed

employees have already left the service of the appellant establishment by the time he joined the service. Since the supporting evidence could not be produced, the respondent issued the impugned order. The respondent also held that Smt. Shiny V.V is eligible to be enrolled w.e.f September 2014. The appellant had produced all the relevant documents to show that all the non enrolled employees are excluded employees and therefore the appellant is not liable to deposit any amount as per the impugned order. The respondent initiated coercive action for recovery of assess demand. The appellant therefore approached Hon'ble High Court of Kerala in W.P.(C) 8977/2019 and the Hon'ble High Court vide its judgement dated 25/03/2019 allowed the appellant to approach this Tribunal in appeal and also kept the recovery action in abeyance for a period of six weeks. A copy of the order of the Hon'ble High Court is produced and marked as Annexure A17.

3. The respondent did not file any counter in spite of giving adequate opportunity. Hence matter was heard and

the respondent filed an argument note. As per the argument note, an Enforcement Officer of the respondent organisation visited the construction site of appellant establishment and reported that eight employees were not enrolled to the fund. The appellant did not produce any records. The Enforcement Officer, therefore, prepared a spot mahazar and quantified the dues of these eight employees from 02/2010 to 08/2015. The appellant enrolled Smt. Shiny V.V subsequently w.e.f. 05/2015 whereas she is required to be enrolled to the fund w.e.f. 09/2014 as her salary as on that date was below Rs.15000/-. During the course of 7A, the appellant produced Form 11 in respect of Sri. Guru Murthy and Sri.Alex Thomas. The respondent also expressed their doubts regarding the genuineness of the Form 11 now produced by the appellant. It is mandatory that the appellant shall collect the Form 11 from an employee before admitting him into employment. The Hon'ble High Court of Delhi in ***Mrs. KEE Marina Ltd. Vs APFC, 2017 LLR 871*** held that if the appellant failed to produce the best evidence before the respondent authority at the time of enquiry, he

cannot dispute the correctness of the claim later. The appellant was provided more than six opportunities to produce the records and documents. Hence it is not correct on the part of the appellant to state that the appellant was not provided adequate opportunity. The appellant was provided with all the details of the report of the Enforcement Officer including the names of the non-enrolled employees and the date from which they are required to be enrolled. The squad of Enforcement Officers itself handed over the copy of the inspection report at the construction site on 14/08/2015. According to the learned Counsel for the appellant, the documents could not be produced at the time of the enquiry since the Accountant who appeared before the respondent authority was totally new and he could not locate the documents to be produced in the enquiry. On a perusal of the impugned order it is seen that the respondent authority provided nine opportunities to the appellant to produce documents to substantiate their claim that all these non enrolled employees are excluded employees. However the appellant failed to produce any documents, the

respondent in the impugned order has specifically observed that “Although the employer claims that the employees are excluded employees and need not be enrolled to the fund, no evidence as required under the statute has been placed before me. By not obtaining Form 11, the employer has violated the statute; and if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same, nor can a person claim any right arising out of his own wrong doing. The principle of *Juris Ex Injuria Non Oritur* squarely applies to the action of the employer”. The respondent authority in such circumstances cannot be blamed for issuing the impugned order on the basis of the available documents. The appellant produced all the Form 11 and also the contract of employment of few employees to show that they were excluded employees. According to the learned Counsel for the respondent, the genuineness of the documents now produced is doubtful.

4. As already pointed out, the impugned order is issued on the basis of the report of the Enforcement Officer

as the appellant failed to produce any records before the respondent authority to substantiate their claim. However the appellant produced some records in this appeal. In the circumstances explained by the learned Counsel for the appellant, it is appropriate that the respondent authority examined these documents to relate the same with the other financial statements of the appellant establishment and also Form 11 and come to a conclusion whether the seven employees are eligible to be enrolled to the fund. As far as Smt. Shiny.V.V is concerned, she is liable to be enrolled to the fund from 09/2014, when the statutory wage limit was enhanced to Rs.15,000/-. With regard to the other seven employees the respondent authority shall examine their eligibility to be enrolled on the basis of the available records.

5. Hence the appeal is allowed. The impugned Order is set aside and the matter is remitted back to the respondent authority to re-assess the dues after providing an opportunity to the appellant to substantiate their case. If the appellant failed to appear and co-operate with the

enquiry or failed to produce additional documents, if any, the respondent authority may take appropriate decision as per law. The pre-deposit made by the appellant under Sec 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded after issuing the order.

Sd/-

(V. Vijaya Kumar)
Presiding Officer